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

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**Form S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
**THE SECURITIES ACT OF 1933**

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**WESTERN DIGITAL CORPORATION**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)

33-0956711  
(I.R.S. Employer  
Identification No.)

5601 Great Oaks Parkway  
San Jose, California 95119  
(408) 717-6000

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Michael C. Ray  
Executive Vice President and Chief Legal Officer  
Western Digital Corporation  
5601 Great Oaks Parkway  
San Jose, California 95119  
(408) 717-6000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copy to:*

Duane McLaughlin, Esq.  
Helena K. Grannis, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
(212) 225-2000

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if smaller reporting company)

Smaller reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

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**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered/ Proposed maximum offering price per unit/ Proposed maximum aggregate offering price(1)	Amount of registration fee(2)
Common Stock, \$0.01 par value(3)(4)		
Preferred Stock, \$0.01 par value(3)		
Debt Securities(3)		
Warrants(3)		
Guarantees of Debt Securities(5)		

(1) An indeterminate aggregate initial offering price and number or amount of the securities is being registered as may periodically be offered at indeterminate prices.

(2) In accordance with Rules 456(b) and 457(r) under the Securities Act of 1933, as amended, the registrant is deferring payment of the entire registration fee.

(3) Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities.

(4) An indeterminate number of shares of common stock may be issued from time to time upon exercise, conversion or exchange of other securities.

(5) Our subsidiary, Western Digital Technologies, Inc., may fully and unconditionally guarantee the debt securities issued by Western Digital Corporation as described in the prospectus included in this registration statement and in any related prospectus supplement. No separate consideration will be received for the guarantees.

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**TABLE OF ADDITIONAL REGISTRANTS**

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<b>Name</b>	<b>State or other jurisdiction of incorporation or organization</b>	<b>I.R.S. employer ID #</b>	<b>Primary standard industrial classification code number</b>	<b>Address and telephone # of registrant's principal executive offices</b>
Western Digital Technologies, Inc.	Delaware	95-2647125	3572	5601 Great Oaks Parkway San Jose, California 95119 (408) 717-6000

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# Western Digital®

## WESTERN DIGITAL CORPORATION

**Common Stock**  
**Preferred Stock**  
**Debt Securities**  
**Warrants**  
**Guarantees of Debt Securities**

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The following are types of securities that we may offer, issue and sell from time to time, together or separately:

- shares of our common stock;
- shares of our preferred stock;
- debt securities, which may be fully and unconditionally guaranteed by our subsidiary, Western Digital Technologies, Inc., on a subordinated or unsubordinated, secured or unsecured basis; and
- warrants to purchase debt or equity securities.

Any of these securities may be offered together or separately and in one or more series, if any, in amounts, at prices and on other terms to be determined at the time of the offering and described in an accompanying prospectus supplement. Any prospectus supplement may also add, update or change information contained in this prospectus. You should carefully read this prospectus and any prospectus supplement, together with any documents we incorporate by reference, carefully before you invest.

Unless otherwise stated in a prospectus supplement, none of these securities other than our common stock will be listed on any securities exchange. Our common stock is listed on The Nasdaq Stock Market LLC under the symbol “WDC.”

We may offer and sell these securities through one or more underwriters, dealers or agents, through underwriting syndicates managed or co-managed by one or more underwriters, or directly to purchasers, on a continuous or delayed basis. The prospectus supplement for each offering of securities will describe in detail the plan of distribution for that offering.

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***Investing in the offered securities involves risks. See “[Risk Factors](#)” beginning on page 3 and carefully consider the discussion of risk and uncertainties described in any applicable prospectus supplement and in the documents we incorporate by reference.***

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus or any applicable prospectus supplement. Any representation to the contrary is a criminal offense.**

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**Prospectus dated August 27, 2021**

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**We are responsible for the information contained and incorporated by reference in this prospectus. We have not authorized anyone to give you any other information, and we take no responsibility for any other information that others may give you. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained or incorporated by reference in this prospectus or any prospectus supplement is accurate as of any date other than the date of the document containing the information.**

## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the “SEC”) utilizing an automatic shelf registration process. Under this shelf process, we may periodically sell the securities described in this prospectus in one or more offerings. This prospectus provides a general description of our common stock, preferred stock, debt securities (including any guarantees thereof) and warrants that we may offer. Each time we offer securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information, including information about us, contained in this prospectus. Therefore, before making your investment decision, you should carefully read:

- this prospectus;
- any applicable prospectus supplement, which (1) explains the specific terms of the securities being offered and (2) updates and changes information in this prospectus; and
- the documents referred to in “Where You Can Find More Information” on page 24 for information about us, including our financial statements.

References to “we,” “us,” “our,” the “Company” and “Western Digital” are references to Western Digital Corporation and its consolidated subsidiaries, unless it is clear from the context that we mean only Western Digital Corporation.

## NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any prospectus supplement and the documents incorporated by reference contain forward-looking statements within the meaning of the federal securities laws. Any statements that do not relate to historical or current facts or matters are forward-looking statements. You can identify some of the forward-looking statements by the use of forward-looking words, such as “may,” “will,” “could,” “would,” “project,” “believe,” “anticipate,” “expect,” “estimate,” “continue,” “potential,” “plan,” “forecast,” and the like, or the use of future tense. Statements concerning current conditions may also be forward-looking if they imply a continuation of current conditions. Examples of forward-looking statements include, but are not limited to, statements concerning:

- consumer trends and market conditions, market opportunities and our market position;
- expectations regarding the effects of the COVID-19 pandemic and measures intended to reduce its spread;
- expectations regarding our Flash Ventures joint venture with Kioxia Corporation, the flash industry and our flash wafer output plans;
- product synergies and our product plans and business strategies;
- expectations regarding pricing trends and conditions for our products;
- expectations regarding our cost saving initiatives;
- expectations regarding our product development and technology plans;
- expectations regarding the outcome of legal proceedings in which we are involved;
- our reinvestment in the business and ongoing deleveraging efforts;
- our share repurchase program and resumption of our quarterly cash dividend policy;
- expectations regarding the repatriation of funds from our foreign operations;
- our beliefs regarding tax benefits and the timing of future payments, if any, relating to the unrecognized tax benefits, and the adequacy of our tax provisions;

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- expectations regarding capital investments and sources of funding for those investments; and
- our beliefs regarding the sufficiency of our available liquidity to meet our working capital, debt and capital expenditure needs.

These forward-looking statements are based on information available to the Company as of the date of this prospectus and are based on management's current views and assumptions. They are conditioned upon and involve a number of risks, uncertainties and other factors that could cause actual results or performance to differ materially from those expressed in the forward-looking statements. These risks and uncertainties include, but are not limited to:

- future responses to and effects of the COVID-19 pandemic;
- volatility in global economic conditions;
- impact of business and market conditions;
- impact of competitive products and pricing;
- our development and introduction of products based on new technologies and expansion into new data storage markets;
- risks associated with cost saving initiatives, restructuring, acquisitions, divestitures, mergers, joint ventures and our strategic relationships;
- difficulties or delays in manufacturing or other supply chain distributions;
- hiring and retention of key employees;
- our substantial level of debt and other financial obligations;
- changes to our relationships with key customers;
- disruptions in operations from cyberattacks or other system security risks;
- actions by competitors;
- risks associated with compliance with changing legal and regulatory requirements and the outcome of legal proceedings; and
- the documents referred to in "Where You Can Find More Information" on page 24 for information about us, including our financial statements.

You are urged to carefully review the disclosures we make concerning these risks and review the additional disclosures we make concerning material risks and other factors that may affect the outcome of our forward-looking statements and our business and operating results, including those made on page 3 of this prospectus, in Part I, Item 1A of our 2021 Annual Report on Form 10-K, and any of those made in our other reports filed with the SEC, including under "Risk Factors" in Item 1A of subsequent Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q that may from time to time amend, supplement or supersede the risks and uncertainties disclosed in the 2021 Annual Report on Form 10-K. You are cautioned not to place undue reliance on the forward-looking statements included in this prospectus, which speak only as of the date of this document. We do not intend, and undertake no obligation, to update or revise these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events, except as required by law.

## WESTERN DIGITAL CORPORATION

Western Digital Corporation is a leading developer, manufacturer, and provider of data storage devices and solutions that address the evolving needs of information technology and the infrastructure that enables the proliferation of data in virtually every industry. We create environments for data to thrive. We are driving the innovation needed to help customers capture, preserve, access and transform an ever-increasing diversity of data. Everywhere data lives, from advanced data centers to mobile sensors to personal devices, our industry-leading solutions deliver the possibilities of data.

Founded in 1970 in Santa Ana, California, Western Digital Corporation is now a Standard & Poor's 500 company headquartered in San Jose, California. We have one of the technology industry's most valuable patent portfolios with approximately 13,700 active patents worldwide. We have a rich heritage of innovation and operational excellence, a wide range of intellectual property assets and broad research and development capabilities. The unabated growth in amount, value, and use of data continues, creating a global need for a larger, faster and more capable storage infrastructure.

We are a customer-focused organization that has developed deep relationships with industry leaders to continue to deliver innovative solutions to help users capture, store and transform data across a boundless range of applications. Wherever data needs to be stored and accessed - from consumer devices such as cameras, drones and virtual reality headsets, to the most complex data centers - Western Digital is there. We enable cloud, Internet, and social media infrastructure players to build more powerful, cost effective and efficient data centers. We help original equipment manufacturers address storage opportunities and solutions to capture and transform data in myriad devices and edge technologies. We have also built strong consumer brands with tools to manage fast-accumulating libraries of personal content.

To increase focus, drive innovation and improve execution, we have recently structured our operations with dedicated leadership of our two broad categories of technology: hard disk drives, which are based on rotating magnetic technology, and flash-based memory ("flash"), which is a semiconductor technology. We continue to transform ourselves to address the growth in data by providing what we believe to be the broadest range of storage technologies in the industry with a comprehensive product portfolio and global reach.

Our principal executive office is located at 5601 Great Oaks Parkway, San Jose, California 95119, and the telephone number of our principal executive office is (408) 717-6000.

## RISK FACTORS

Investing in the offered securities involves risks. Before deciding to invest in our securities, you should carefully consider the discussion of risks and uncertainties under the heading "Risk Factors" contained in any applicable prospectus supplement and in the documents that are incorporated by reference in this prospectus. See the section entitled "Where You Can Find More Information" on page 24.

## SUPPLEMENTAL GUARANTOR FINANCIAL INFORMATION

### *Obligor Group Summarized Financial Information*

In this section, the term "Company" refers solely to Western Digital Corporation (and not to any of its affiliates, including subsidiaries). The debt securities that may be issued by the Company may be fully and unconditionally guaranteed, jointly and severally, on a secured or unsecured, subordinated or unsubordinated basis, subject to certain customary guarantor release conditions, by our 100% owned domestic subsidiary, Western Digital Technologies, Inc. ("Guarantor" and, together with the Company, the "Obligor Group"). The other subsidiaries of the Company (the "non-guarantor subsidiaries") will not guarantee any debt securities we may issue and,



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accordingly, we are not registering for possible issuance any guarantees of the Company's debt securities by the non-guarantor subsidiaries. For a brief description of the general terms of the debt securities that we may offer and the guarantees that the Guarantor may offer, see the information under the heading "Description of Debt Securities" and "Description of Guarantees" in this prospectus.

The Company conducts operations almost entirely through its subsidiaries. Accordingly, the Obligor Group's cash flow and ability to service any guaranteed registered debt securities will depend on the earnings of the Company's subsidiaries and the distribution of those earnings to the Obligor Group, including the earnings of the non-guarantor subsidiaries, whether by dividends, loans or otherwise. Holders of the guaranteed registered debt securities will have a direct claim only against the Obligor Group.

The following tables include summarized financial information for the Obligor Group. The information for the Obligor Group is presented on combined basis, excluding intercompany balances and transactions between the Company and the Guarantor and excluding investments in and equity in the earnings of non-guarantor subsidiaries. The Obligor Group's amounts due from, amounts due to, and transactions with non-guarantor subsidiaries have been presented in separate line items.

The assets and liabilities of the Obligor Group included the following as of July 2, 2021 (in millions):

Current assets (excluding net intercompany receivable from non-guarantor subsidiaries)	\$ 2,898
Noncurrent assets	1,903
Net intercompany receivable/(payable) to non-guarantor subsidiaries	(463)
Current liabilities	2,325
Noncurrent liabilities	9,726

The operating results of the Obligor Group included the following for the fiscal year ended July 2, 2021 (in millions):

Net sales	\$ 12,378
Gross profit	1,861
Operating income	142
Net income	377

Results for the Obligor Group for the fiscal year ended July 2, 2021 include the following transactions with non-guarantor subsidiaries (in millions):

Intercompany revenue	\$ 5,190
Net intercompany interest expense	23
Intercompany dividends	528

## USE OF PROCEEDS

Except as otherwise set forth in a prospectus supplement, we intend to use the net proceeds from any sale of the securities described in this prospectus for our general corporate purposes, which may include the repayment of outstanding indebtedness, working capital, capital expenditures, acquisitions, and repurchasing our common stock.

## DESCRIPTION OF SECURITIES

This prospectus contains summary descriptions of the common stock, preferred stock, debt securities and warrants that we may sell from time to time. These summary descriptions are not meant to be complete descriptions of each security. The particular terms of any security will be described in a related prospectus supplement, if necessary.

### DESCRIPTION OF COMMON STOCK

We may periodically issue shares of our common stock or other securities that can be exercised, converted or exchanged into shares of our common stock. The description below summarizes the general terms of our common stock. This section is a summary, and it does not describe every aspect of our common stock. This summary is subject to, and qualified in its entirety by, reference to the provisions of our amended and restated certificate of incorporation (“Certificate of Incorporation”) and our amended and restated bylaws (“Bylaws”).

#### Authorized Capitalization

Our authorized capital stock consists of:

- 450,000,000 shares of common stock, par value \$0.01 per share; and
- 5,000,000 shares of preferred stock, par value \$0.01 per share.

As of August 18, 2021, 308,748,049 shares of our common stock were outstanding, and no shares of preferred stock were issued and outstanding.

#### Common Stock

Subject to the relative rights, limitations and preferences of the holders of any then outstanding preferred stock, holders of our common stock will be entitled to certain rights, including (i) to share ratably in dividends if, when and as declared by the Company’s Board of Directors (our “Board”) out of funds legally available therefor and (ii) in the event of liquidation, dissolution or winding up of the Company, to share ratably in the distribution of assets legally available therefor, after payment of debts and expenses. Each outstanding share of our common stock will entitle the holder to one vote on all matters submitted to a vote of the stockholders, including the election of directors, and the holders of shares of our common stock will possess the exclusive voting power. The holders of our common stock will not have cumulative voting rights in the election of directors or preemptive rights to subscribe for additional shares of our capital stock. Our Bylaws require that, in uncontested elections, each director be elected by the majority of votes cast with respect to such director. This means that the number of shares voted “for” a director nominee must exceed the number of votes cast “against” that nominee in order for that nominee to be elected.

Holders of shares of our common stock will have no preference, conversion, exchange, sinking fund, redemption or appraisal rights. The rights, preferences and privileges of holders of our common stock will be subject to the terms of any series of preferred stock which the Company may issue in the future. All outstanding shares of common stock are fully paid and nonassessable.

#### Anti-Takeover Effect of Our Certificate of Incorporation and Bylaws and Delaware Law

Our Certificate of Incorporation and Bylaws include provisions, summarized below, that are intended to discourage and prevent coercive takeover practices and inadequate takeover bids. These provisions are designed to encourage persons seeking to acquire control of the Company to first negotiate with our Board. They are also intended to provide our management with the flexibility to enhance the likelihood of continuity and stability if

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our Board determines that a takeover is not in the best interests of our stockholders. These provisions, however, could have the effect of discouraging others from making tender offers for our shares and may have the effect of deterring hostile takeovers or delaying changes in our control or management.

### ***Special Stockholder Meetings***

Under our Bylaws, only our Board, the Chairman of the Board or our Chief Executive Officer may call special meetings of stockholders. Stockholders do not have the authority to call a special meeting of stockholders.

### ***Requirements for Advance Notification of Stockholder Nominations and Proposals***

Our stockholders must comply with advance notice procedures set forth in our Bylaws to bring business before or nominate directors for election at a meeting of stockholders. A stockholder (or group of up to 20 stockholders) who has held at least 3% of our common stock for at least three years must also satisfy and comply with additional requirements set forth in our Bylaws to nominate and have any director nominee (generally not exceeding the greater of (i) two director nominees or (ii) 20% of the number of directors on the Board, rounded down to the nearest whole number) included in our proxy materials.

### ***Elimination of Stockholder Action by Written Consent***

The Delaware General Corporation Law (the "DGCL") permits stockholder action by written consent unless the corporation's certificate of incorporation provides otherwise. Our Certificate of Incorporation eliminates the right of stockholders to act by written consent without a meeting.

### ***No Cumulative Voting***

Under Delaware law, cumulative voting for the election of directors is not permitted unless a corporation's certificate of incorporation authorizes cumulative voting. Our Certificate of Incorporation and Bylaws do not provide for cumulative voting in the election of directors. The absence of cumulative voting makes it more difficult for a minority stockholder to gain a seat on our Board to influence our Board's decision regarding a takeover.

### ***Authorized but Unissued Shares***

Subject to the requirements of The Nasdaq Stock Market LLC and other applicable law, our authorized but unissued shares of common stock may be available for future issuance without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

### ***Amendment of Provisions in Certificate of Incorporation and Bylaws***

Our Certificate of Incorporation may be amended in accordance with Delaware law. Our Bylaws, or any of them, may be altered, amended or repealed, and new Bylaws may be adopted, (i) by our Board, by vote of a majority of the number of directors then in office as directors, acting at any duly called and held meeting of our Board, or (ii) by the stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting.

### ***Delaware Anti-Takeover Law***

We are subject to Section 203 of the DGCL, which is an anti-takeover law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder for a

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period of three years following the date that the person became an interested stockholder, unless the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Generally, a business combination includes a merger, asset or stock sale, or another transaction resulting in a financial benefit to the interested stockholder. Generally, an interested stockholder is a person who, together with affiliates and associates, owns 15% or more of the corporation's voting stock. Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- before the stockholder became interested, the board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances; or
- at or after the time the stockholder became interested, the business combination was approved by the board of directors of the corporation and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

### ***Exclusive Forum***

Under the provisions of our Bylaws, unless we consent in writing to the selection of an alternative forum, (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our current or former directors, officers, other employees or stockholders to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, or our Certificate of Incorporation or Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware will, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware (the "Delaware Exclusive Forum Provision"). In addition, under the provisions of our Bylaws, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the "Federal Forum Provision"). Under our Bylaws and to the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of our capital stock is deemed to have notice of and consented to the Delaware Exclusive Forum Provision and the Federal Forum Provision.

The Delaware Exclusive Forum Provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Securities Exchange Act of 1934, as amended ("Exchange Act"), or the Securities Act of 1933, as amended ("Securities Act"), or any other claim for which the federal courts have exclusive jurisdiction. In addition, the Federal Forum Provision is intended to apply to claims arising under the Securities Act and would not apply to claims brought pursuant to the Exchange Act. The exclusive forum provisions in our Bylaws will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder and, accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal courts. Our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

### **Listing of Common Stock**

Our common stock is traded on the The Nasdaq Stock Market LLC under the symbol "WDC."

## **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

## **DESCRIPTION OF PREFERRED STOCK**

Our Board has the authority, within the limitations and restrictions stated in our Certificate of Incorporation, to authorize the issuance of shares of preferred stock, in one or more classes or series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, preemptive rights and the number of shares constituting any series or the designation of such series. The issuance of Preferred Stock could have the effect of decreasing the market price of our common stock and could adversely affect the voting and other rights of the holders of our common stock.

## **DESCRIPTION OF DEBT SECURITIES**

This section describes the general terms that will apply to any debt securities that we may offer pursuant to this prospectus and an applicable prospectus supplement. The specific terms of any offered debt securities, and the extent to which the general terms described in this section apply to these debt securities, will be described in the applicable prospectus supplement at the time of the offering. The prospectus supplement, which we will file with the SEC, may or may not modify the general terms found in this prospectus. For a complete description of any series of debt securities, you should read both this prospectus and the prospectus supplement that applies to that series of debt securities.

In this section, the terms “we,” “our,” “us” and “Western Digital” refer solely to Western Digital Corporation (and not to any of its affiliates, including subsidiaries). As used in this prospectus, “debt securities” means the debentures, notes, bonds and other evidences of indebtedness that we may offer pursuant to this prospectus and an applicable prospectus supplement and authenticated by the relevant trustee and delivered under the applicable indenture.

We may issue senior debt securities under an indenture (the “indenture”) to be entered into between us and U.S. Bank National Association, as trustee, as supplemented from time to time, the form of which is filed as an exhibit to the registration statement of which this prospectus is a part. If a different trustee or a different indenture for a series of debt securities is used, those details will be provided in a prospectus supplement and the forms of any other indentures will be filed with the SEC at the time they are used.

We have summarized below the material provisions of the indenture and the debt securities, and indicated which material provisions will be described in an applicable prospectus supplement. For further information, you should read the indenture. The following summary is qualified in its entirety by the provisions of the indenture, including the provisions made part thereof by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”).

### **General**

The debt securities that we may offer under the indenture are not limited in aggregate principal amount. We may issue debt securities at one or more times in one or more series. Each series of debt securities may have different terms. The terms of any series of debt securities will be described in, or determined by action taken pursuant to, a resolution of our board of directors or a committee appointed by our board of directors or in a supplement to the indenture relating to that series.

We are not obligated to issue all debt securities of one series at the same time and, unless otherwise provided in the prospectus supplement, we may reopen a series, without the consent of the holders of the debt securities of

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that series, for the issuance of additional debt securities of that series. Additional debt securities of a particular series will have the same terms and conditions as outstanding debt securities of that series, except for the date of original issuance and the offering price, and will be consolidated with, and form a single series with, those outstanding debt securities.

The prospectus supplement relating to any series of debt securities that we may offer will state the price or prices at which the debt securities will be offered and will contain the specific terms of that series. These terms may include the following:

- the title of the series;
- any limit upon the aggregate principal amount of the series;
- the date or dates on which each of the principal of and premium, if any, on the securities of the series is payable and the method of determination thereof;
- whether the debt securities are senior or subordinated debt securities and, if subordinated, the terms of such subordination;
- whether the debt securities of the series will be secured by any collateral and, if so, the terms and conditions upon which such debt securities will be secured and, if applicable, upon which such liens may be subordinated to other liens securing other indebtedness of us or of any guarantor;
- the rate or rates at which the securities of the series will bear interest, if any, or the method of calculating such rate or rates of interest, the date or dates from which interest will accrue or the method by which the date or dates will be determined, the interest payment dates on which any interest will be payable and the record date, if any;
- whether debt securities are entitled to any guarantee of Western Digital Technologies, Inc. or any other subsidiary guarantors and the identity of any such other subsidiary guarantors for that series and the terms of such guarantee;
- the place or places where the principal of (and premium, if any) and interest, if any, on securities of the series will be payable;
- the place or places where the securities may be exchanged or transferred;
- the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which, and the other terms and conditions upon which, securities of the series may be redeemed, in whole or in part, at our option, if we are to have that option with respect to the applicable series;
- our obligation, if any, to redeem or purchase securities of the series in whole or in part pursuant to any sinking fund or analogous provision or upon the happening of a specified event or at the option of a holder thereof and the period or periods within which, the price or prices at which, and the other terms and conditions upon which securities of the series will be redeemed or purchased, in whole or in part, pursuant to such an obligation;
- if other than minimum denominations of \$2,000 and multiples of \$1,000 thereafter, the denominations in which securities of the series are issuable;
- if other than U.S. dollars, the currency or currencies (including currency unit or units) in which payments of principal of (and premium, if any) and interest, if any, on the securities of the series will or may be payable, or in which the securities of the series will be denominated, and the particular provisions applicable thereto;
- if the payments of principal of (and premium, if any), or interest, if any, on the securities of the series are to be made, at our or a holder's election, in a currency or currencies (including currency unit or

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units) other than that in which the securities are denominated or designated to be payable, the currency or currencies (including currency unit or units) in which the payments are to be made, the terms and conditions of the payments and the manner in which the exchange rate with respect to the payments will be determined, and the particular provisions applicable thereto;

- if the amount of payments of principal of (and premium, if any) and interest, if any, on the securities of the series will be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on a currency or currencies (including currency unit or units) other than that in which the securities of the series are denominated or designated to be payable), the index, formula or other method by which those amounts will be determined;
- whether, and the terms and conditions upon which, the securities of the series may or must be converted into our securities or exchanged for our securities or those of another enterprise;
- if other than the principal amount thereof, the portion of the principal amount of securities of the series which will be payable upon declaration of acceleration of the maturity thereof pursuant to an event of default or the method by which that portion will be determined;
- any modifications of or additions to the events of default or covenants with respect to securities of the series, or any modifications of or additions to subordination provisions with respect to the subordinated debt securities;
- whether the securities of the series will be subject to legal defeasance or covenant defeasance as provided in the indenture;
- if other than the trustee, the identity of the registrar and any paying agent;
- if the securities of the series will be issued in whole or in part in global form, (i) the depository for the global securities, (ii) the form of any legend that will be borne by the global securities, (iii) whether beneficial owners of interests in any securities of the series in global form may exchange those interests for certificated securities of that series and of like tenor of any authorized form and denomination and (iv) the circumstances under which any such exchange may occur; and
- any other terms of the series.

### **Interest**

Unless otherwise indicated in the applicable prospectus supplement, if any payment date with respect to debt securities falls on a day that is not a business day, we will make the payment on the next business day. The payment made on the next business day will be treated as though it had been made on the original payment date, and no interest will accrue on the payment for the additional period of time.

### **Ranking**

The debt securities, if senior secured debt securities, will be our direct, unconditional and unsubordinated secured obligations and will rank *pari passu* with all of our other secured senior obligations. The debt securities, if senior debt securities, will be our direct, unconditional, unsecured and unsubordinated obligations and will rank *pari passu* with all of our other unsecured senior obligations. However, such senior debt securities will be effectively junior to all of our secured obligations to the extent of the value of the assets securing those obligations. Such debt securities will also be structurally subordinated to all liabilities, including trade payables and lease obligations, of our subsidiaries. The debt securities, if subordinated debt securities will be our direct, unconditional, unsecured and subordinated obligations and will be junior in right of payment to our existing and future senior obligations. The extent of such subordination of the subordinated debt securities will be described below under “–Additional Provisions Applicable to Subordinated Debt Securities – Subordination of Subordinated Debt Securities,” or as described in an accompanying prospectus supplement.



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### **Covenants**

Except as described below or in the prospectus supplement with respect to any series of debt securities, neither we nor any subsidiary guarantors are restricted by the indenture from paying dividends or making distributions on our or their capital stock or purchasing or redeeming our or their capital stock. The indenture does not require the maintenance of any financial ratios or specified levels of net worth or liquidity. In addition, with certain exceptions, the indenture does not contain any covenants or other provisions that would limit our or any subsidiary guarantor's right to incur additional indebtedness or limit the amount of additional indebtedness, including senior or secured indebtedness that we can create, incur, assume or guarantee.

Unless otherwise indicated in the applicable prospectus supplement, covenants contained in the indenture will be applicable to the series of debt securities to which the prospectus supplement relates so long as any of the debt securities of that series are outstanding.

### **Reporting**

The indenture provides that we will file with the trustee and the SEC such information, documents and other reports as may be required pursuant to the Trust Indenture Act at the times and in the manner provided in the Trust Indenture Act.

### **Guarantees**

Our wholly-owned subsidiary, Western Digital Technologies, Inc., may fully and unconditionally guarantee any series of debt securities offered by this prospectus in the future, on a secured or unsecured, subordinated or unsubordinated basis. The terms of any such guarantee will be described in the prospectus supplement applicable to the relevant series of guaranteed debt securities. We may also file one or more post-effective amendments to our registration statement to add additional subsidiary guarantors other than Western Digital Technologies, Inc.

### **Consolidation, Merger and Sale of Assets**

The indenture provides neither we nor any subsidiary guarantor may consolidate or merge with or into, or sell or convey all or substantially all of our assets in any one transaction or series of related transactions to another person, unless:

- either we or the subsidiary guarantor, as the case may be, are the resulting, surviving or transferee corporation, or our successor expressly assumes by supplemental indenture all of our obligations under the indenture and all the debt securities; and
- immediately after giving effect to the transaction, no default or event of default has occurred and is continuing.

The term "default" for the purpose of this provision means any event that is, or with the passage of time or the giving of notice or both would become, an event of default.

Except in the case of a lease of all or substantially all of our assets or a subsidiary guarantor's assets, the successor will be substituted for us or the subsidiary guarantor, as the case may be, in the indenture with the same effect as if it had been an original party to such indenture. Thereafter, the successor may exercise our rights and powers or those of such subsidiary guarantor under the indenture.

### **Events of Default, Notice and Waiver**

In the indenture, the term "event of default" with respect to debt securities of any series means any of the following:

- failure by us to pay interest, if any, on the debt securities of that series for 30 days after the date payment is due and payable;

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- failure by us to pay principal of or premium, if any, on the debt securities of that series when due, at maturity, upon any redemption, by declaration or otherwise;
- failure by us or any subsidiary guarantor to comply with other covenants in the indenture or the debt securities of that series for 90 days after notice that compliance was required;
- certain events of bankruptcy or insolvency of us or any subsidiary guarantor with respect to such series that is a significant subsidiary; and
- if applicable, specified events involving the guarantees.

The term “significant subsidiaries” for the purpose of this provision means any of our subsidiaries that would be a “significant subsidiary” as defined in Rule 1-02(w) of Regulation S-X of the Securities Act.

If an event of default (other than relating to certain events of bankruptcy or insolvency of us or any subsidiary guarantor or breach of our reporting obligation) has occurred and is continuing, the trustee or the holders of not less than 30% in aggregate principal amount of the debt securities of that series may declare the entire principal of all the debt securities of the affected series to be due and payable immediately.

If an event of default relating to certain events of bankruptcy or insolvency of us occurs and is continuing, then the principal amount of all of the outstanding debt securities and any accrued interest thereon will automatically become due and payable immediately, without any declaration or other act by the trustee or any holder.

The holders of not less than a majority in aggregate principal amount of the debt securities of any series may, after satisfying conditions, rescind and annul any of the above-described declarations and consequences involving the debt securities of that series, except a continuing default or event of default in the payment of principal of, or interest or premium, if any, on the debt securities of the affected series.

The indenture imposes limitations on suits brought by holders of debt securities of any series against us or any subsidiary guarantor. Except for actions for payment of overdue principal or interest, no holder of a debt security of any series may institute any action against us under the indenture unless:

- the holder has previously given to the trustee written notice of an event of default and the continuance of that event of default;
- the holder or holders of at least 30% in aggregate principal amount of the outstanding debt securities of that series have requested that the trustee pursue the remedy;
- such holder or holders have offered to the trustee security or indemnity reasonably satisfactory to the trustee against the costs, expenses and liabilities to be incurred in compliance with such request;
- the trustee has not instituted the action within 60 days of the receipt of such notice, request and offer of indemnity; and
- the trustee has not received inconsistent direction by the holders of a majority in principal amount of the outstanding debt securities of that series.

We will be required to file annually with the trustee a certificate, signed by an officer of our company, stating whether or not the officer knows of any default by us in the performance, observance or fulfillment of any condition or covenant of the indenture.

Notwithstanding the foregoing, the sole remedy for any breach of our obligation under the indenture to file or furnish reports or other financial information pursuant to section 314(a)(1) of the Trust Indenture Act (or as otherwise required by the indenture) shall be the payment of liquidated damages, and the holders will not have any right under the indenture to accelerate the maturity of the debt securities of the affected series as a result of any such breach. If any such breach continues for 90 days after notice thereof is given in accordance with the

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indenture, we will pay liquidated damages to all the holders of the debt securities of that series at a rate per annum equal to (i) 0.25% per annum of the principal amount of the debt securities of that series from the 90th day following such notice to but not including the 180th day following such notice (or such earlier date on which the event of default relating to the reporting obligations referred to in this paragraph shall have been cured or waived) and (ii) 0.50% per annum of the principal amount of the debt securities of that series from the 180th day following such notice to but not including the 365th day following such notice (or such earlier date on which the event of default relating to the reporting obligations referred to in this paragraph shall have been cured or waived). On such 365th day (or earlier, if the event of default relating to the reporting obligations referred to in this paragraph shall have been cured or waived prior to such 365th day), such additional interest will cease to accrue, and the debt securities of that series will be subject to acceleration as provided above if the event of default is continuing. The provisions of the indenture described in this paragraph will not affect the rights of the holders of the debt securities of any series in the event of the occurrence of any other event of default.

### **Modification and Waiver**

Except as provided in the two succeeding paragraphs, the indenture provides that we, any subsidiary guarantors and the trustee thereunder may, with the consent of the holders of not less than a majority in aggregate principal amount of the debt securities of any series then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, debt securities of that series), voting as one class, add any provisions to, or change in any manner, eliminate or modify in any way the provisions of, the indenture or modify in any manner the rights of the holders of the debt securities of that series.

We, any subsidiary guarantors and the trustee may amend or supplement the indenture or the debt securities of any series without the consent of any holder to:

- secure our obligations in respect of the debt securities of any series;
- evidence the assumption by a successor corporation of our obligations under the indenture and the debt securities of any series in the case of a merger, amalgamation, consolidation or sale of all or substantially all of our assets;
- add covenant(s) or events of default(s) for the protection of the holders of all or any series of debt securities;
- cure any ambiguity or correct any defect, mistake or inconsistency in the indenture or make any other provisions as we may deem necessary or desirable; provided, however, that no such provisions will materially adversely affect the interests of the holders of any debt securities;
- evidence and provide for the acceptance of appointment by a successor trustee in accordance with the indenture;
- provide for uncertificated debt securities in addition to, or in place of, certificated debt securities of any series in a manner that does not materially and adversely affect any holders of the debt securities of that series;
- conform the text of the indenture or the debt securities of any series to any provision of this “Description of Debt Securities” or “Description of Securities” in the prospectus supplement for that series to the extent that the provision in that description was intended to be a verbatim recitation of a provision of the indenture or the debt securities of that series;
- provide for the issuance of additional debt securities of any series in accordance with the limitations set forth in the indenture as of the date of the indenture;
- make any change that would provide any additional rights or benefits to the holders of all or any series of debt securities or that does not adversely affect the legal rights under the indenture of any such holder or any holder of a beneficial interest in the debt securities of that series;

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- comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act;
- establish the form or terms of debt securities of any series as permitted by the indenture;
- in the case of convertible or exchangeable debt securities of any series, subject to the provisions of the supplemental indenture for that series, to provide for conversion rights, exchange rights and/or repurchase rights of holders of that series in connection with any reclassification or change of our common stock or in the event of any amalgamation, consolidation, merger or sale of all or substantially all of the assets of us or our subsidiaries substantially as an entirety occurs;
- in the case of convertible or exchangeable debt securities of any series, to reduce the conversion price or exchange price applicable to that series;
- in the case of convertible or exchangeable debt securities of any series, to increase the conversion rate or exchange ratio in the manner described in the supplemental indenture for that series, provided that the increase will not adversely affect the interests of the holders of that series in any material respect; or
- any other action to amend or supplement the indenture or the debt securities of any series as described in the prospectus supplement with respect to that series of debt securities.

We, any subsidiary guarantors and the trustee may not, without the consent of the holder of each outstanding debt security affected thereby:

- change the final maturity of any debt security;
- reduce the aggregate principal amount on any debt security;
- reduce the rate or amend or modify the calculation, or time of payment, of interest, including defaulted interest on any debt security;
- reduce or alter the method of computation of any amount payable on any debt security upon redemption, prepayment or purchase of any debt security or otherwise alter or waive any of the provisions with respect to the redemption of any debt security, or waive a redemption payment with respect to any debt security;
- change the currency in which the principal of, or interest or premium, if any, on any debt security is payable;
- impair the right to institute suit for the enforcement of any payment on any debt security when due, or otherwise make any change in the provisions of the indenture relating to waivers of past defaults or the rights of holders of any debt security to receive payments of principal of, or premium, if any, or interest on any debt security;
- modify the provisions of the indenture with respect to modification and waiver (including waiver of certain covenants, waiver of a default or event of default in respect of debt securities of any series), except to increase the percentage required for modification or waiver or to provide for the consent of each affected holder;
- reduce the percentage of principal amount of outstanding debt securities of any series whose holders must consent to an amendment, supplement or waiver of the indenture or the debt securities of that series;
- impair the rights of holders of debt securities of any series that are exchangeable or convertible to receive payment or delivery of any consideration due upon the conversion or exchange of the debt securities of that series; or
- any other action to modify or amend the indenture or the debt securities of any series as may be described in the prospectus supplement with respect to that series of debt securities as requiring the consent of each holder affected thereby.

## **Defeasance**

The indenture provides that we and any subsidiary guarantors will be discharged from any and all obligations in respect of the debt securities of any series (except for certain obligations to register the transfer or exchange of the debt securities, to replace stolen, lost or mutilated debt securities, to maintain paying agencies and hold monies for payment in trust and to pay the principal of and interest, if any, on those debt securities), upon the deposit with the applicable trustee, in trust, of money and/or U.S. government obligations, which through the payment of interest and principal of the U.S. government obligations in accordance with their terms will provide money in an amount sufficient to pay any installment of principal and premium, if any, and interest, if any, on the debt securities of that series on the stated maturity date thereof in accordance with the terms of the indenture and the debt securities of that series. Also, the establishment of such a trust will be conditioned on the delivery by us or a subsidiary guarantor to the trustee of an opinion of counsel reasonably satisfactory to the trustee to the effect that, based upon applicable U.S. federal income tax law or a ruling published by the IRS, such a defeasance and discharge will not be deemed, or result in, a taxable event with respect to the holders. For the avoidance of doubt, such an opinion would require a change in current U.S. tax law.

We and any subsidiary guarantors may also omit to comply with the restrictive covenants, if any, of any particular series of debt securities, other than our covenant to pay the amounts due and owing with respect to that series. Any such omission will not be an event of default with respect to the debt securities of that series, upon the deposit with the applicable trustee, in trust, of money and/or U.S. government obligations, which through the payment of interest and principal of the U.S. government obligations in accordance with their terms will provide money in an amount sufficient to pay any installment of principal and premium, if any, and interest, if any, on the debt securities of that series on the stated maturity date thereof in accordance with the terms of the indenture and the debt securities of that series. Our and any subsidiary guarantors' obligations under the indenture and the debt securities of that series other than with respect to those covenants will remain in full force and effect. Also, the establishment of such a trust will be conditioned on the delivery by us or a subsidiary guarantor to the trustee of an opinion of counsel to the effect that such a defeasance and discharge will not be deemed, or result in, a taxable event with respect to the holders.

## **Satisfaction and Discharge**

At our option, we may satisfy and discharge the indenture with respect to the debt securities of any series (except for specified obligations of the trustee and ours, including, among others, the obligations to apply money held in trust) when:

- either (a) all debt securities of that series previously authenticated under the indenture have been delivered to the trustee for cancellation or (b) all debt securities of that series not yet delivered to the trustee for cancellation (i) have become due and payable by reason of the mailing of a notice of redemption or otherwise or (ii) will become due and payable within one year, and we have irrevocably deposited or caused to be deposited with the trustee as trust funds in trust solely for the benefit of the holders an amount sufficient to pay and discharge the entire indebtedness on debt securities of that series;
- no default or event of default with respect to debt securities of that series has occurred or is continuing on the date of the deposit or will occur as a result of the deposit and the deposit will not result in a breach or violation of any other instrument to which we are bound;
- we have paid or caused to be paid all other sums payable by us under the indenture and any applicable supplemental indenture with respect to the debt securities of that series;
- we have delivered irrevocable instructions to the trustee to apply the deposited funds toward the payment of securities of that series at the stated maturity date or the redemption date, as applicable; and
- we have delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent relating to the satisfaction and discharge of the indenture as to that series have been satisfied.

### **Unclaimed Money**

If money deposited with the trustee or paying agent for the payment of principal of, premium or accrued and unpaid interest, if any, on debt securities remains unclaimed for two years, the trustee and paying agent will pay the money back to us upon our request. However, the trustee and paying agent have the right to withhold paying the money back to us until they publish in a newspaper of general circulation in the City of New York, or mail to each holder, a notice stating that the money will be paid back to us if unclaimed after a date no less than 30 days from the publication or mailing. After the trustee or paying agent pays the money back to us, holders of debt securities entitled to the money must look to us for payment, subject to applicable law, and all liability of the trustee and the paying agent with respect to the money will cease.

### **Purchase and Cancellation**

The registrar and paying agent will forward to the trustee any debt securities surrendered to them for transfer, exchange or payment, and the trustee will promptly cancel those debt securities in accordance with its customary procedures. We will not issue new debt securities to replace debt securities that we have paid or delivered to the trustee for cancellation or that any holder has converted.

We may, to the extent permitted by law, purchase debt securities in the open market or by tender offer at any price or by private agreement. We may, at our option and to the extent permitted by law, reissue, resell or surrender to the trustee for cancellation any debt securities we purchase in this manner; provided that we not reissue or resell those debt securities if upon reissuance or resale, they would constitute “restricted securities” within the meaning of Rule 144 under the Securities Act. Debt securities surrendered to the trustee for cancellation may not be reissued or resold and will be promptly cancelled.

### **Replacement of Debt Securities**

We will replace mutilated, lost, destroyed or stolen debt securities at the holder’s expense upon delivery to the trustee of the mutilated debt securities or evidence of the loss, destruction or theft of the debt securities satisfactory to the trustee and us. In the case of a lost, destroyed or stolen debt security, we or the trustee may require, at the expense of the holder, indemnity satisfactory to us and the trustee.

### **Book-Entry Issuance**

Unless otherwise specified in the applicable prospectus supplement, our debt securities will be book-entry securities that are cleared and settled through the Depository Trust Company (the “DTC”), a securities depository. Upon issuance, unless otherwise specified in the applicable prospectus supplement, all book-entry securities of the same series will be represented by one or more fully registered global securities. Each global security will be deposited with, or on behalf of, DTC and will be registered in the name of DTC or a nominee of DTC. DTC will thus be the only registered holder of any such securities and will be considered the sole owner of the securities.

Purchasers may only hold interests in the global securities through DTC if they are participants in the DTC system. Purchasers may also hold interests through a securities intermediary – a bank, brokerage house or other institution that maintains securities accounts for customers – that has an account with DTC or its nominee. DTC will maintain accounts showing the securities holdings of its participants, and these participants will in turn maintain accounts showing the securities holdings of their customers. Some of these customers may themselves be securities intermediaries holding securities for their customers. Thus, each beneficial owner of a book-entry security will hold that security indirectly through a hierarchy of intermediaries, with DTC at the “top” and the beneficial owner’s own securities intermediary at the “bottom.”

The securities of each beneficial owner of a book-entry security will be evidenced solely by entries on the books of the beneficial owner’s securities intermediary. The actual purchaser of the securities will generally not be

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entitled to have the securities represented by the global securities registered in its name and will not be considered the owner. In most cases, a beneficial owner will also not be able to obtain a paper certificate evidencing the holder's ownership of securities. The book-entry system for holding securities eliminates the need for physical movement of certificates. The laws of some jurisdictions require some purchasers of securities to take physical delivery of their securities in definitive form. These laws may impair the ability to transfer book-entry securities.

Unless otherwise specified in the prospectus supplement with respect to a series of debt securities, the beneficial owner of book-entry securities represented by a global security may exchange the securities for definitive or paper securities only if:

- DTC is unwilling or unable to continue as depository for such global security and we are unable to find a qualified replacement for DTC within 90 days;
- at any time DTC ceases to be a "clearing agency" registered under the Exchange Act and we are unable to find a qualified replacement for DTC within 90 days;
- we in our sole discretion decide to allow some or all book-entry securities to be exchangeable for definitive securities in registered form; or
- an event of default has occurred and is continuing under the indenture, and a holder of the securities has requested definitive securities.

Any global security that is exchangeable will be exchangeable in whole for definitive securities in registered form with the same terms, and in the case of debt securities, in an equal aggregate principal amount in denominations of \$2,000 and whole multiples of \$1,000 (unless otherwise specified in the prospectus supplement). Definitive securities will be registered in the name or names of the person or persons specified by DTC in a written instruction to the registrar of the securities. DTC may base its written instruction upon directions it receives from its participants.

In this prospectus and the applicable prospectus supplement, for book-entry securities, references to actions taken by security holders will mean actions taken by DTC upon instructions from its participants, and references to payments and notices of redemption to security holders will mean payments and notices of redemption to DTC as the registered holder of the securities for distribution to participants in accordance with DTC's procedures.

DTC is a limited-purpose trust company organized under the laws of the State of New York, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under the Exchange Act. The rules applicable to DTC and its participants are on file with the SEC.

We will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the book-entry securities or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

### **Regarding the Trustee**

U.S. Bank National Association is the trustee under the indenture.

Except during the continuance of an event of default, the trustee will perform only such duties as are specifically set forth in the indenture. During the existence of an event of default, the trustee will exercise such of the rights and powers vested in it under the indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs. The holders of a majority in principal amount of the then outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee, subject

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to certain exceptions. Subject to these provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of debt securities, unless such holder has offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Pursuant and subject to the Trust Indenture Act, the trustee will be permitted to engage in other transactions with us; however, if the trustee acquires any conflicting interest, it would be required to eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. U.S. Bank National Association is also the trustee under certain indentures under which our senior debt securities have been issued.

### **No individual liability of directors, officers, employees, incorporators, stockholders or agents**

The indenture provides that none of our or any subsidiary guarantor's past, present or future directors, officers, employees, incorporators, stockholders or agents in their capacity as such will have any liability for any of our obligations under the debt securities of any series or the indenture. Each holder of debt securities of any series by accepting a debt security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the debt securities. The waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

### **Governing law**

The indenture is, and the debt securities of each series will be, governed by and construed in accordance with the laws of the State of New York.

### **Additional Provisions Applicable to Subordinated Debt Securities**

#### **General**

The subordinated debt securities will be our unsecured obligations under a subordinated indenture (the "subordinated indenture") to be entered into between us and U.S. Bank National Association, as trustee and will be subordinate in right of payment to certain other indebtedness as described below under "Subordination of Subordinated Debt Securities" or in the applicable prospectus supplement. The subordinated debt securities will be effectively subordinated to all of our secured debt, to the extent of the value of the assets securing that debt.

#### **Subordination of Subordinated Debt Securities**

Payments on the subordinated debt securities will, as described in the applicable prospectus supplement, be subordinated in right of payment to the prior payment in full, in cash or cash equivalents, of all of our existing and future senior debt. As a result, the subordinated debt securities will be contractually subordinated to all of our senior debt and effectively subordinated to all debt and other obligations of our subsidiaries.

"Senior debt" will be defined in the subordinated indenture as, with respect to any "person" (as defined in the subordinated indenture), the principal of (and premium, if any) and interest on any indebtedness, whether outstanding at the date of the subordinated indenture or thereafter created or incurred, which is for:

- money borrowed by such person;
- securities, notes, debentures, bonds or other similar instruments issued by such person;
- obligations of such person evidencing the purchase price of property by such person or a subsidiary of such person, all conditional sale obligations of such person and all obligations of such person under any conditional sale or title retention agreement other than trade accounts payable in the ordinary course of business;
- obligations, contingent or otherwise, of such person in respect of any letters of credit, bankers' acceptance, security purchase facilities or similar credit transactions;



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- obligations in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other similar agreements;
- obligations in respect of any factoring, securitization, sale of receivables or similar transaction;
- money borrowed by or obligations described in the six preceding bullet points of others and assumed or guaranteed by such person;
- obligations under performance guarantees, support agreements and other agreements in the nature thereof relating to the obligations of any subsidiary of such person;
- renewals, extensions, refundings, amendments and modifications of any indebtedness of the kind described in the eight preceding bullet points or of the instruments creating or evidencing the indebtedness, unless, in each case, by the terms of the instrument creating or evidencing the indebtedness or the renewal, extension, refunding, amendment and modification, it is provided that the indebtedness is not senior in right of payment to the subordinated debt securities; and
- obligations of the type referred to in the preceding bulletpoints of others secured by a lien on the property or asset of such person.

Unless otherwise specified in the applicable prospectus supplement for a particular series of subordinated debt securities, in the event of any distribution of our assets upon dissolution, winding up, liquidation or reorganization, the holders of senior debt shall first be paid in full in respect of principal, premium (if any) and interest before any such payments are made on account of the subordinated debt securities. In addition, in the event that (1) the subordinated debt securities are declared due and payable because of an event of default (other than under the circumstances described in the preceding sentence) and (2) any default has occurred and is continuing in the payment of principal, premium (if any), sinking funds or interest on any senior debt, then no payment shall be made on account of principal, premium (if any), sinking funds or interest on the subordinated debt securities until all such payments due in respect of the senior debt have been paid in full.

By reason of the subordination provisions described above, in the event of liquidation or insolvency, any of our creditors who are not holders of senior debt may recover less, ratably, than holders of senior debt and may recover more, ratably, than holders of the subordinated debt securities.

### **Deferral of Interest Payments**

The terms upon which we may defer payments of interest on subordinated debt securities of any series will be set forth in the relevant prospectus supplement and, to the extent necessary, in the supplemental indenture relating to that series. If any such terms are provided for, an interest payment properly deferred will not constitute a default in the payment of interest.

## **DESCRIPTION OF WARRANTS**

We may issue warrants to purchase debt or equity securities. Each warrant will entitle the holder to purchase for cash the amount of debt or equity securities at the exercise price stated or determinable in the prospectus supplement for the warrants. We may issue warrants independently or together with any offered securities. The warrants may be attached to or separate from those offered securities. We will issue the warrants under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, all as described in a related prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

The prospectus supplement relating to any warrants that we may offer will contain the specific terms of the warrants. These terms will include some or all of the following:

- the title of the warrants;

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- the price or prices at which the warrants will be issued;
- the designation, amount and terms of the securities for which the warrants are exercisable;
- the designation and terms of the other securities, if any, with which the warrants are to be issued and the number of warrants issued with each other security;
- the aggregate number of warrants;
- any provisions for adjustment of the number or amount of securities receivable upon exercise of the warrants or the exercise price of the warrants;
- the price or prices at which the securities purchasable upon exercise of the warrants may be purchased;
- the date on and after which the warrants and the securities purchasable upon exercise of the warrants will be separately transferable, if applicable;
- a discussion of any material U.S. federal income tax considerations applicable to the exercise of the warrants;
- the date on which the right to exercise the warrants will commence, and the date on which the right will expire;
- the maximum or minimum number of warrants that may be exercised at any time;
- information with respect to book-entry procedures, if any; and
- any other terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

### **DESCRIPTION OF GUARANTEES**

Our subsidiary, Western Digital Technologies, Inc., may fully and unconditionally guarantee any series of debt securities offered by this prospectus in the future, which will be described in a prospectus supplement relating to the offering of such guaranteed debt securities. The applicable prospectus supplement will describe the terms of any such guarantee by Western Digital Technologies, Inc., including whether such guarantees (i) are secured or unsecured, (ii) are subordinated or unsubordinated or (iii) may be amended, waived, released or otherwise terminated, if different from the provisions applicable to the guaranteed debt securities.

### **LEGAL OWNERSHIP**

In this prospectus and in any applicable prospectus supplement, when we refer to the “holders” of securities as being entitled to specified rights or payments, we mean only the actual legal holders of the securities. While you will be the holder if you hold a security registered in your name, more often than not the holder actually will be a broker, bank or other financial institution or, in the case of a global security, the depository. Our obligations, as well as the obligations of the trustee, any transfer agent, any registrar and any third parties employed by us, the trustee, any transfer agent and any registrar, run only to persons who are registered as holders of our securities, except as may be specifically provided for in the contract governing the securities. For example, once we make payment to the registered holder, we have no further responsibility for the payment even if that holder is legally required to pass the payment along to you as a street name customer but does not do so.

Holding securities in accounts at banks, brokers or other financial institutions is called holding in “street name.” If you hold our securities in street name, we will recognize only the bank or broker, or the financial institution the bank or broker uses to hold the securities, as a holder. These intermediary banks, brokers, other financial institutions and depositories pass along principal, interest, dividends and other payments, if any, on the securities,

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either because they agree to do so in their customer agreements or because they legally are required to do so. This means that if you are an indirect holder, you will need to coordinate with the institution through which you hold your interest in a security in order to determine how the provisions involving holders described in this prospectus and any applicable prospectus supplement actually will apply to you. For example, if the debt security in which you hold a beneficial interest in street name can be repaid at the option of the holder, you cannot redeem it yourself by following the procedures described in the prospectus supplement that applies to that security. Instead, you would need to cause the institution through which you hold your interest to take those actions on your behalf. Your institution may have procedures and deadlines different from or additional to those described in the applicable prospectus supplement.

If you hold our securities in street name or through other indirect means, you should check with the institution through which you hold your interest in a security to find out:

- how it handles payments and notices with respect to the securities;
- whether it imposes fees or charges;
- how it handles voting, if applicable;
- how and when you should notify it to exercise on your behalf any rights or options that may exist under the securities;
- whether and how you can instruct it to send you securities registered in your own name so you can be a direct holder as described below; and
- how it would pursue rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests.

## PLAN OF DISTRIBUTION

We may sell the securities covered by this prospectus from time to time, in one or more or any combination of the following transactions:

- to or through underwriters or dealers;
- directly to a limited number of purchasers or to a single purchaser;
- in “at the market offerings,” within the meaning of Rule 415(a)(4) under the Securities Act, to or through a market maker or into an existing trading market, on an exchange or otherwise;
- through agents; or
- any other method permitted by applicable law.

We may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement so indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third party in such sale transactions will be an underwriter and, if not identified in this prospectus, will be identified in the applicable prospectus supplement (or a post-effective amendment to the registration statement of which this prospectus forms a part).

The applicable prospectus supplement will set forth the terms of the offering of the securities covered by this prospectus, including:

- the name or names of any underwriters, dealers or agents and the amounts of securities underwritten or purchased by each of them;
- the initial public offering price of the securities, if a fixed priced offering, and the proceeds to us and any discounts, commissions or concessions allowed or reallocated or paid to dealers; and
- any securities exchanges on which the securities may be listed.

Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

Underwriters or the third parties described above may offer and sell the offered securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. If we use underwriters in the sale of any securities, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions described above. The securities may be offered to the public either through underwriting syndicates represented by managing underwriters or directly by underwriters. Generally, the underwriters’ obligations to purchase the securities will be subject to customary conditions. The underwriters will be obligated to purchase all of the offered securities if they purchase any of the offered securities.

We may sell the securities at prices then prevailing or related to the then current market price or at negotiated prices. The offering price of the securities from time to time will be determined by us, as applicable, and, at the time of the determination, may be higher or lower than the market price of the securities on any securities exchanges on which the securities may be listed.

We may sell the securities through agents from time to time. The applicable prospectus supplement will name any agent involved in the offer or sale of the securities and any commissions we pay to them. Generally, any agent will be acting on a best efforts basis for the period of its appointment.

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We may authorize underwriters, dealers or agents to solicit offers by certain purchasers to purchase the securities from us at the public offering price set forth in the applicable prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. The contracts will be subject only to those conditions set forth in the applicable prospectus supplement, and the applicable prospectus supplement will set forth any commissions we pay for solicitation of these contracts.

Certain persons participating in an offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. Specifically, in connection with underwritten offerings of the offered securities and in accordance with applicable law and industry practice, the underwriters may over-allot and may bid for, and purchase, the securities in the open market.

Agents, underwriters and other third parties described above that participate in the distribution of the offered securities may be underwriters as defined in the Securities Act, and any discounts or commissions they receive from us and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the Securities Act. We may have agreements with the agents, underwriters and those other third parties to indemnify them against specified civil liabilities, including liabilities under the Securities Act, or to contribute to payments they may be required to make in respect of those liabilities. Agents, underwriters and those other third parties may engage in transactions with or perform services for us in the ordinary course of their businesses.

To comply with applicable state securities laws, the securities offered by this prospectus will be sold, if necessary, in such jurisdictions only through registered or licensed brokers or dealers. In addition, securities may not be sold in some states absent registration or pursuant to an exemption from applicable state securities laws.

### **VALIDITY OF THE SECURITIES**

The validity of the securities described in this prospectus will be passed upon for us by Cleary Gottlieb Steen & Hamilton LLP, New York, New York. Additional legal matters may be passed on for us, or any underwriters, dealers or agents, by counsel we will name in the applicable prospectus supplement.

### **EXPERTS**

The consolidated financial statements of Western Digital Corporation and subsidiaries as of July 2, 2021 and July 3, 2020, and for each of the years in the three-year period ended July 2, 2021, and management's assessment of the effectiveness of internal control over financial reporting as of July 2, 2021 have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Please note that the SEC's website is included in this prospectus and any applicable prospectus supplement as an inactive textual reference only. The information contained on the SEC's website is not incorporated by reference into this prospectus and should not be considered to be part of this prospectus, except as described in the following paragraph.

We "incorporate by reference" into this prospectus and any applicable prospectus supplement certain information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. Certain

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information that we subsequently file with the SEC will automatically update and supersede information in this prospectus and in our other filings with the SEC. We incorporate by reference the documents listed below, which we have already filed with the SEC, and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, until all the securities offered by this prospectus have been sold and all conditions to the consummation of such sales have been satisfied, except that we are not incorporating any information included in a Current Report on Form 8-K that has been or will be furnished (and not filed) with the SEC, unless such information is expressly incorporated herein by a reference in a furnished Current Report on Form 8-K or other furnished document:

- our Annual Report on [Form 10-K](#) for the fiscal year ended July 2, 2021 filed with the SEC on August 27, 2021;
- portions of our [Definitive Proxy Statement](#) on Schedule 14A filed with the SEC on October 5, 2020 that are incorporated by reference into Part III of our Annual Report on [Form 10-K](#) for the fiscal year ended July 3, 2020;
- our Current Report on [Form 8-K](#) filed with the SEC on July 8, 2021; and
- the description of our capital stock contained in [Exhibit 4.1](#) to our Annual Report on Form 10-K filed with the SEC on August 27, 2021, and any subsequent amendments and reports to update that description.

You may request a copy of these filings at no cost, by writing or calling us at the following address:

Corporate Secretary  
Western Digital Corporation  
5601 Great Oaks Parkway  
San Jose, California 95119  
(408) 717-6000

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the various expenses payable by the registrant in connection with the securities being registered hereby. Except as otherwise noted, all of the fees set forth below are estimates.

Filing Fee for Registration Statement	\$(1)
Legal Fees and Expenses	(2)
Accounting Fees and Expenses	(2)
Trustee's Fees and Expenses	(2)
Printing and Engraving Fees	(2)
Rating Agency Fees	(2)
Miscellaneous	(2)
Total	<u>\$(2)</u>

- (1) Deferred in accordance with Rules 456(b) and 457(r) under the Securities Act of 1933, as amended, or the Securities Act.  
(2) An estimate of the aggregate amount of these expenses will be reflected in the applicable prospectus supplement.

**Item 15. Indemnification of Directors and Officers.**

Western Digital Corporation and Western Digital Technologies, Inc. (the "Delaware Corporation Registrants") are incorporated under the laws of the state of Delaware.

Section 145(a) of the DGCL provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted under similar standards to those set forth above, except that no indemnification may be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnified for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL further provides, among other things, that to the extent a director or officer of the corporation has been successful in the defense of any action, suit or proceeding referred to in subsection (a) and (b) of Section 145 or in the defense of any claim, issue or matter therein, such person shall be indemnified

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against expenses actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled, and that the corporation may purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against such officer or director and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

As permitted by Section 102(b)(7) of the DGCL, the certificates of incorporation of the Delaware Corporation Registrants provides that a director shall not be liable to the respective Delaware Corporation Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. However, such provision does not eliminate or limit the liability of a director for acts or omissions not in good faith or for breaching his or her duty of loyalty, engaging in intentional misconduct or knowingly violating the law, paying a dividend or approving a stock repurchase which was illegal, or obtaining an improper personal benefit. A provision of this type has no effect on the availability of equitable remedies, such as injunction or rescission, for breach of fiduciary duty.

The bylaws of Western Digital Corporation and Western Digital Technologies, Inc. require that directors and officers be indemnified to the maximum extent permitted by Delaware law. In addition to the indemnification provisions in Western Digital Corporation's bylaws, Western Digital Corporation has entered into indemnity agreements with each director and executive officer of Western Digital Corporation. These indemnity agreements require that Western Digital Corporation indemnify each director and executive officer to the fullest extent permitted by the DGCL. The indemnity agreements also require Western Digital Corporation to make prompt payment of expenses incurred by the director or executive officer in connection with any proceeding upon the request of the director or executive officer in advance of indemnification to the extent permitted by law.

Western Digital Corporation has a policy of directors' liability insurance which insures the directors and officers of Western Digital Corporation and Western Digital Technologies, Inc. against the cost of defense, settlement or payment of a judgment under certain circumstances stated in the policy.

### **Item 16. Exhibits.**

See the "Exhibit Index," which follows the signature pages to this registration statement and is herein incorporated by reference.

### **Item 17. Undertakings.**

(a) The undersigned registrants hereby undertake:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and



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(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the registration statement is on Form S-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of the registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

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(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

### EXHIBIT INDEX

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
1.1**	Form of Underwriting Agreement for common stock.
1.2**	Form of Underwriting Agreement for preferred stock.
1.3**	Form of Underwriting Agreement for debt securities and related guarantees.
1.4**	Form of Underwriting Agreement for warrants.
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation of Western Digital Corporation, as amended to date (Filed as Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q (File No. 1-08703) with the Securities and Exchange Commission on February 8, 2006).</u></a>
3.2	<a href="#"><u>Amended and Restated By-Laws of Western Digital Corporation, as amended effective as of February 10, 2021 (Filed as Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 1-08703) with the Securities and Exchange Commission on February 12, 2021).</u></a>
4.1	<a href="#"><u>Description of Western Digital Corporation's Capital Stock (Filed as Exhibit 4.1 to the Company's Annual Report on Form 10-K (File No. 1-08703) with the Securities and Exchange Commission on August 27, 2021).</u></a>
4.2**	Form of Preferred Stock Certificate.
4.3**	Form of Certificate of Designation of Preferred Stock.
4.4*	<a href="#"><u>Form of Indenture.</u></a>
4.5**	<a href="#"><u>Form of Debt Securities (included in Exhibit 4.4).</u></a>
4.6**	Form of Warrant Agreement
4.7**	Form of Warrant Certificate.
5.1*	<a href="#"><u>Opinion of Cleary Gottlieb Steen &amp; Hamilton LLP.</u></a>

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<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
23.1*	<a href="#"><u>Consent of KPMG LLP, Independent Registered Public Accounting Firm.</u></a>
23.2	<a href="#"><u>Consent of Cleary Gottlieb Steen &amp; Hamilton LLP (included in Exhibit 5.1).</u></a>
24.1	<a href="#"><u>Powers of Attorney (included on the signature pages of this Registration Statement)</u></a>
25.1*	<a href="#"><u>Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of U.S. Bank National Association, as trustee for the form of Indenture.</u></a>

\* Filed herewith.

\*\* To be filed by post-effective amendment or pursuant to a Current Report on Form 8-K and incorporated herein by reference.



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<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Martin I. Cole</u> (Martin I. Cole)	Director	August 25, 2021
<u>/s/ Kathleen A. Cote</u> (Kathleen A. Cote)	Director	August 25, 2021
<u>/s/ Tunç Doluca</u> (Tunç Doluca)	Director	August 25, 2021
<u>/s/ Paula A. Price</u> (Paula A. Price)	Director	August 25, 2021
<u>/s/ Stephanie A. Streeter</u> (Stephanie A. Streeter)	Director	August 25, 2021
<u>/s/ Miyuki Suzuki</u> (Miyuki Suzuki)	Director	August 25, 2021



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Form of  
WESTERN DIGITAL CORPORATION  
as Issuer,  
and  
[THE SUBSIDIARIES LISTED ON THE SIGNATURE PAGES  
HERETO,  
as potential Subsidiary Guarantors,]  
and  
U.S. BANK NATIONAL ASSOCIATION  
as Trustee  
INDENTURE  
Dated as of \_\_\_\_\_ ,

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WESTERN DIGITAL CORPORATION  
Reconciliation and tie between Trust Indenture Act of 1939  
and this Indenture

Trust Indenture Act Section	Indenture Section
§310(a)(1)	6.10
(a)(2)	6.10
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	6.10
(b)	6.10
(c)	Not Applicable
§311(a)	6.11
(b)	6.11
(b)(2)	6.06
(c)	Not Applicable
§312(a)	3.14
(b)	14.03
(c)	14.03
§313(a)	6.06
(b)	6.06
(b)(2)	6.06, 6.07
(c)	6.06, 14.02
(d)	6.06
§314(a)	4.04, 4.05, 14.02
(a)(4)	14.05
(b)	Not Applicable
(c)(1)	14.04
(c)(2)	14.04
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	14.05
(f)	Not Applicable
§315(a)	6.01
(b)	6.06, 6.05
(c)	6.01
(d)	6.01
(d)(1)	6.01
(d)(2)	6.01
(d)(3)	6.01
(e)	5.11
§316(a)(last sentence)	3.13
(a)(1)(A)	5.05
(a)(1)(B)	5.02, 5.04
(a)(2)	Not Applicable
(b)	5.07
(c)	Not Applicable
§317(a)(1)	5.08
(a)(2)	5.09
(b)	4.03
318(a)	14.01

\* This cross-reference table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE dated as of \_\_\_\_\_, \_\_\_\_\_ among Western Digital Corporation, a Delaware corporation (the “Company”)[, the potential subsidiary guarantors listed on the signature pages hereto (collectively, the “Potential Subsidiary Guarantors”),] and U.S. Bank National Association, a national banking association, as trustee (the “Trustee”).

WITNESSETH:

WHEREAS, the Company [and the Potential Subsidiary Guarantors] have duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the “Securities”), to be issued in one or more series as in this Indenture provided, and the related Guarantees (as hereinafter defined), if any, as provided in this Indenture; and

[WHEREAS, the Company and the Potential Subsidiary Guarantors are members of the same consolidated group of companies. The Potential Subsidiary Guarantors will derive direct and indirect economic benefit from the issuance of the Securities. Accordingly, each Potential Subsidiary Guarantor has duly authorized the execution and delivery of this Indenture in light of the possibility that such Potential Subsidiary Guarantor will provide its full and unconditional guarantee of a series of the Securities to the extent provided in this Indenture.]

WHEREAS, all things necessary to make the Indenture a valid indenture and agreement according to its terms, have been done.

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities by the Holders thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Securities as follows:

ARTICLE 1.

DEFINITIONS

SECTION 1.01. Certain Terms Defined. The following terms (except as otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture that are defined in the Trust Indenture Act or the definitions of which in the Securities Act are referred to in the Trust Indenture Act (except as herein otherwise expressly provided or unless the context otherwise clearly requires) shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of this Indenture. All accounting terms used herein and not expressly defined shall have the meanings given to them in accordance with generally accepted accounting principles in the United States (whether or not so indicated herein). The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“Agent Members” has the meaning provided in Section 3.08(a).

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

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

“Board of Directors” means, with respect to any Person, the Board of Directors of such Person, or any authorized committee of the Board of Directors of such Person or any officer of such Person duly authorized by the Board of Directors of such Person to take a specific action.

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

“Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in the City of New York or place of payment are authorized or obligated by law or executive order to close.

“Capital Stock” means:

- (a) in the case of a corporation, corporate stock;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
- (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

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

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

“Company Order” means a certificate signed in the name of the Company by any Officer of the Company and delivered to the Trustee.

“Corporate Trust Office” means the office of the Trustee at which at any time its corporate trust business with respect to this Indenture shall be administered, which office at the date hereof is located at 1 California Street, Suite 1000, San Francisco, CA 94111, Attention: David Jason/Western Digital Administrator, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders, the Company and the Subsidiary Guarantors).

“Covenant Defeasance” has the meaning provided in Section 10.03.

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

“Depository” means The Depository Trust Company, its nominees, and their respective successors.

“Event of Default” means any event or condition specified as such in Section 5.01 which shall have continued for the period of time, if any, therein designated.

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

“GAAP” means, with respect to any computation required or permitted hereunder, shall mean generally accepted accounting principles in effect in the United States as in effect from time to time, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession.

“Global Security” means a Security evidencing all or part of a series of Securities, issued to the Depository for that series in accordance with Section 3.05 and bearing the appropriate legend prescribed in Section 3.06.

“Government Securities” means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

“Guarantee” means the guarantee of the Company’s obligations under the Securities of a series by a Subsidiary Guarantor (specified with respect to such series as contemplated by Section 3.01(g)) as provided in Article 13.

“Holder,” “Holder of Securities,” “Securityholder” or other similar terms mean the registered holder of any Security.

“Indebtedness” means any and all obligations of a Person for money borrowed which, in accordance with GAAP, would be reflected on the balance sheet of such Person as a liability on the date as of which Indebtedness is to be determined.

“Indenture” means this indenture as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated hereunder.

“Interest Payment Date,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Issue Date” means the date on which the Securities of any series are originally issued under this Indenture.

“Legal Defeasance” has the meaning provided in Section 10.02.

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

“Officer” means, with respect to a Person, the chairman of the Board of Directors, chief executive officer, president, chief operating officer, chief financial officer, any vice president, treasurer, any assistant treasurer, controller, any assistant controller, corporate secretary or any assistant secretary of such Person.

“Officer’s Certificate” means a certificate signed in the name of the Company by any Officer of the Company in accordance with the requirements of Section 14.04.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. Such counsel may be an employee of or counsel to the Company or a Subsidiary Guarantor or other counsel acceptable to the Trustee.

“outstanding”, when used with reference to Securities, subject to Section 3.13, means, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except

- (a) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside, segregated and held in trust by the Company (if the Company shall act as its own Paying Agent), provided that if such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to a Responsible Officer of the Trustee shall have been made for giving such notice;
- (c) Securities in substitution for which other Securities shall have been authenticated and delivered, or which shall have been paid, pursuant to the terms of Section 3.09 (unless proof satisfactory to the Trustee and the Company is presented that any of such Securities is held by a person in whose hands such Security is a legal, valid and binding obligation of the Company); and
- (d) Securities that have been defeased pursuant to Section 10.01.

“Paying Agent” means any Person authorized by the Company to pay the principal of (and premium, if any) and interest, if any, on any Securities on behalf of the Company. The Company, a Subsidiary Guarantor or any of its other Subsidiaries may act as Paying Agent with respect to any Securities issued hereunder.

“Payment Office,” when used with respect to the Securities of or within any series, means the place or places where the principal of (and premium, if any) and interest on such Securities are payable as specified as contemplated by Sections 3.01 and 4.01.

“Person” means any individual, corporation, partnership, joint stock company, business trust, trust, unincorporated association, joint venture or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Physical Securities” means Securities issued pursuant to Section 3.02 in exchange for an interest in the Global Security or pursuant to Section 3.08(b) in registered form substantially in the form herein recited.

“Registrar” has the meaning provided in Section 3.07.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.01.

“Responsible Officer” with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant treasurer, trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

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

“Security” or “Securities” means any Security or Securities, as the case may be, authenticated and delivered under this Indenture.

“Security Register” has the meaning provided in Section 3.07.

“Senior Indebtedness” means the principal of, premium, if any, or interest on (x) Indebtedness of the Company, whether outstanding on the date hereof or thereafter created, incurred, assumed or guaranteed, for money borrowed other than (a) any Indebtedness of the Company which when incurred, and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse to the Company, (b) any Indebtedness of the Company to any of its Significant Subsidiaries, (c) Indebtedness to any employee of the Company, (d) any liability for taxes, (e) Trade Payables and (f) any Indebtedness of the Company which is expressly subordinate in right of payment to any other Indebtedness of the Company, and (y) renewals, extensions, modifications and refundings of any such Indebtedness. For purposes of the foregoing and the definition of “Senior Indebtedness,” the phrase “subordinated in right of payment” means debt subordination only and not lien subordination, and accordingly, (i) unsecured indebtedness shall not be deemed to be subordinated in right of payment to secured indebtedness merely by virtue of the fact that it is unsecured, and (ii) junior liens, second liens and other contractual arrangements that provide for priorities among Holders of the same or different issues of indebtedness with respect to any collateral or the proceeds of collateral shall not constitute subordination in right of payment. This definition may be modified or superseded by a supplemental indenture.

“Significant Subsidiary” means, with respect to any Person, any subsidiary of such Person that would be a “significant subsidiary” of such Person as defined in Rule 1-02(w) of Regulation S-X, promulgated pursuant to the Exchange Act, as such Regulation is in effect on the Issue Date of Securities of the applicable series.

“Stated Maturity,” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security or a coupon representing such installment of interest as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“Subsidiary” means, when used with respect to any Person:



- (a) any corporation, limited liability company, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity that is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and
- (b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

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

"Subsidiary Guarantors" means, with respect to any series of Securities, the Person or Persons, if any, named in accordance with Section 3.01(g) as the "Subsidiary Guarantors" with respect to such series until a successor Person or Persons shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Subsidiary Guarantors" with respect to such series of Securities shall mean such successor Person or Persons, and any other Subsidiary of the Company who may execute this Indenture, or a supplement thereto, for the purpose of providing a Guarantee for such series of Securities pursuant to this Indenture. If a series of Securities does not have any Subsidiary Guarantors, all references in this Indenture to Subsidiary Guarantors shall be ignored with respect to such series of Securities.

"Trade Payables" means accounts payable or any other Indebtedness or monetary obligations to trade creditors created or assumed by the Company or any Subsidiary of the Company in the ordinary course of business (including guarantees thereof or instruments evidencing such liabilities).

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended, as in force at the date as of which this Indenture was originally executed, and "TIA", when used in respect of an indenture supplemental hereto, means such Act as in force at the time such indenture supplemental hereto becomes effective.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder; provided, however, that if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean only the Trustee with respect to Securities of that series.

## ARTICLE 2.

### SECURITY FORMS

SECTION 2.01. Forms Generally. The Securities of each series shall be in substantially the form as set forth in this Article, or in such form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the secretary or an assistant secretary of the Company and set forth in an Officer's Certificate and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.02 for the authentication and delivery of such Securities.

The Trustee's certificate of authentication on all Securities shall be in substantially the form set forth in this Article.

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

[Face of Security]

**WESTERN DIGITAL CORPORATION**

Certificate No.

[INSERT GLOBAL SECURITY LEGEND AS REQUIRED]

**[TITLE OF SECURITY]**

CUSIP No.

ISIN No.

Western Digital Corporation, a Delaware corporation (the “**Company**”), for value received, hereby promises to pay to \_\_\_\_\_, or its registered assigns, the principal sum of \_\_\_\_\_ dollars (\$) on \_\_\_\_\_, *[if this Security is to bear interest prior to Maturity, insert –* and to pay interest thereon, as provided on the reverse hereof, until the principal and any unpaid and accrued interest are paid or duly provided for.

Interest Payment Dates: \_\_\_\_\_ and \_\_\_\_\_, with the first payment to be made \_\_\_\_\_, \_\_\_\_\_.

Regular Record Dates: \_\_\_\_\_ and \_\_\_\_\_.]

*[If this Security is not to bear interest prior to Maturity, insert –* The principal of this Security shall not bear interest *[if applicable, insert –* except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of \_\_\_\_\_ % per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment].

The provisions on the back of this certificate are incorporated as if set forth on the face hereof.

**IN WITNESS WHEREOF**, Western Digital Corporation has caused this instrument to be duly signed.

WESTERN DIGITAL CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Dated \_\_\_\_\_

[Reverse of Security]

**WESTERN DIGITAL CORPORATION**

**[TITLE OF SECURITY]**

*[If applicable, insert –* 1. **Interest.** Western Digital Corporation, a Delaware corporation (the “**Company**”), promises to pay interest on the principal amount of this Security at the rate *per annum* shown above. The Company shall pay interest, payable semi-annually in arrears, on \_\_\_\_\_ and \_\_\_\_\_ of each year, with the first payment to be made on \_\_\_\_\_, \_\_\_\_\_. Interest on the Securities shall accrue on the principal amount from, and

including, the most recent date to which interest has been paid or provided for or, if no interest has been paid, from, and including, , , in each case to, but excluding, the next Interest Payment Date or the Stated Maturity for the payment of principal on the Securities, as the case may be [if applicable, insert – ; provided that if there is no existing Default in the payment of interest, the Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is % per annum in excess of the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful.] Interest shall be computed on the basis of a 360-day year of twelve 30-day months.]

2. **Maturity.** The Securities will mature on , .

3. **Method of Payment.** [If applicable, insert – Except as provided in the Indenture (as defined below), the Company shall pay interest on the Securities to the persons who are Holders of record of Securities at the close of business on the Regular Record Date set forth on the face of this Security next preceding the applicable Interest Payment Date.] Holders must surrender Securities to a Paying Agent to collect the principal amount. The Company shall pay, in money of the United States that at the time of payment is legal tender for payment of public and private debts, all amounts due in cash with respect to the Securities, which amounts shall be paid (A) in the case this Security is a Global Security, by wire transfer of immediately available funds to the account designated by the Depository for the Securities or its nominee; and (B) in the case this Security is a Physical Security, by mailing a check to the address of the relevant Holder set forth in the Security Register for the Securities. [If applicable, insert – The Company shall pay, in cash, interest on any overdue amount (including, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities.]

4. **Paying Agent and Registrar.** Initially, U.S. Bank National Association (the “Trustee”) shall act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar upon prior written notice to the Trustee. The Company or any of its Subsidiaries may act in any such capacity.

5. **Indenture.** The Company issued the Securities under an indenture dated as of , (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “**Base Indenture**”) among the Company, [the potential subsidiary guarantors listed therein] and the Trustee, as amended, supplemented or otherwise modified by the Supplemental Indenture No. (the “**Supplemental Indenture**”), dated as of , , among the Company, the subsidiary guarantors listed therein and the Trustee (the Base Indenture, as amended, supplemented or otherwise modified by the Supplemental Indenture, the “**Indenture**”). The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb) (the “**TIA**”), as amended and in effect from time to time. The Securities are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of such terms. To the extent any provision of this Security conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Securities are [general unsecured senior] obligations of the Company. The original Securities are limited to \$ aggregate principal amount, except as otherwise provided in the Indenture (except for Securities issued in substitution for destroyed, mutilated, lost or stolen Securities). Subject to the conditions set forth in the Indenture and without the consent of the Holders, the Company may issue additional Securities. All Securities, including any additional Securities, shall be treated as a single class of securities under the Indenture. Terms used herein without definition and that are defined in the Indenture have the meanings assigned to them in the Indenture.

[If applicable, insert – 6. **Optional Redemption.** The Securities are redeemable at the Company’s election, in whole or in part, at any time at a redemption price equal to the greater of:

- (1) 100% of the principal amount of the Securities to be redeemed then outstanding; and
- (2) as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest on the Securities to be redeemed (not including any portion of such payments of interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate, plus basis points;

plus, in either of the above cases, accrued and unpaid interest to the date of redemption on the Securities to be redeemed.

If the Company selects a redemption date that is on or after a Regular Record Date and on or before the related Interest Payment Date, the accrued and unpaid interest, if any, shall be paid to the person in whose name the Security is registered at the close of business on such Regular Record Date.

The Company shall mail or cause to be mailed a notice of redemption at least 30 days, but not more than 60 days, before the redemption date to each Holder of the Securities to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of the Indenture. Notices of redemption may not be conditional.

Unless the Company defaults in payment of the redemption price, on and after the redemption date, interest shall cease to accrue on the Securities or portions thereof called for redemption. Securities called for redemption become due on the date fixed for redemption.

For purposes of the foregoing, the following terms have the following meanings:

**“Adjusted Treasury Rate”** means, with respect to any redemption date:

- (1) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15(519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue (as defined below) (if no maturity is within three months before or after the Remaining Life (as defined below), yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month); or
- (2) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price (as defined below) for such redemption date.

The Adjusted Treasury Rate shall be calculated on the third Business Day preceding the redemption date.

**“Comparable Treasury Issue”** means the United States Treasury security selected by an Independent Investment Banker (as defined below) as having a maturity comparable to the remaining term of the Securities that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Securities (**“Remaining Life”**).

**“Comparable Treasury Price”** means, for any redemption date, (1) the average of four Reference Treasury Dealer Quotations (as defined below) for such redemption date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Independent Investment Banker obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

**“Independent Investment Banker”** means one of the Reference Treasury Dealers appointed by the Company.

**“Reference Treasury Dealer”** means any of the primary U.S. Government securities dealers in New York City.

**“Reference Treasury Dealer Quotations”** means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.]

[If applicable, insert – 7. **No Mandatory Redemption.** The Company shall not be required to make mandatory redemption payments with respect to the Securities.]

[If applicable, insert – 8. **Repurchase at Option of Holder.** Upon the occurrence of a Change of Control Triggering Event, and subject to certain conditions set forth in the Indenture, the Company shall be required to offer to purchase all of the outstanding Securities at a purchase price equal to % of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the date of repurchase.]

[If applicable, insert – 9. **Notice of Redemption.** Notice of redemption shall be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Securities are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 10 or Article 11 of the Base Indenture. Securities in denominations larger than \$2,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Securities held by a Holder are to be redeemed. Unless the Company defaults in payment of the redemption price, on and after the redemption date, interest shall cease to accrue on Securities or portions thereof called for redemption.]

**10. Denominations, Transfer, Exchange.** The Securities are in registered form, without coupons, in minimum denominations of \$2,000 principal amount and integral multiples of \$1,000 principal amount. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or similar governmental charge that may be imposed in connection with certain transfers or exchanges. [If applicable, insert – The Company shall not be required to register the transfer of or exchange any Security selected for redemption, except for the unredeemed portion of any Security being redeemed in part. Also, the Company need not exchange or register the transfer of any Securities for a period of 15 days next preceding the first mailing of notice of redemption of Securities to be redeemed.]

**11. Persons Deemed Owners.** The registered Holder of a Security shall be treated as the owner of such Security for all purposes.

**12. Merger or Consolidation.** The Company shall not consolidate with or merge with or into, or sell, transfer, lease, convey or otherwise dispose of all or substantially all of its property or assets to, another Person (including pursuant to a statutory arrangement), whether in a single transaction or series of related transactions, unless it complies with Article 8 of the Base Indenture.

**13. Amendments, Supplements and Waivers.** The Indenture or the Securities may be amended or supplemented as provided in the Indenture.

**14. Defaults and Remedies.** The Events of Default relating to the Securities are defined in Section 5.01 of the Base Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 30% in principal amount of the then outstanding Securities may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Securities to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Securities shall become due and payable immediately without further action or notice.

Holders may not enforce the Indenture or the Securities except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Securities notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, or interest) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Securities then outstanding by notice to the Trustee may on behalf of the Holders of all of the Securities waive any existing Default and its consequences under the Indenture except a continuing Default in payment of the principal of, premium, if any, or interest, if any, on, any of the Securities held by a non-consenting Holder. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

15. **Trustee Dealings with the Company.** The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its affiliates, and may otherwise deal with the Company or its affiliates, as if it were not the Trustee.

16. **No Recourse Against Others.** A director, officer, employee, incorporator, stockholder or other owner, of the Company or a Subsidiary Guarantor, as such, shall not have any liability for any obligations of the Company under the Securities or the Indenture, for any obligations of any Subsidiary Guarantor under any Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Securities.

17. **Authentication.** This Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent in accordance with the Indenture.

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

19. **CUSIP and ISIN Numbers.** Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Securities and the Trustee may use CUSIP and ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

THE COMPANY SHALL FURNISH TO ANY HOLDER UPON WRITTEN REQUEST AND WITHOUT CHARGE A COPY OF THE BASE INDENTURE OR THE SUPPLEMENTAL INDENTURE. REQUESTS MAY BE MADE TO:

Western Digital Corporation  
5601 Great Oaks Parkway  
San Jose, California  
Attention: Chief Legal Officer  
Facsimile: (949) 672-9612

SECTION 2.02. Form of Trustee's Certificate of Authentication. The Trustee's certificate of authentication shall be substantially in the following form:

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

U.S. Bank National Association  
as Trustee

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

### ARTICLE 3.

#### ISSUE, EXECUTION, FORM AND REGISTRATION OF SECURITIES

SECTION 3.01. Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued from time to time in one or more series. Prior to the issuance of Securities of any series, there shall be established in or pursuant to (i) a Board Resolution, (ii) action taken pursuant to a Board Resolution and (subject to Sections 3.03 and 3.04) set forth, or determined in the manner provided, in an Officer's Certificate, or (iii) one or more indentures supplemental hereto:

- (a) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities);
- (b) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Sections 3.03, 3.08, 3.10, 7.05 or 9.03);
- (c) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable or the method of determination thereof;
- (d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method of calculating such rate or rates of interest, the date or dates from which such interest shall accrue or the method by which such date or dates shall be determined, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date, if any, for the interest payable on any Interest Payment Date;
- (e) the place or places where the principal of (and premium, if any) and interest, if any, on Securities of the series shall be payable;
- (f) the place or places where the Securities may be exchanged or transferred;
- (g) whether Securities of the series are entitled to the benefits of any Guarantee of a Subsidiary Guarantor pursuant to this Indenture, the identity of such Subsidiary Guarantors and any terms of such Guarantee with respect to the Securities of the series in addition to those set forth in Article 13, or any exceptions to or changes to those set forth in Article 13;
- (h) the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which, and the other terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option, and, if other than as provided in Section 9.02, the manner in which the particular Securities of such series (if less than all Securities of such series are to be redeemed) are to be selected for redemption;
- (i) the obligation, if any, of the Company to redeem or purchase Securities of the series in whole or in part pursuant to any sinking fund or analogous provisions or upon the happening of a specified event or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the other terms and conditions upon which Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (j) if other than minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof, the denominations in which Securities of the series shall be issuable;
- (k) if other than U.S. dollars, the currency or currencies (including currency unit or units) in which payments of principal of (and premium, if any) and interest, if any, on the Securities of the series shall or may be payable, or in which the Securities of the series shall be denominated, and the particular provisions applicable thereto;
- (l) if the payments of principal of (and premium, if any) and interest, if any, on the Securities of the series are to be made, at the election of the Company or a Holder, in a currency or currencies (including currency unit or units) other than that in which such Securities are denominated or designated to be payable, the currency or currencies (including currency unit or units) in which such payments are to be made, the terms and conditions of such payments and the manner in which the exchange rate with respect to such payments shall be determined, and the particular provisions applicable thereto;

(m) if the amount of payments of principal of (and premium, if any) and interest, if any, on the Securities of the series shall be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on a currency or currencies (including currency unit or units) other than that in which the Securities of the series are denominated or designated to be payable), the index, formula or other method by which such amounts shall be determined;

(n) if other than the principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Stated Maturity thereof pursuant to Section 5.02 or the method by which such portion shall be determined;

(o) any modifications of or additions to the Events of Default or the covenants of the Company or a Subsidiary Guarantor set forth herein with respect to Securities of the series;

(p) if either or both of Section 10.02 and Section 10.03 shall be inapplicable to the Securities of the series (provided that if no such inapplicability shall be specified, then both Section 10.02 and Section 10.03 shall be applicable to the Securities of the series) and any other terms upon which the Securities of such series will be defeasible;

(q) if other than the Trustee, the identity of the Registrar and any Paying Agent;

(r) if the Securities of the series shall be issued in whole or in part in global form, (i) the Depositary for such global Securities, (ii) the form of any legend in addition to or in lieu of that in Section 3.06 that shall be borne by such global Security, (iii) whether beneficial owners of interests in any Securities of the series in global form may exchange such interests for certificated Securities of such series and of like tenor of any authorized form and denomination, and (iv) if other than as provided in Section 3.07, the circumstances under which any such exchange may occur;

(s) if, and the terms and conditions upon which, the Securities of such series may or must be converted into securities of the Company or a Subsidiary Guarantor, or exchanged for securities of the Company, a Subsidiary Guarantor or another enterprise;

(t) whether the Securities of the series are subject to subordination and, if subordinated, the terms of such subordination; and

(u) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 7.01, but which may modify or delete any provision of this Indenture insofar as it applies to such series), including any terms that may be required by or advisable under the laws of the United States of America or regulations thereunder or advisable (as determined by the Company) in connection with the marketing of Securities of the series.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided (i) by a Board Resolution, (ii) by action taken pursuant to a Board Resolution and (subject to Sections 3.02-3.05) set forth, or determined in the manner provided, in an Officer's Certificate or (iii) in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

If any of the terms of the Securities of any series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officer's Certificate setting forth, or providing the manner for determining, the terms of the Securities of such series, and an appropriate record of any action taken pursuant thereto in connection with the issuance of any Securities of such series shall be delivered to the Trustee prior to the authentication and delivery thereof.

SECTION 3.02. Authentication and Delivery of Securities. Upon the execution and delivery of this Indenture, or from time to time thereafter, Securities may be executed by the Company and delivered to the Trustee for authentication, and upon delivery to the Trustee of all documents and certificates as required by this Indenture, the Trustee shall thereupon authenticate and make available for delivery said Securities to the Company or as may otherwise be set forth in a Company Order without any further action by the Company.



SECTION 3.03. Execution of Securities. An Officer shall sign the Securities for the Company by manual or facsimile signature. If an Officer of the Company whose signature is on any Security no longer holds that office at the time such Security is authenticated, such Security shall nevertheless be valid.

SECTION 3.04. Certificate of Authentication. Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinabove recited, executed by the Trustee by manual signature of one of its authorized signatories, shall be entitled to the benefits of this Indenture or the related Guarantees or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture or the related Guarantees.

SECTION 3.05. Denomination and Date of Securities; Payments of Interest. (a) The Securities shall be issuable in such denominations as shall be specified as contemplated by Section 3.01 but in any event not less than \$2,000 and integral multiples of \$1,000 in excess thereof. In the absence of any such provisions with respect to the Securities, the Securities shall be issuable in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The Securities shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plans as the officers of the Company executing the same may determine with the approval of the Trustee.

Any of the Securities may be issued with appropriate insertions, omissions, substitutions and variations, and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, including those required by Section 3.06, or with the rules of any securities market in which the Securities are admitted to trading, or to conform to general usage.

Each Security shall be dated the date of its authentication, shall bear interest from the applicable date and shall be payable on the dates specified on the face of the form of Security. Except as otherwise specified as contemplated by Section 3.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

(b) Global Securities. If Securities of or within a series are issuable in whole or in part in global form, then any such Security of such series shall be deposited with the Trustee as custodian for the Depositary and registered in the name of Cede & Co., as nominee for the Depositary. The Global Security shall be deposited on behalf of the purchasers of the Securities represented thereby with the Trustee, as custodian for the Depositary (or with such other custodian as the Depositary may direct), and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Company and authenticated by the Trustee as provided herein. The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee as provided herein.

(c) The person in whose name any Security is registered at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest, if any, payable on such Interest Payment Date notwithstanding any transfer or exchange of such Security subsequent to the Regular Record Date and prior to such Interest Payment Date, except if and to the extent the Company shall default in the payment of the interest due on such Interest Payment Date, in which case such defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest, shall be paid to the persons in whose names outstanding Securities are registered at the close of business on a subsequent record date (which shall be not less than five Business Days prior to the date of such payment) established by notice given by mail by or on behalf of the Company to the Holders of Securities not less than 15 days preceding such subsequent record date.

SECTION 3.06. Global Security Legend. Any Security in global form authenticated and delivered hereunder shall bear a legend in substantially the following form, or in such other form as may be necessary or appropriate to reflect the arrangements with or to comply with the requirements of any Depositary:

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

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

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE DEPOSITARY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE.

SECTION 3.07. Registration, Transfer and Exchange. The Securities are issuable only in registered form. The Company will keep at each office or agency (the "Registrar") for each series of Securities a register or registers (the "Security Register(s)") in which, subject to such reasonable regulations as it may prescribe, it will register, and will register the transfer of, Securities as provided in this Article. Such Security Register or Security Registers shall be in written form in the English language or in any other form capable of being converted into such form within a reasonable time. At all reasonable times such Security Register or Security Registers shall be open for inspection by the Trustee. The initial Registrar shall be the Trustee.

Upon due presentation for registration of transfer of any Security of any series at each such office or agency, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and make available for delivery in the name of the designated transferee or transferees a new Security or Securities of the same series, in each case, of any authorized denominations and of a like aggregate principal amount.

At the option of the Holder, Securities of any series (except a Security in global form) may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate principal amount and Stated Maturity, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and, upon receipt of a Company Order, the Trustee shall authenticate and make available for delivery, the Securities which the Holder making the exchange is entitled to receive.

A Holder may transfer a Security only by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Registrar in the Security Register. Prior to the registration of any transfer by a Holder as provided herein, the Company, each Subsidiary Guarantor, the Trustee, and any agent of the Company or each Subsidiary Guarantor shall treat the person in whose name the Security is registered as the owner thereof for all purposes whether or not the Security shall be overdue, and neither the Company, any Subsidiary Guarantor, the Trustee, nor any such agent shall be affected by notice to the contrary. Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book entry system maintained by the Depositary (or its nominee) and that ownership of a beneficial interest in the Security shall be required to be reflected in a book entry. When Securities are presented to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if the requirements for such transactions set forth herein are met. To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request.

The Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any exchange or registration of transfer of Securities (other than any such transfer taxes or other similar governmental charge payable upon exchanges pursuant to Section 3.11, 7.05 or 9.06). No service charge to any Holder shall be made for any such transaction.

The Company shall not be required to exchange or register a transfer of (a) any Securities of any series for a period of 15 days next preceding the first mailing of notice of redemption of Securities of that series to be redeemed, or (b) any Securities of any series selected, called or being called for redemption except, in the case of any Security of any series where public notice has been given that such Security is to be redeemed in part, the portion thereof not so to be redeemed.

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

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

**SECTION 3.08. Book-Entry Provisions for Global Securities.** (a) Each Global Security initially shall (i) be registered in the name of the Depository for such Global Securities or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear legends as set forth in Section 3.06.

Members of, or participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository shall be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Security.

(b) Transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to the Depository for such series, its successors or their respective nominees. The Company may at any time and in its sole discretion determine that the Securities of a series issued in the form of one or more Global Securities shall no longer be represented by such Global Securities. In such event, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Securities of such series of like tenor, will authenticate and deliver Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Securities of such series in exchange for such Global Security or Securities. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depository.

In addition, Physical Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security, if (i) the Depository (A) notifies the Company that it is unwilling or unable to continue as Depository for such Global Security, and a successor depository is not appointed by the Company within 90 days of such notice, or (B) ceases to be qualified to serve as Depository and a successor depository is not appointed by the Company within 90 days of such notice, (ii) the Company executes and delivers to the Trustee a Company Order that such Global Security shall be so transferable, registrable and exchangeable, and such transfers shall be registrable, or (iii) an Event of Default of which the Trustee has actual notice has occurred and is continuing and the Registrar has received a request from a beneficial owner to issue such Physical Securities.

(c) Any beneficial interest in a Global Security that is transferred to a person who takes delivery in the form of an interest in another Global Security representing securities of the same series will, upon transfer, cease to be an interest in such Global Security and become an interest in such other Global Security and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to beneficial interests in such other Global Security for as long as it remains such an interest.

(d) In connection with any transfer of a portion of the beneficial interests in a Global Security to beneficial owners pursuant to paragraph (b) of this Section 3.08, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in such Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and make available for delivery, one or more Physical Securities of like tenor and amount.

(e) In connection with the transfer of an entire Global Security to beneficial owners pursuant to paragraph (b) of this Section, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in such Global Security, an equal principal amount of Physical Securities of authorized denominations.

(f) The registered holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities of such series.

(g) Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depository.

**SECTION 3.09. Mutilated, Defaced, Destroyed, Lost and Stolen Securities.** In case any temporary or definitive Security shall become mutilated, defaced or be apparently destroyed, lost or stolen, the Company in its discretion may execute, and upon the written request of any officer of the Company and delivery to the Trustee of all documents and certificates as required by this Indenture, the Trustee shall authenticate and make available for delivery, a new Security of the same series bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and substitution for the Security so apparently destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Company, each Subsidiary Guarantor and the Trustee and any agent of the Company or the Trustee such security or indemnity as may be required by each of them to indemnify and defend and to save each of them harmless and, in every case of mutilation or defacement, such mutilated or defaced security, and, in every case of destruction, loss or theft evidence to their satisfaction of the apparent destruction, loss or theft of such Security and of the ownership thereof.

Upon the issuance of any substitute Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Security which has matured or is about to mature, or has been called for redemption in full, shall become mutilated or defaced or be apparently destroyed, lost or stolen, the Company may, instead of issuing a substitute Security of the same series, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Security), if the applicant for such payment shall furnish to the Company, each Subsidiary Guarantor and to the Trustee and any agent of the Company, each Subsidiary Guarantor or the Trustee such security or indemnity as may be required to save each of them harmless from all risks, however remote, and, in every case of mutilation or defacement, such mutilated or defaced security, and, in every case of apparent destruction, loss or theft, the applicant shall also furnish to the Company, each Subsidiary Guarantor and the Trustee and any agent of the Company, each Subsidiary Guarantor or the Trustee evidence to their satisfaction of the apparent destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security issued pursuant to the provisions of this Section by virtue of the fact that any Security is apparently destroyed, lost or stolen shall constitute an additional contractual obligation of the Company whether or not the apparently destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this Indenture equally

and proportionately with any and all other Securities duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by law, with respect to the holder of a substitute Security, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, or apparently destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 3.10. Cancellation of Securities. All Securities surrendered for payment, redemption, registration of transfer or exchange, if surrendered to the Company, a Subsidiary Guarantor or any agent of the Company, a Subsidiary Guarantor or the Trustee, shall be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled by it; and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of cancelled Securities in accordance with its customary procedures. If the Company or a Subsidiary Guarantor shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

SECTION 3.11. Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall authenticate and make available for delivery temporary Securities of such series (printed, lithographed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities shall be issuable as registered Securities of such series without coupons, of any authorized denomination, and substantially in the form of the definitive Securities of such series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company with the concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities of such series. Without unreasonable delay the Company shall execute and shall furnish definitive Securities of such series and thereupon temporary Securities of such series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Company for the purpose pursuant to Section 4.02, and upon delivery to the Trustee of all documents and certificates as required by this Indenture, the Trustee shall authenticate and make available for delivery in exchange for such temporary Securities a like aggregate principal amount of definitive Securities of such series of authorized denominations. Until so exchanged the temporary Securities of such series shall be entitled to the same benefits under this Indenture as definitive Securities of such series.

SECTION 3.12. CUSIP and ISIN Numbers. The Company in issuing the Securities of any series may use a “CUSIP” and “ISIN” number (if then generally in use), and, if so, the Trustee shall use the CUSIP numbers or ISIN numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders of such series; provided that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Securities and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers or ISIN numbers.

SECTION 3.13. Treasury Securities. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

SECTION 3.14. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with Trust Indenture Act § 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may reasonably request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes, and the Company shall otherwise comply with Trust Indenture Act § 312(a).

## CERTAIN COVENANTS

SECTION 4.01. Payment of Principal, Premium and Interest on Securities. The Company, for the benefit of each series of the Securities, will duly and punctually pay or cause to be paid the principal of and any premium and any interest on the Securities of that series in accordance with the terms of such Securities and this Indenture. Principal, premium, if any, and interest, if any, on the Securities of that series shall be considered paid on the date due if the Paying Agent, if other than the Company or a subsidiary thereof, holds as of 10:00 a.m., Eastern Time, on the due date money deposited by the Company or a Subsidiary Guarantor in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest, if any, then due on the Securities of that series.

SECTION 4.02. Maintenance of Office or Agency. The Company will maintain a Payment Office where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Company or a Subsidiary Guarantor in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee and the Subsidiary Guarantors of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee or the Subsidiary Guarantors with the address thereof, such presentations, surrenders, notices, and demands may be made or served at the Corporate Trust Office, and the Company hereby initially appoints the Trustee at its office or agency as its agent to receive all such presentations, surrenders, notices and demands; provided that the Corporate Trust Office shall not be a place for service of legal process on the Company.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

SECTION 4.03. Money for Securities Payments to be Held in Trust. (a) If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of or any premium or any interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and any interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

(b) Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, prior to each due date of the principal of or any premium or any interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(c) The Company will cause each Paying Agent for any series of Securities (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent will agree with the Trustee, subject to the provisions of this Section 4.03, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent; (ii) hold all sums held by it for the payment of the principal of (and premium, if any) or interest, if any, on the Securities of that series in trust for the benefit of the Holders until such sums shall be paid to such Holders or otherwise disposed of as herein provided; (iii) give the Trustee notice of any Default by the Company (or any other obligor upon the Securities) in the making of any payment of principal (and premium, if any) or interest, if any, on the Securities of that series; and (iv) during the continuance of any Default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, and upon the written request of that Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

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

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

SECTION 4.04. Reports. The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided in the Trust Indenture Act; provided that, any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 30 calendar days after the same is filed with the Commission; provided further that the filing of the reports specified in Section 13 or 15(d) of the Exchange Act by an entity that is the direct or indirect parent of the Company shall satisfy the requirements of this Section 4.04 so long as such entity is an obligor or guarantor on the Securities; provided further that the reports of such entity shall not be required to include condensed consolidating financial information for the Company in a footnote to the financial statements of such entity.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, compliance with the covenants under the Indenture or with respect to any reports or other documents filed with the Commission or posted on the Company's website pursuant to the Indenture, or participate in any conference calls or determine whether any reports have been filed or posted. It is expressly understood that materials transmitted electronically by the Company to the Trustee or filed pursuant to the Commission's EDGAR system (or any successor electronic filing system) shall be deemed filed with the Trustee and transmitted to Holders for purposes of this Section 4.04.

SECTION 4.05. Compliance Certificate.

(a) The Company and each Subsidiary Guarantor (to the extent that such Subsidiary Guarantor is so required under the Trust Indenture Act) shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the first date any series of Securities issued under this Indenture is outstanding, an Officer's Certificate stating that a review of the activities of the Company or such Subsidiary Guarantor, as the case may be, during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Company or such Subsidiary Guarantor, as the case may be, has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company or such Subsidiary Guarantor, as the case may be, has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee, within 30 days upon any Officer of the Company becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

SECTION 4.06. Taxes. The Company shall pay or discharge or cause to be paid or discharged, and shall cause each of its subsidiaries to pay or discharge, prior to delinquency, all taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Securities.

SECTION 4.07. Stay, Extension and Usury Laws. Each of the Company and the Subsidiary Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) each of the Company and the Subsidiary Guarantors hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 4.08. Waiver of Certain Covenants. The Company may omit in any particular instance to comply with any term, provision, or condition set forth in this Indenture or any applicable supplemental indenture, with respect to the Securities of any series, if the Holders of a majority in principal amount of all outstanding Securities of such series shall, either waive such compliance in such instance or generally waive compliance with such term, provision, or condition in accordance with Article 7 and Section 5.07, but no such waiver will extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision, or condition will remain in full force and effect.

## ARTICLE 5.

### REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

SECTION 5.01. Events of Default. The term "Event of Default" with respect to Securities of any series, wherever used herein, means any one of the following events which shall have occurred and be continuing (whatever the reason for such Event of Default), whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) failure by the Company to pay interest, if any, on Securities of that series for 30 days after the date payment is due and payable; or
- (b) failure by the Company to pay principal of or premium, if any, on the Securities of that series when due, at Stated Maturity, upon any redemption, by declaration or otherwise; or
- (c) failure by the Company or a Subsidiary Guarantor to comply with any other covenant in this Indenture or the Securities of that series for 90 days after notice that compliance was required; or
- (d) the Company or a Subsidiary Guarantor with respect to such series that is a Significant Subsidiary, pursuant to or within the meaning of Bankruptcy Law:
  - (i) commences a voluntary case, or
  - (ii) consents to the entry of an order for relief against it in an involuntary case, or
  - (iii) consents to the appointment of a custodian of it or for all or substantially all of its property, or
  - (iv) makes a general assignment for the benefit of its creditors, or



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

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

(i) is for relief against the Company or a Subsidiary Guarantor with respect to such series that is a Significant Subsidiary as debtor in an involuntary case, or

(ii) appoints a custodian of the Company or a Subsidiary Guarantor with respect to such series that is a Significant Subsidiary as debtor, or for all or substantially all of the property of the Company or a Subsidiary Guarantor with respect to such series that is a Significant Subsidiary, or

(iii) orders the liquidation of the Company or a Subsidiary Guarantor with respect to such series that is a Significant Subsidiary; and the order or decree remains unstayed and in effect for 60 consecutive days; or

(f) any Guarantee of any of the Subsidiary Guarantors with respect to such series that is a Significant Subsidiary ceases to be in full force and effect with respect to Securities of that series (except as otherwise provided in this Indenture) or is declared null and void in a judicial proceeding, or any such Subsidiary Guarantor denies or disaffirms its material obligations under this Indenture or such Guarantee; or

(g) any other Event of Default with respect to Securities of that series as provided in the applicable supplemental indenture.

However, a default under clause (c) will not constitute an Event of Default with respect to Securities of any series as until the Trustee or the holders of 30% in principal amount of the outstanding Securities of such series notify the Company (with a copy to the Trustee if given by the holders) of the default and the Company does not cure such default within the time specified in clause (c) of this paragraph after receipt of such notice. Any default for the failure to deliver any report within the time periods prescribed in this Indenture or to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the subsequent delivery of any such report, notice or certificate, even though such delivery is not within the prescribed period specified.

SECTION 5.02. Acceleration. (a) Subject to Section 5.03, if an Event of Default (other than an Event of Default with respect to the Company of the type described in clauses (d) or (e) of Section 5.01) occurs and is continuing with respect to Securities of any series, then, and in each and every such case, either the Trustee or the Holders of not less than 30% in aggregate principal amount of then outstanding Securities of that series by notice in writing to the Company and the Subsidiary Guarantors (and to the Trustee if given by Holders), may declare the entire principal of all the Securities of the affected series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration, the same shall become immediately due and payable. If an Event of Default described in clause (d) or (e) of Section 5.01 occurs and is continuing, then the principal amount of all the Securities of the affected series then outstanding, and the interest accrued thereon, if any, shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after such a declaration of acceleration with respect to the Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article 5 provided, the Holders of a majority in principal amount of the outstanding Securities of such series, by written notice to the Company, the Subsidiary Guarantors and the Trustee, may rescind and annul such declaration and its consequences if

(i) the Company or a Subsidiary Guarantor has paid or deposited with the Trustee a sum sufficient to pay (A) all overdue interest on all of the Securities of that series, (B) the principal of (and premium, if any, on) Securities of that series which has become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in the Securities of that series, (C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in the Securities of that series, and (D) all sums paid or advanced by the Trustee hereunder and the compensation and reasonable expenses, disbursements and advances of the Trustee and the reasonable compensation, expenses, disbursements and advances of its agents and counsel; and

(ii) all Events of Default with respect to the Securities of that series, other than the non-payment of the principal of the Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.04. No such rescission will affect any subsequent default or impair any right consequent thereon.

SECTION 5.03. Other Remedies. If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal amount of, premium, if any, and interest, if any, on the Securities of the affected series or to enforce the performance of any provision of the Securities of such series or this Indenture.

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

Notwithstanding the foregoing, the sole remedy for any breach of the Company's obligation under this Indenture to file or furnish reports or other financial information pursuant to Trust Indenture Act § 314(a)(1) (or as otherwise required by this Indenture) shall be the payment of liquidated damages, and the Holders will not have any right under this Indenture to accelerate the Stated Maturity of the Securities of the affected series as a result of any such breach. If any such breach continues for 90 days after notice thereof is given in accordance with this Indenture, the Company shall pay liquidated damages to all the Holders of the Securities of such series at a rate per annum equal to (i) 0.25% per annum of the principal amount of the Securities of the affected series from the 90th day following such notice to but not including the 180th day following such notice (or such earlier date on which the Event of Default relating to the reporting obligations referred to in this paragraph shall have been cured or waived) and (ii) 0.50% per annum of the principal amount of the debt securities of that series from the 180th day following such notice to but not including the 365th day following such notice (or such earlier date on which the Event of Default relating to the reporting obligations referred to in this paragraph shall have been cured or waived). On such 365th day (or earlier, if the event of default relating to the reporting obligations referred to in this paragraph shall have been cured or waived prior to such 365th day), such additional interest will cease to accrue, and the debt securities of that series will be subject to acceleration as provided in Section 5.02 if the Event of Default is continuing. This paragraph will not affect the rights of the holders of Securities of the affected series in the event of the occurrence of any other Event of Default.

SECTION 5.04. Waiver of Past Defaults. Holders of not less than a majority in aggregate principal amount of the Securities of any series then outstanding by notice to the Trustee may on behalf of the Holders of all of the Securities of such series waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal amount, premium, if any, and any accrued and unpaid interest, if any, on any Security of such series or, in the case of the Securities of any series that are convertible or exchangeable, in the payment or delivery of any consideration due upon conversion or exchange of the Securities of that series (including in connection with an offer to purchase); provided, however, that the Holders of a majority in aggregate principal amount of the then outstanding Securities of any series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration in accordance with Section 5.02(b). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 5.05. Control by Majority. With respect to the Securities of any series, the Holders of a majority in aggregate principal amount of the then outstanding Securities of that series may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders of that series or that may involve the Trustee in personal liability.

SECTION 5.06. Limitation on Suits. A Holder of any Security of any series may pursue a remedy with respect to this Indenture or the Securities of the applicable series or the related Guarantees, if any, only if:

- (a) the Holder gives to the Trustee written notice of an Event of Default and the continuance of such Event of Default;
- (b) the Holders of at least 30% in aggregate principal amount of the then outstanding Securities of that series make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of indemnity; and
- (e) during the 60-day period, the Holders of a majority in aggregate principal amount of the then outstanding Securities of such series do not give the Trustee a direction inconsistent with the request.

Holders may not use this Indenture or any Securities to prejudice the rights of any other such Holders or Holders of Securities of any other series or to obtain a preference or priority over any other Holders.

SECTION 5.07. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal (whether at Stated Maturity, upon redemption (if applicable), upon any required repurchase by the Company (if applicable) or otherwise) of (and premium, if any) and interest, if any, on any Security or, if applicable, payment or delivery of any consideration due upon conversion or exchange of any Security, in each case, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment or delivery on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

SECTION 5.08. Collection Suit by Trustee. If an Event of Default specified in clauses (a) or (b) of Section 5.01 occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company or a Subsidiary Guarantor for the whole amount of principal of, premium, if any, and interest, if any, remaining unpaid on any Securities of such series and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the compensation and reasonable expenses, disbursements and advances of the Trustee and the reasonable compensation, expenses, disbursements and advances of its agents and counsel.

SECTION 5.09. Trustee May File Proofs of Claim. The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation and reasonable expenses, disbursements and advances of the Trustee and the reasonable compensation, expenses, disbursements and advances of its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company or a Subsidiary Guarantor or their respective creditors or properties and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the compensation and reasonable expenses, disbursements and advances of the Trustee and the reasonable compensation, expenses, disbursements and advances of its agents and counsel, and any other amounts due the Trustee under Section 6.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding. The Trustee shall be entitled to participate as a member of any official committee of creditors in the matters as it deems necessary or advisable.

SECTION 5.10. Priorities. If the Trustee collects any money or property pursuant to this Article, it shall pay out the money or property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 6.07, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

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

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

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 5.10.

SECTION 5.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder of Securities of the affected series pursuant to Section 5.07 or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Securities of any series.

## ARTICLE 6.

### THE TRUSTEE

#### SECTION 6.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to Securities of any series, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

(ii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of certificates or opinions specifically required by any provision hereof to be furnished to it, the Trustee shall examine the certificates and opinions required to be furnished to the Trustee hereunder to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts state therein).

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

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

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 5.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 6.01.

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

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

(g) In the absence of bad faith, negligence or willful misconduct on the part of the Trustee, the Trustee shall not be responsible for the application of any money by any Paying Agent other than the Trustee.

#### SECTION 6.02. Rights of Trustee.

(a) The Trustee may conclusively rely upon any document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

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

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

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

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

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate (including any Officer's Certificate), statement, instrument, opinion (including any Opinion of Counsel), notice, request, direction, consent, order, bond, debenture, or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

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

(i) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as duties.

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

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

(l) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture.

SECTION 6.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities of any series and may otherwise deal with the Company, a Subsidiary Guarantor or any of their respective affiliates with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign, subject to Sections 6.10 and 6.11. Any Agent may do the same with like rights and duties.

SECTION 6.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or Securities of any series, it shall not be accountable for the Company's use of the proceeds from the Securities of any series or any money paid to the Company or a Subsidiary Guarantor or upon the Company's or such Subsidiary Guarantor's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in Securities of any series or any other document in connection with the sale of Securities of any series or pursuant to this Indenture other than its certificate of authentication.

SECTION 6.05. Notice of Defaults. If a Default or Event of Default occurs and is continuing with respect to the Securities of any series and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall mail to each Holder of Securities of such series a notice of the Default or Event of Default within 90 days after it occurs. Except with respect to a Default or Event of Default with respect to Securities of any series relating to the payment of principal of, premium, if any, or interest, if any, on the Securities of that series or in the payment or delivery of any consideration due upon conversion or exchange of any Security of such series (if applicable), the Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of the Holders of the Securities of that series.

SECTION 6.06. Reports by Trustee to Holders of the Securities. Within 60 days after each December 15 beginning with the December 15 following the Issue Date of Securities of any series, and for so long as Securities of such series remain outstanding, the Trustee shall mail to the Holders of Securities of such series, the Subsidiary Guarantors and the Company a brief report dated as of such reporting date that complies with the Trust Indenture Act § 313(a) (but if no event described in the Trust Indenture Act § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with the Trust Indenture Act § 313(b). The Trustee shall also transmit by mail all reports as required by the Trust Indenture Act § 313(c).

A copy of each report at the time of its mailing to the Holders of Securities of such series shall be mailed to the Company or a Subsidiary Guarantor and filed with the Commission and each stock exchange on which the Securities of that series are listed in accordance with the Trust Indenture Act § 313(d). The Company shall promptly notify the Trustee when any Securities are listed on any stock exchange or delisted therefrom.

SECTION 6.07. Compensation and Indemnity. The Company shall pay to the Trustee from time to time compensation for its acceptance of this Indenture and services hereunder as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall fully indemnify the Trustee against any and all losses, liabilities, claims, damages or expenses (including reasonable legal fees and expenses) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this Section 6.07) and defending itself against any claim (whether asserted by the Company or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense is caused by its own negligence, bad faith or willful misconduct. The Trustee shall notify the Company and the Subsidiary Guarantors promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Company under this Section 6.07 shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

To secure the Company's payment obligations in this Section 6.07, the Trustee shall have a lien prior to the Securities of each series on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.01(d) or (e) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

The provisions of this Section 6.07 shall survive termination of this Indenture. The Trustee shall comply with the provisions of the Trust Indenture Act § 313(b)(2) to the extent applicable.

SECTION 6.08. Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign in writing at any time with regard to Securities of one or more series and be discharged from the trust hereby created by so notifying the Company and the Subsidiary Guarantors. The Holders of a majority in principal amount of the Securities of such series at the time outstanding may remove the Trustee by so notifying the Trustee, the Company and the Subsidiary Guarantors in writing. The Company may remove the Trustee with regard to Securities of one or more series if:

- (a) the Trustee fails to comply with Section 6.10;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason with regard to Securities of one or more series, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the Securities of the affected series at the time outstanding may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, a Subsidiary Guarantor or the Holders of at least 10% in principal amount of the Securities of any series at the time outstanding may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 6.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee, to the Company and to the Subsidiary Guarantors. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, provided all sums owing to the Trustee hereunder have been paid and subject to the lien provided for in Section 6.07.

Notwithstanding replacement of the Trustee pursuant to this Section 6.08, the Company's obligations under Section 6.07 shall continue for the benefit of the retiring Trustee.

SECTION 6.09. Successor Trustee by Merger, etc. If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

SECTION 6.10. Eligibility; Disqualification. There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$75.0 million as set forth in its most recent published annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of the Trust Indenture Act § 310(a)(1), (2) and (5). The Trustee is subject to the Trust Indenture Act § 310(b); provided, however, that there shall be excluded from the operation of Trust Indenture Act § 310(b)(i) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Trust Indenture Act § 310(b)(i) are met.

SECTION 6.11. Preferential Collection of Claims Against Company or a Subsidiary Guarantor. The Trustee is subject to the Trust Indenture Act § 311(a), excluding any creditor relationship listed in the Trust Indenture Act § 311(b). A Trustee who has resigned or been removed shall be subject to the Trust Indenture Act § 311(a) to the extent indicated therein.

## ARTICLE 7.

### SUPPLEMENTAL INDENTURES

SECTION 7.01. Supplemental Indentures Without Consent of Holders. The Company, when authorized by a Board Resolution (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to an Officer's Certificate), the Subsidiary Guarantors and the Trustee may from time to time and at any time enter into one or more supplemental indentures (which shall conform to the provisions of the TIA as in force at the date of the execution thereof) for one or more of the following purposes:

- (a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities of any series, any property or assets;



(b) to evidence the assumption of the Company's obligations to Holders of the Securities in the case of a merger, amalgamation or consolidation of the Company or sale of all or substantially all of the assets of the Company;

(c) to add to the covenants of the Company or a Subsidiary Guarantor such further covenants, restrictions, conditions or provisions as the Company and the Trustee shall consider to be for the protection of the Holders of all or any series of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, restriction, condition or provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the right of the Holders of a majority in aggregate principal amount of the Securities of such series to waive such an Event of Default;

(d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may contain a mistake, be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make any other provisions as the Company may deem necessary or desirable; provided, however, that no such provisions will materially adversely affect the interests of any Holder of Securities of such series;

(e) to evidence and provide for the acceptance of the appointment of a successor Trustee pursuant to Section 6.08;

(f) to provide for uncertificated Securities of any series in addition to or in place of certificated Securities of such series or to alter the provisions of Article 3 (including the related definitions) in a manner that does not materially and adversely affect any Holder of Securities of such series;

(g) to conform the text of this Indenture or the Securities of any series to any provision of the "Description of the Securities" in the related prospectus or prospectus supplement for such series to the extent that such provision in the "Description of the Securities" was intended to be a verbatim recitation of a provision of this Indenture or the Securities of such series;

(h) to provide for the issuance of additional debt securities of any series in accordance with the limitations set forth herein as of the date hereof;

(i) to make any change that would provide any additional rights or benefits to the Holders of all or any series of Securities or that does not adversely affect the legal rights hereunder of any such Holder or any holder of a beneficial interest in the Securities of such series;

(j) to comply with requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(k) to establish the form or terms of Securities of any series as permitted by Sections 2.01 and 3.01;

(l) to secure the Company's obligations in respect of the Securities of any series;

(m) in the case of convertible or exchangeable Securities of any series, subject to the provisions of the supplemental indenture for such series of Securities, to provide for conversion rights, exchange rights and/or repurchase rights of Holders of such series of Securities in connection with any reclassification or change of the Company's common stock or in the event of any amalgamation, consolidation, merger or sale of all or substantially all of the assets of the Company or its subsidiaries substantially as an entirety occurs;

(n) in the case of convertible or exchangeable Securities of any series, to reduce the conversion price or exchange price applicable to such series of Securities;

(o) in the case of convertible or exchangeable Securities of any series, to increase the conversion rate or exchange ratio in the manner described in the supplemental indenture for such series of Securities, provided that the increase will not adversely affect the interests of the Holders of the Securities of such series in any material respect; or

(p) any other action to amend or supplement the Indenture or the Securities of any series as set forth in the supplemental indenture with respect to the Securities of that series.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such supplemental indenture, and upon receipt by the Trustee of the documents described in Section 6.02, the Trustee shall join with the Company and the Subsidiary Guarantors in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section may be executed without the consent of the Holders of any of the Securities then outstanding, notwithstanding any of the provisions of Section 7.02.

SECTION 7.02. With Consent of Holders. Except as provided below in this Section 7.02, with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities of each series then outstanding affected by such supplemental indenture voting as one class (including, without limitation, consents obtained in connection with purchase of, or tender or exchange offers for, the Securities of such series), the Company, when authorized by a Board Resolution (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to an Officer's Certificate), the Subsidiary Guarantors and the Trustee may, from time to time and at any time, amend this Indenture or enter into one or more supplemental indentures (which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of such series; and, subject to Sections 5.04 and 5.07, any existing Default or Event of Default (other than an uncured Default or Event of Default in the payment of principal, premium or interest on the Securities of any series, except a payment default resulting from an acceleration that has been rescinded) and compliance with any provision of the Indenture or the Securities of any series may be waived as to such series of Securities with the consent of the Holders of not less than a majority in principal amount of the outstanding Securities of such series affected by such waiver, voting as one class (including, without limitation, consents obtained in connection with a purchase of, or tender or exchange offer for, the Securities of such series); provided, however, that without the consent of each Holder affected, an amendment or waiver under this Section 7.02 may not (but only with respect to any Securities of any series held by a non-consenting Holder):

(a) change the Stated Maturity of Securities of any series;

(b) reduce the aggregate principal amount of Securities of any series;

(c) reduce the rate or amend or modify the calculation, or time of payment, of interest, including defaulted interest on the Securities of any series;

(d) reduce or alter the method of computation of any amount payable on redemption, prepayment or purchase of Securities of any series (or the time at which any such redemption, prepayment or purchase may be made) or otherwise alter or waive any of the provisions with respect to the redemption of Securities of any series, or waive a redemption payment with respect to any Securities of any series;

(e) make the principal thereof, or interest, thereon payable in any coin or currency other than provided in the Securities of any series or in accordance with the terms of the Securities of any series, this Indenture and any supplemental indenture;

(f) impair the right to institute suit for the enforcement of any payment on Securities of any series when due, or otherwise make any change in the provisions of this Indenture or any supplemental indenture relating to waivers of past Defaults or the rights of Holders of Securities of any series to receive payments of principal of, or premium, if any, or interest on the Securities of any series;

(g) modify any of the provisions of this Section 7.02, Section 5.04 or Section 4.08, except to increase the percentage in principal amount of Holders required under any such Section or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security affected thereby, provided, however, that this clause (g) will not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section 7.02, Section 5.04 and Section 4.08, or the deletion of this proviso, in accordance with the requirements of Section 6.08;

(h) reduce the percentage of principal amount of Securities of any series whose Holders must consent to an amendment, supplement or waiver;

(i) impair the rights of Holders of the Securities of any series that are exchangeable or convertible to receive payment or delivery of any consideration due upon the conversion or exchange of the Securities of that series; or

(j) modify or amend any of the provisions of the Indenture or Securities of any series as may be set forth in the supplemental indenture with respect to the Securities of that series as requiring the consent of each Holder affected thereby.

The Holders of the Securities of any series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such amendment, waiver or supplemental indenture shall be and shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Upon the request of the Company, accompanied by a copy of a resolution of the Board of Directors (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to an Officer’s Certificate) certified by the secretary or an assistant secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Holders of the Securities of any series as aforesaid, the Trustee shall join with the Company and the Subsidiary Guarantors in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may at its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Holders of Securities of any series under this Section 7.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company, the Subsidiary Guarantors and the Trustee of any supplemental indenture pursuant to the provisions of this Section 7.02, the Company (or the Trustee at the request and expense of the Company) shall give notice thereof to the Holders of the then outstanding Securities of any series affected thereby, as provided in Section 14.02. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

**SECTION 7.03. Effect of Supplemental Indenture.** Upon the execution of any supplemental indenture pursuant to the provisions hereof, or any amendment to or waiver of the provisions of the Indenture, this Indenture shall be and shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company, the Subsidiary Guarantors and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture, amendment or waiver shall be and shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 7.04. Conformity with Trust Indenture Act. Every amendment or supplement to this Indenture or the Securities of any series shall be set forth in an amended or supplemental indenture executed pursuant to this Article that shall conform to the requirements of the Trust Indenture Act as then in effect if this Indenture shall then be qualified under the Trust Indenture Act.

SECTION 7.05. Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture, amendment or waiver pursuant to the provisions of this Article 7 may bear a notation in form approved by the Trustee as to any matter provided for by such supplemental indenture or as to any action taken by the Holders of Securities of any series. If the Company or the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company and the Subsidiary Guarantors, authenticated by the Trustee and delivered in exchange for the Securities of such series then outstanding.

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

SECTION 7.06. Revocation and Effect of Consents. Until an amendment, waiver or a supplemental indenture becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder of a Security and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder of a Security or subsequent Holder of a Security may revoke the consent as to its Security if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

SECTION 7.07. Trustee to Sign Amendments, etc. The Trustee shall sign any amended or supplemental indenture authorized pursuant to this Article 7 if the amendment or supplemental indenture does not adversely affect the rights, duties, liabilities or immunities of the Trustee. In executing any amended or supplemental indenture, the Trustee shall be provided with and (subject to Section 6.01) shall be fully protected in relying upon, in addition to the documents required by Section 14.04, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture or any relevant supplemental indenture and constitutes the legal, valid and binding obligations of the Company enforceable in accordance with its terms (subject to customary exceptions).

## ARTICLE 8.

### CONSOLIDATION, MERGER OR SALE OF ASSETS

SECTION 8.01. Merger, Consolidation or Sale of Assets. Neither the Company nor the Subsidiary Guarantors may consolidate or merge with or into, or sell, lease or convey all or substantially all of its assets in any one transaction or series of related transactions to any other Person (other than a consolidation or merger of the Company and one or more Subsidiary Guarantors or two or more Subsidiary Guarantors, or a sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the assets of the Company to a Subsidiary Guarantor, a Subsidiary Guarantor to the Company or of a Subsidiary Guarantor to another Subsidiary Guarantor), unless:

(a) the resulting, surviving or transferee corporation (the "successor") is either the Company or such Subsidiary Guarantor, as the case may be, or is a corporation organized under the laws of the United States, any state or the District of Columbia and expressly assumes by supplemental indenture all of the Company's obligations under this Indenture and all the Securities;

(b) immediately after giving effect to the transaction no Default or Event of Default has occurred and is continuing; and

(c) Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each in the form required by this Indenture and stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with the foregoing provisions relating to such transaction and constitutes the legal, valid and binding obligation of the Company or successor entity, as applicable, subject to customary exceptions.

SECTION 8.02. Successor Corporation Substituted. Upon any consolidation or merger of the Company or a Subsidiary Guarantor, as the case may be, or any sale, assignment, transfer, conveyance or other disposition of all or substantially all of the assets of the Company or such Subsidiary Guarantor in accordance with Section 8.01 (except in the case of a lease of all or substantially all of the Company's or such Subsidiary Guarantor's assets), the successor corporation formed by such consolidation or into or with which the Company or such Subsidiary Guarantor is merged or to which such sale, assignment, transfer, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor corporation and not to the Company), and may exercise every right and power of the Company or such Subsidiary Guarantor, as the case may be, under this Indenture with the same effect as if such successor Person had been named as the Company or such Subsidiary Guarantor, as the case may be, herein; provided, however, that the predecessor Company or Subsidiary Guarantor shall not be relieved from the obligation to pay the principal of and interest on the Securities of any series except in the case of the Company's or such Subsidiary Guarantor's consolidation or merger with or into, or sale or conveyance of all of the Company's or such Subsidiary Guarantor's assets to, any other Person that meets the requirements of Section 8.01.

## ARTICLE 9.

### REDEMPTION OF SECURITIES

SECTION 9.01. Applicability of Article. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.01 for Securities of any series) in accordance with this Article.

SECTION 9.02. Selection of Securities to Be Redeemed. If less than all the Securities of a series are to be redeemed, the Trustee shall select Securities to be redeemed as follows:

- (a) if the Securities to be redeemed are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which such Securities are listed; or
- (b) if the Securities to be redeemed are not listed on any national securities exchange, on a pro rata basis (subject to the procedures of the Depositary) or, to the extent a pro rata basis is not permitted, by lot or in such other manner as the Trustee deems fair and appropriate.

No Securities of \$2,000 of principal amount or less will be redeemed in part. Except as provided in the preceding sentence, provisions of this Indenture that apply to Securities of a series called for redemption also apply to portions of Securities of such series called for redemption.

Securities of a series called for redemption become due on the date fixed for redemption.

SECTION 9.03. Notice of Redemption. At least 30 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each Holder of Securities of any series to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Securities of such series or a satisfaction and discharge of this Indenture.

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

- (1) the CUSIP and ISIN (if applicable) numbers;
- (2) the redemption date;
- (3) the redemption price;
- (4) if any Security of a series is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date upon surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Security;

- (5) the name and address of the Paying Agent;
- (6) that Securities of such series called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (7) that interest, if any, on the Securities of such series or portions of them called for redemption shall cease to accrue on and after the redemption date;
- (8) the paragraph of the Securities of such series and/or Section of this Indenture pursuant to which such Securities called for redemption are being redeemed; and
- (9) that no representation is made as to the correctness or accuracy of the CUSIP and ISIN (if applicable) numbers, if any, listed in such notice or printed on such Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; provided, however, that the Company shall have delivered to the Trustee, at least 45 days (or such shorter time as may be agreed to by the Trustee) prior to the redemption date, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

SECTION 9.04. Effect of Notice of Redemption. Once notice of redemption is mailed in accordance with Section 9.03, Securities of any series called for redemption become irrevocably due and payable on the redemption date at the redemption price.

SECTION 9.05. Deposit of Redemption Price. Prior to 10:00 a.m., Eastern Time, on a redemption date, the Company or a Subsidiary Guarantor shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities of a series to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company or Subsidiary Guarantor any money deposited with the Trustee or the Paying Agent by the Company or such Subsidiary Guarantor in excess of the amounts necessary to pay the redemption price of and accrued interest, if any, on all Securities of such series to be redeemed.

If the Company or a Subsidiary Guarantor complies with the provisions of the preceding paragraph, on and after the redemption date, interest, if any, on the Securities or the portions of the Securities called for redemption shall cease to accrue for as long as the Company has deposited with the Trustee or Paying Agent funds in satisfaction of the applicable redemption price. If a Security is redeemed on or after a Regular Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest, if any, shall be paid to the Person in whose name such Security was registered at the close of business on such Regular Record Date.

SECTION 9.06. Securities Redeemed in Part. Upon surrender of any Security that is redeemed in part, the Company shall issue and, upon the Company's written request, the Trustee shall authenticate for the Holder thereof, at the expense of the Company a new Security equal in principal amount to the unredeemed portion of the Security surrendered. If a Global Security is so surrendered, such new Security shall also be a Global Security.

## ARTICLE 10.

### DEFEASANCE AND COVENANT DEFEASANCE

SECTION 10.01. Option to Effect Legal Defeasance or Covenant Defeasance. Unless pursuant to Section 3.01 provision is made for the inapplicability of either or both of (a) defeasance of the Securities of a series under Section 10.02 or (b) covenant defeasance of the Securities of a series under Section 10.03, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article, shall be applicable to the Securities of such series, and the Company may, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, at any time, elect to have either Section 10.02 or 10.03 be applied to all outstanding Securities of such series upon compliance with the conditions set forth below in this Article 10.

SECTION 10.02. Legal Defeasance and Discharge.

Upon the Company's exercise under Section 10.01 of the option applicable to defease the outstanding Securities of a particular series under this Section 10.02, the Company and the Subsidiary Guarantors shall, subject to the satisfaction of the conditions set forth in Section 10.04, be deemed to have been discharged from their respective obligations with respect to such outstanding Securities on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company or a Subsidiary Guarantor shall be deemed to have paid and discharged the entire indebtedness represented by the outstanding Securities and the related Guarantees, if any, of such series, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 10.05 and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all their respective other obligations under such Securities and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments provided to it acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

- (a) the rights of Holders of outstanding Securities of such series to receive payments in respect of the principal amount, premium, if any, interest, if any, on such Securities when such payments are due from the trust referred to in Section 10.04;
- (b) the Company's and the Subsidiary Guarantors' respective obligations, if any, with respect to such Securities under Sections 3.06, 3.07, 3.08(a), 3.09, 3.11, 4.02 and 4.03;
- (c) the rights, powers, trusts, duties and immunities of the Trustee and the Company's obligations in connection therewith; and
- (d) this Article 10.

Subject to compliance with this Article 10, the Company may exercise its option under this Section 10.02 notwithstanding the prior exercise of its option under Section 10.03 with respect to the Securities of such series.

**SECTION 10.03. Covenant Defeasance.** Upon the Company's exercise under Section 10.01 of the option applicable to obtain a covenant defeasance with respect to the outstanding Securities of a particular series under this Section 10.03, the Company and the Subsidiary Guarantors shall, subject to the satisfaction of the conditions set forth in Section 10.04, be released from their respective obligations under the covenants contained in Sections 4.04, 4.06 and 8.01 and the covenants contained in any supplemental indenture applicable to such series, with respect to the outstanding Securities of such series on and after the date the conditions set forth in Section 10.04 are satisfied (hereinafter, "Covenant Defeasance"), and the Securities of such series shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Securities shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Securities of such series, the Company and the Subsidiary Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 5.01 with respect to outstanding Securities of such series, but, except as specified above, the remainder of this Indenture and of the Securities of such series shall be unaffected thereby. In addition, upon the Company's exercise under Section 10.01 of the option applicable to this Section 10.03, subject to the satisfaction of the conditions set forth in Section 10.04, Sections 5.01(d) and 5.01(e) shall not constitute Events of Default.

**SECTION 10.04. Conditions to Legal or Covenant Defeasance.** The following shall be the conditions to the application of either Section 10.02 or Section 10.03 to the outstanding Securities of a particular series:

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (a) the Company or a Subsidiary Guarantor must irrevocably deposit or cause to be deposited with the Trustee, in trust, for the benefit of the Holders of such Securities, cash in United States dollars, non-callable Government Securities, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, a nationally recognized investment bank or a nationally recognized appraisal or valuation firm delivered to the Trustee, without consideration of any

reinvestment of interest, to pay the principal of, premium, if any, interest, if any, on such outstanding Securities on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company or a Subsidiary Guarantor shall specify whether such Securities are being defeased to maturity or to a particular redemption date;

(b) in the case of an election under Section 10.02, the Company has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that:

(i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or

(ii) since the Issue Date of the Securities of the applicable series, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the Holders of the outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 10.03, the Company has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default with respect to the Securities of such series has occurred and is continuing on the date of such deposit or will occur as a result of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

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

(f) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that on the 91<sup>st</sup> day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(g) the Company shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the affected Securities over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others;

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

(i) the Company shall have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Securities at maturity or the redemption date, as the case may be.

SECTION 10.05. Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions. Subject to Section 10.06, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 10.05, the "Trustee") pursuant to Section 10.04 in respect of the outstanding Securities of a particular series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company or a Subsidiary Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities of all sums due and to become due thereon in respect of principal, premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.



The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 10.04 or the principal and interest received in respect thereof other than any such tax, fee or other charge that by law is for the account of the Holders of the outstanding Securities of such series. Anything in this Article 10 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 10.04 with respect to the Securities of any series which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 10.04(a)), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 10.06. Repayment to the Company or Subsidiary Guarantor. Any money deposited with the Trustee or any Paying Agent, or then held by the Company or a Subsidiary Guarantor, in trust for the payment of the principal of, premium, if any, or interest, if any, on any Security and remaining unclaimed for two years after such principal, and premium, if any, or interest, if any, has become due and payable shall be paid to the Company or a Subsidiary Guarantor on its request or (if then held by the Company or a Subsidiary Guarantor) shall be discharged from such trust; and the Holder of such Security shall thereafter look only to the Company and the Subsidiary Guarantors for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company or such Subsidiary Guarantor as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.07. Reinstatement. If the Trustee or Paying Agent is unable to apply any U.S. Dollars or non-callable Government Securities in accordance with Section 10.02 or 10.03, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations of the Company and the Subsidiary Guarantors under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.02 or 10.03 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 10.02 or 10.03, as the case may be; provided, however, that, if the Company or a Subsidiary Guarantor makes any payment of principal of, or interest or premium, if any, on any Security following the reinstatement of its obligations, the Company or such Subsidiary Guarantor, as the case may be, shall be subrogated to the rights of the Holders of such Security to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 11.

### SATISFACTION AND DISCHARGE

SECTION 11.01. Satisfaction and Discharge of Indenture. This Indenture shall be discharged and shall cease to be of further effect with respect to any series of Securities (except, as to any surviving rights of registration of transfer, exchange or conversion of Securities of such series herein expressly provided for or in the form of Security for such series and any rights to receive payment of interest thereon), and the Trustee, on demand of and at the expense of the Company, shall execute such instruments acknowledging satisfaction and discharge of this Indenture as may be requested by the Company, when:

(a) either

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

(ii) all such Securities not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company or a Subsidiary Guarantor has

irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on such Securities not delivered to the Trustee for cancellation for the principal amount and premium, if any, plus accrued interest, if any, on all such Securities;

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

(c) the Company or a Subsidiary Guarantor has paid or caused to be paid all sums payable under this Indenture and any applicable supplemental indenture with respect to such Securities; and

(d) the Company has delivered irrevocable instructions to the Trustee under this Indenture and any applicable supplemental indenture to apply the deposited money toward the payment of such Securities at Stated Maturity or the redemption date, as the case may be.

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

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section, the provisions of the last paragraph of Section 4.03, Section 10.06 and Section 11.02 shall survive. In addition, nothing in this Section 11.01 shall be deemed to discharge the provisions of Section 6.07.

SECTION 11.02. Notices. Subject to the provisions of the last paragraph of Section 4.03 and Section 10.06, all money deposited with the Trustee pursuant to Section 11.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and premium, if any, and interest, if any, for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and such Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01; provided that if the Company has made any payment of principal of and premium, if any, and interest, if any, on Securities of any series because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

## ARTICLE 12.

### SUBORDINATION OF SECURITIES

SECTION 12.01. Agreement to Subordinate. In the event a series of Securities is designated as subordinated pursuant to Section 3.01, and except as otherwise provided in a Company Order, Officer's Certificate or in one or more indentures supplemental hereto, the Company, for itself, its successors and assigns, covenants and agrees, and each Holder of Securities of such series by his, her or its acceptance thereof, likewise covenants and agrees, that the payment of the principal of, premium, if any, or interest on each and all of the Securities of such series is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Indebtedness. In the event a series of Securities is not designated as subordinated pursuant to Section 3.01(t), this Article 12 shall have no effect upon such series of Securities.

SECTION 12.02. Distribution on Dissolution, Liquidation and Reorganization; Subrogation of Securities. Subject to Section 12.01, upon any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred in this Indenture upon the Senior Indebtedness and the holders thereof with respect to the Securities and the holders thereof by a lawful plan of reorganization under any Bankruptcy Law):

(a) the holders of all Senior Indebtedness shall be entitled to receive payment in full of the principal, premium, if any, or interest thereon before the Holders of the Securities are entitled to receive any payment upon the principal of, premium, if any, or interest on Indebtedness evidenced by the Securities;

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article 12 in respect of the principal of, premium, if any, or interest, on the Securities shall be paid by the liquidation trustee or agent or other Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the principal of, premium, if any, or interest on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character in respect of the principal of, premium, if any, or interest on Indebtedness evidenced by the Securities, whether in cash, property or securities prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Indebtedness is paid in full, such payment or distribution shall be paid over, upon written notice to a Responsible Officer of the Trustee, to the holder of such Senior Indebtedness or his, her or its representative or representatives or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior Indebtedness may have been issued, ratably as aforesaid, as calculated by the Company, for application to payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities shall be subrogated to the rights of the holders of Senior Indebtedness (to the extent that distributions otherwise payable to such holder have been applied to the payment of Senior Indebtedness) to receive payments or distributions of cash, property or securities of the Company applicable to Senior Indebtedness until the principal of, premium, if any, or interest on the Securities shall be paid in full and no such payments or distributions to the Holders of the Securities of cash, property or securities otherwise distributable to the holders of Senior Indebtedness shall, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities be deemed to be a payment by the Company to or on account of the Securities. It is understood that the provisions of this Article 12 are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the other hand. Nothing contained in this Article 12 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities, the obligation of the Company, which is unconditional and absolute, to pay to the Holders of the Securities the principal of, premium, if any, or interest on the Securities as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or in the Securities prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 12 of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any payment or distribution of assets of the

Company referred to in this Article 12, the Trustee, subject to the provisions of Section 12.05, shall be entitled to conclusively rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereof and all other facts pertinent thereto or to this Article 12.

**SECTION 12.03. No Payment on Securities in Event of Default on Senior Indebtedness.** Subject to Section 12.01, no payment by the Company on account of principal (or premium, if any), sinking funds or interest, if any, on the Securities shall be made at any time if: (i) a default on Senior Indebtedness exists that permits the holders of such Senior Indebtedness to accelerate its maturity and (ii) the default is the subject of judicial proceedings or the Company has received notice of such default. The Company may resume payments on the Securities when full payment of amounts then due for principal (premium, if any), sinking funds and interest on Senior Indebtedness has been made or duly provided for in money or money's worth.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 12.03, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of such Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, but only to the extent that the holders of such Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 calendar days of such payment of the amounts then due and owing on such Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Senior Indebtedness.

**SECTION 12.04. Payments on Securities Permitted.** Subject to Section 12.01, nothing contained in this Indenture or in any of the Securities shall (a) affect the obligation of the Company to make, or prevent the Company from making, at any time except as provided in Sections 12.02 and 12.03, payments of principal of (or premium, if any) or interest, if any, on the Securities or (b) prevent the application by the Trustee of any moneys or assets deposited with it hereunder to the payment of or on account of the principal of, premium, if any, or interest on the Securities, unless a Responsible Officer of the Trustee shall have received at its Corporate Trust Office written notice of any fact prohibiting the making of such payment from the Company or from the holder of any Senior Indebtedness or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Indebtedness or of the authority of such trustee, more than two Business Days prior to the date fixed for such payment.

**SECTION 12.05. Authorization of Securityholders to Trustee to Effect Subordination.** Subject to Section 12.01, each Holder of Securities by his acceptance thereof authorizes and directs the Trustee on his, her or its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 12 and appoints the Trustee his attorney-in-fact for any and all such purposes.

**SECTION 12.06. Notices to Trustee.** The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of moneys or assets to or by the Trustee in respect of the Securities of any series pursuant to the provisions of this Article 12. Subject to Section 12.01, notwithstanding the provisions of this Article 12 or any other provisions of this Indenture, neither the Trustee nor any Paying Agent (other than the Company) shall be charged with knowledge of the existence of any Senior Indebtedness or of any fact which would prohibit the making of any payment of moneys or assets to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee or such Paying Agent shall have received (in the case of a Responsible Officer of the Trustee, at the Corporate Trust Office of the Trustee) written notice thereof from the Company or from the holder of any Senior Indebtedness or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Indebtedness or of the authority of such trustee, and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects conclusively to presume that no such facts exist; provided, however, that if at least two Business Days prior to the date upon which by the terms hereof any such moneys or assets may become payable for any purpose (including, without limitation, the payment of either the principal of, premium, if any, or interest on any Security) a Responsible Officer of the Trustee shall not have received with respect to such moneys or assets the notice provided for in this Section 12.06, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys or assets and to apply the same to the purpose for which they were

received, and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date. The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such a notice has been given by a holder of Senior Indebtedness or a trustee on behalf of any such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 12, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 12 and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.07. Trustee as Holder of Senior Indebtedness. Subject to Section 12.01, the Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 12 in respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder. Nothing in this Article 12 shall apply to claims of, or payments to, the Trustee under or pursuant to Sections 5.10 or 6.07.

SECTION 12.08. Modifications of Terms of Senior Indebtedness. Subject to Section 12.01, any renewal or extension of the time of payment of any Senior Indebtedness or the exercise by the holders of Senior Indebtedness of any of their rights under any instrument creating or evidencing Senior Indebtedness, including, without limitation, the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee. No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Indebtedness is Outstanding or of such Senior Indebtedness, whether or not such release is in accordance with the provisions of any applicable document, shall in any way alter or affect any of the provisions of this Article 12 or of the Securities relating to the subordination thereof.

SECTION 12.09. Reliance on Judicial Order or Certificate of Liquidating Agent. Subject to Section 12.01, upon any payment or distribution of assets of the Company referred to in this Article 12, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 12.

SECTION 12.10. Satisfaction and Discharge; Defeasance and Covenant Defeasance. Subject to Section 12.01, moneys and Government Securities deposited in trust with the Trustee pursuant to and in accordance with Article 10 and not, at the time of such deposit, prohibited to be deposited under Sections 12.02 or 12.03 shall not be subject to this Article 12.

SECTION 12.11. Trustee Not Fiduciary for Holders of Senior Indebtedness. With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or observe only such of its covenants and obligations as are specifically set forth in this Article 12, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness. The Trustee shall not be liable to any such holder if it shall pay over or distribute to or on behalf of Holders of Securities or the Company, or any other Person, moneys or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article 12 or otherwise.

## [GUARANTEE]

SECTION 13.01. Guarantee.

(a) Notwithstanding any provision of this Article 13 to the contrary, the provisions of this Article 13 relating to the Subsidiary Guarantors shall be applicable only to, and inure solely to the benefit of, the Securities of any series designated, pursuant to Section 3.01, as entitled to the benefits of the related Guarantee of each of the Subsidiary Guarantors.

(b) For value received, each of the Subsidiary Guarantors hereby fully, unconditionally and absolutely guarantees (each, a "Guarantee") to the Holders and to the Trustee the due and punctual payment of the principal of, and premium, if any, and interest on the Securities and all other amounts due and payable under this Indenture and the Securities by the Company, when and as such principal, premium, if any, and interest shall become due and payable, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, according to the terms of the Securities and this Indenture, subject to the limitations set forth in Section 13.02.

(c) Failing payment when due of any amount guaranteed pursuant to the related Guarantee, for whatever reason, each of the Subsidiary Guarantors will be jointly and severally obligated to pay the same immediately. Each of the Subsidiary Guarantors hereby agrees that its obligations hereunder shall be full, unconditional and absolute, irrespective of the validity, regularity or enforceability of the Securities, its Guarantee, the Guarantee of any other Subsidiary Guarantor or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities with respect to any provisions hereof or thereof, the recovery of any judgment against the Company or a Subsidiary Guarantor, or any action to enforce the same or any other circumstances which might otherwise constitute a legal or equitable discharge or defense of the Subsidiary Guarantors. Each of the Subsidiary Guarantors hereby agrees that in the event of a default in payment of the principal of, or premium, if any, or interest on the Securities of such series, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee on behalf of the Holders or, subject to Section 5.06, by the Holders, on the terms and conditions set forth in this Indenture, directly against such Subsidiary Guarantor to enforce such Guarantee without first proceeding against the Company or any other Subsidiary Guarantor.

(d) The obligations of each of the Subsidiary Guarantors under this Article 13 shall be as aforesaid full, unconditional and absolute and shall not be impaired, modified, released or limited by any occurrence or condition whatsoever, including, without limitation, (i) any compromise, settlement, release, waiver, renewal, extension, indulgence or modification of, or any change in, any of the obligations and liabilities of the Company or any of the Subsidiary Guarantors contained in the Securities or this Indenture, (ii) any impairment, modification, release or limitation of the liability of the Company, any of the Subsidiary Guarantors or any of their estates in bankruptcy, or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of any applicable Bankruptcy Law, as amended, or other statute or from the decision of any court, (iii) the assertion or exercise by the Company, any of the Subsidiary Guarantors or the Trustee of any rights or remedies under the Securities or this Indenture or their delay in or failure to assert or exercise any such rights or remedies, (iv) the assignment or the purported assignment of any property as security for the Securities, including all or any part of the rights of the Company or any of the Subsidiary Guarantors under this Indenture, (v) the extension of the time for payment by the Company or any of the Subsidiary Guarantors of any payments or other sums or any part thereof owing or payable under any of the terms and provisions of the Securities or this Indenture or of the time for performance by the Company or any of the Subsidiary Guarantors of any other obligations under or arising out of any such terms and provisions or the extension or the renewal of any thereof, (vi) the modification or amendment (whether material or otherwise) of any duty, agreement or obligation of the Company or any of the Subsidiary Guarantors set forth in this Indenture, (vii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, the Company or any of

the Subsidiary Guarantors or any of their respective assets, or the disaffirmance of the Securities, the Guarantee or this Indenture in any such proceeding, (viii) the release or discharge of the Company or any of the Subsidiary Guarantors from the performance or observance of any agreement, covenant, term or condition contained in any of such instruments by operation of law, (ix) the unenforceability of the Securities of such series, the related Guarantees or this Indenture or (x) any other circumstances (other than payment in full or discharge of all amounts guaranteed pursuant to the related Guarantees) which might otherwise constitute a legal or equitable discharge of a surety or guarantor.

(e) Each of the Subsidiary Guarantors hereby (i) waives, to the extent permitted by law, diligence, presentment, demand of payment, filing of claims with a court in the event of the merger, insolvency or bankruptcy of the Company or any of the Subsidiary Guarantors, and all demands whatsoever, (ii) acknowledges that any agreement, instrument or document evidencing its Guarantee may be transferred and that the benefit of its obligations hereunder shall extend to each holder of any agreement, instrument or document evidencing its Guarantee without notice to it and (iii) covenants that its Guarantee will not be discharged except by complete performance of such Guarantee. Each of the Subsidiary Guarantors further agrees that if at any time all or any part of any payment theretofore applied by any Person to its Guarantee is, or must be, rescinded or returned for any reason whatsoever, including, without limitation, the insolvency, bankruptcy or reorganization of the Company or any of the Subsidiary Guarantors, such Guarantee shall, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence notwithstanding such application, and such Guarantee shall continue to be effective or be reinstated, as the case may be, as though such application had not been made.

(f) Each of the Subsidiary Guarantors shall be subrogated to all rights of the Holders and the Trustee against the Company in respect of any amounts paid by such Subsidiary Guarantor pursuant to the provisions of this Indenture; provided, however, that such Subsidiary Guarantor, shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until all of the Securities of such series and the related Guarantees shall have been paid in full or discharged.

SECTION 13.02. Limitation on Liability of the Subsidiary Guarantors. Each Subsidiary Guarantor and by its acceptance hereof each Holder of a Security of a series entitled to the benefits of a Guarantee under this Article 13 hereby confirms that it is the intention of all such parties that the guarantee by such Subsidiary Guarantor pursuant to its Guarantee not constitute a fraudulent transfer or conveyance for purposes of any federal or state law. To effectuate the foregoing intention, the Holders of a Security entitled to the benefits of such Guarantee and the Subsidiary Guarantors hereby irrevocably agree that the obligations of each Subsidiary Guarantor under its Guarantee shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor and to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Guarantee, result in the obligations of such Subsidiary Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

SECTION 13.03. Release of Subsidiary Guarantors from Guarantee.

(a) Notwithstanding any other provisions of this Indenture, the Guarantee of a Subsidiary Guarantor may be released upon the terms and subject to the conditions set forth in this Section 13.03. Provided that no Default shall have occurred and shall be continuing under this Indenture, any Guarantee incurred by a Subsidiary Guarantor pursuant to this Article 13 shall be unconditionally released and discharged (i) automatically upon (A) any sale, exchange or transfer, whether by way of merger or otherwise, to any Person that is not an Affiliate of the Company, of all of the Company's direct or indirect equity interests in such Subsidiary Guarantor (provided such sale, exchange or transfer is not prohibited by this Indenture) or (B) the merger of such Subsidiary Guarantor into the Company or any other Subsidiary Guarantor or the liquidation and dissolution of such Subsidiary Guarantor (in each case to the extent not prohibited by this Indenture) or (ii) following delivery of a written notice of such release or discharge by the Company to the Trustee, upon the release or discharge of all guarantees by such Subsidiary Guarantor of any Indebtedness of the Company other than obligations arising under this Indenture and any Securities issued hereunder, except a discharge or release by or as a result of payment under such guarantees.

(b) The Trustee shall deliver such instrument as are requested by the Company evidencing any release of a Subsidiary Guarantor from its Guarantee upon receipt of a written request of the Company accompanied by an Officer's Certificate and an Opinion of Counsel that the Subsidiary Guarantor is entitled to such release in accordance with the provisions of this Indenture. If the Subsidiary Guarantor is not so released it shall remain liable for the full amount of principal of (and premium, if any, on) and interest on the Securities entitled to the benefits of such Guarantee as provided in this Indenture, subject to the limitations of Section 13.02.

SECTION 13.04. Contribution. In order to provide for just and equitable contribution among the Subsidiary Guarantors, the Subsidiary Guarantors hereby agree, *inter se*, that in the event any payment or distribution is made by a Subsidiary Guarantor (a "Funding Guarantor") under its Guarantee, such Funding Guarantor shall be entitled to a contribution from each other Subsidiary Guarantor (as applicable) in a pro rata amount based on the net assets of each Subsidiary Guarantor (including the Funding Guarantor) for all payments, damages and expenses incurred by that Funding Guarantor in discharging the Company's obligations with respect to the Securities of a series entitled to the benefits of a Guarantee under this Article 13 or any other Subsidiary Guarantor's obligations with respect to its Guarantee of such series of Securities.]

## ARTICLE 14.

### MISCELLANEOUS PROVISIONS

SECTION 14.01. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required or deemed to be included in this Indenture by the Trust Indenture Act, such required or deemed provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or excluded, as the case may be.

SECTION 14.02. Notices. Any notice or communication by the Company, a Subsidiary Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company or a Subsidiary Guarantor:

Western Digital Corporation  
5601 Great Oaks Parkway  
San Jose, California  
Attention: Chief Legal Officer  
Facsimile: (949) 672-9612

If to the Trustee:

U.S. Bank National Association  
Global Corporate Trust  
1 California Street, Suite 1000  
San Francisco, CA 94111  
Attention: David Jason/Western Digital Administrator

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

All notices and communications (other than those sent to Holders) shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is acknowledged (or, in the case of the Trustee, when receipt is actually acknowledged by a Responsible Officer) if delivered electronically, in pdf format; when receipt is acknowledged, if telecopied; five (5) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee); and next Business Day if by nationally recognized overnight courier service.



The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent in writing by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods, *provided, however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, and provided further, that any communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Trustee by the authorized representative), in English. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

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

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

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

SECTION 14.03. Communication by Holders with Other Holders. Holders may communicate pursuant to the Trust Indenture Act § 312(b) with other Holders with respect to their rights under this Indenture or the Securities of any series. The Company, the Subsidiary Guarantors, the Trustee, the Registrar and anyone else shall have the protection of the Trust Indenture Act § 312(c).

SECTION 14.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officer's Certificate stating that, in the opinion of the signers, all conditions precedent to be performed or effected by the Company, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (b) an Opinion of Counsel stating that, in the opinion of such counsel, any and all such conditions precedent have been complied with; *provided, however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials

SECTION 14.05. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to the Trust Indenture Act § 314(a)(4)) shall comply with the provisions of the Trust Indenture Act § 314(e) and shall include:

- (a) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

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

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with; *provided, however,* that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 14.06. Rules by Trustee and Agents. The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions; provided that no such rule shall conflict with the terms of this Indenture or the Trust Indenture Act.

SECTION 14.07. No Personal Liability of Directors, Officers, Employees and Stockholders. No past, present or future director, officer, employee, incorporator, stockholder, other owner or agent of the Company or a Subsidiary Guarantor, as such, shall have any liability for any obligations of the Company or the Subsidiary Guarantors under the Securities or any Guarantee, as applicable, of any series, this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities of any series.

SECTION 14.08. Governing Law. **THIS INDENTURE AND THE SECURITIES AND ANY GUARANTEES OF ANY SERIES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS.**

SECTION 14.09. No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company, a Subsidiary Guarantor or any of their respective subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 14.10. Successors. All agreements of the Company and each Subsidiary Guarantor in this Indenture and the Securities of any series shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 14.11. Severability. To the fullest extent permitted by applicable law, in case any one or more of the provisions in this Indenture or in the Securities shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SECTION 14.12. Counterpart Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 14.13. Table of Contents, Headings, etc. The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 14.14. Waiver of Jury Trial. EACH OF THE COMPANY, [THE GUARANTORS] AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OF ANY SERIES, OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 14.15. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, work stoppages, accidents, acts of war or

terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and statewide or countrywide interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 14.16. Provisions of Indenture for the Sole Benefit of Parties and Holders. Nothing in this Indenture or in the Securities or in any Guarantee of any series, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and the Holders of the Securities of such series, any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders of the Securities.

SECTION 14.17. Payments Due on Saturdays, Sundays and Holidays. If the Stated Maturity of interest on or principal of the Securities of a particular series or the date fixed for redemption of any Security shall not be a Business Day, then payment of interest or principal with respect to such Securities need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

[Signatures on following page]

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of \_\_\_\_\_, \_\_\_\_\_.

WESTERN DIGITAL CORPORATION, as Company

By: \_\_\_\_\_

Name:

Title:

[POTENTIAL SUBSIDIARY GUARANTORS, as Potential  
Subsidiary Guarantors

By: \_\_\_\_\_

Name:

Title: ]

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_

Name:

Title:

# CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza  
New York, NY 10006-1470

T: +1 212 225 2000

F: +1 212 225 3999

clearygottlieb.com

WASHINGTON, D.C. • PARIS • BRUSSELS • LONDON • MOSCOW  
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG  
BEIJING • BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL

D: +1 212 225 2106  
dmclaughlin@cgsh.com

STEVEN M. LOEB	BENET J. O'REILLY	JOSEPH LANZKRON
CRAIG B. BROD	ADAM E. FLEISHER	MAURICE R. GHDI
NICOLAS GRABAR	SEAN A. O'NEAL	KATHERINE R. BEAVES
DAVID E. BRODSKY	GLENN P. MCGORRY	RAHUL MUKHI
RICHARD J. COOPER	MATTHEW F. SALERNO	ELANA S. BRONSON
JEFFREY S. LEWIS	MICHAEL J. ALBANO	MANUEL SILVA
PAUL J. SHIM	VICTOR L. HOU	KYLE A. HARRIS
STEVEN L. WILNER	ROGER A. COOPER	LINA BENSIMAN
ANDRES DE LA CRUZ	AMY R. SHAPIRO	ARON M. ZUCHERMAN
DAVID C. LOPEZ	JENNIFER KENNEDY PARK	KENNETH S. BLAZIJEWSKI
MICHAEL A. GERSTENZANG	ELIZABETH LENAS	MARK E. McDONALD
LEV L. DASSIN	LUKE A. BAREFOOT	F. JAMAL FULTON
JORGE U. JUANTORENA	JONATHAN S. KOLODNER	RESIDENT PARTNERS
MICHAEL D. WEINBERGER	DANIEL ILAN	SANDRA M. ROCKS
DAVID LEINWAND	MEYER H. FEDIDA	JUDITH KASSEL
DIANA L. WOLLMAN	ADRIAN R. LEPSIC	PENELOPE L. CHRISTOPHOROU
JEFFREY A. ROSENTHAL	ELIZABETH VICENS	BOAZ S. MORAG
MICHAEL D. DAYAN	ADAM J. BRENNEMAN	MARY E. ALCOCK
CARMINE D. BOCCUZZI, JR.	ARI O. MACKINNON	HEIDE H. ILGENFRITZ
JEFFREY D. KARPFF	JAMES E. LANGSTON	ANDREW WEAVER
KIMBERLY BROWN BLACKLOW	JARED GERBER	HELENA K. GRANNIS
FRANCISCO L. CESTERO	COLIN D. LLOYD	JOHN V. HARRISON
FRANCESCA L. ODELL	CORREY M. GOODMAN	LAURA BAGARELLA
WILLIAM L. MCRAE	RISHI ZUFISHI	JONATHAN D. W. GIFFORD
JASON FACTOR	JANE VANLARE	SUSANNA E. PARKER
JODI H. KIM	DAVID H. HERRINGTON	DAVID W. E. YUDIN
MARGARET S. PEIPONIS	KIMBERLY R. SPERRI	RESIDENT COUNSEL
LISA M. SCHWEITZER	AARON J. MEYERS	LOUISE M. PARENT
JUAN G. GIRALDEZ	DANIEL C. REYNOLDS	OF COUNSEL
DUANE MCLAUGHLIN	ANDRY X. CASUSOL	
BREON D. PEACE	ABENNA A. MAINOO	
CHANTALE E. KORDULA	HUGH C. CONROY, JR.	

August 27, 2021

Western Digital Corporation  
5601 Great Oaks Parkway  
San Jose, California 95119

Re: Western Digital Corporation Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to Western Digital Corporation, a corporation organized under the laws of Delaware (the "Company"), and Western Digital Technologies, Inc., a corporation organized under the laws of Delaware (the "Guarantor"), in connection with the preparation of a registration statement on Form S-3 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement relates to the offering from time to time, together or separately in one or more series (if applicable), by the Company of (i) shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"); (ii) shares of the Company's preferred stock, par value \$0.01 per share (the "Preferred Stock"); (iii) senior or subordinated debt securities of the Company (which may be convertible into Common Stock) (the "Debt Securities"); (iv) warrants to purchase debt or equity securities of the Company (the "Warrants"); and (v) guarantees of debt securities of the Company by the Guarantor (the "Guarantees"). The Common Stock, Preferred Stock, Debt Securities, Warrants and Guarantees are referred to herein collectively as the "Securities."

The Securities being registered under the Registration Statement will have an indeterminate aggregate initial offering price and will be offered on a continuous or delayed basis pursuant to the provisions of Rule 415 under the Securities Act.

The Debt Securities and the Guarantees are to be issued under an indenture (the "Indenture") to be entered into between the Company and U.S. Bank National Association, as trustee, as supplemented from time to time, or one or more other indentures that may be entered into between the Company and a trustee.

Cleary Gottlieb Steen & Hamilton LLP or an affiliated entity has an office in each of the cities listed above.

The Warrants are to be issued from time to time under one or more warrant agreements (each such warrant agreement, a “Warrant Agreement”) to be entered into between the Company and the warrant agent to be named therein.

In arriving at the opinions expressed below, we have reviewed the following documents:

- (a) the Registration Statement;
- (b) the certificate of American Stock Transfer & Trust Company, LLC, as registrar and transfer agent for the shares of Common Stock, certifying due registration of the shares of Common Stock;
- (c) the form of Indenture, filed as an exhibit to the Registration Statement, including the form of debt security; and
- (d) copies of the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws certified by the Secretary of State of the State of Delaware and the corporate secretary of the Company, respectively.

In addition, we have reviewed the originals or copies certified or otherwise identified to our satisfaction of all such corporate records of the Company and such other documents, and we have made such investigations of law, as we have deemed appropriate as a basis for the opinions expressed below.

In rendering the opinions expressed below, we have assumed the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. In addition, we have assumed and have not verified the accuracy as to factual matters of each document we have reviewed.

Based on the foregoing, and subject to the further assumptions and qualifications set forth below, it is our opinion that:

1. The Common Stock, including Common Stock to be issued upon conversion, exchange or exercise of any other Security in accordance with its terms, will be validly issued by the Company, fully paid and nonassessable.
2. The Preferred Stock will be validly issued by the Company, fully paid and nonassessable.
3. The Debt Securities will be the valid, binding and enforceable obligations of the Company, entitled to the benefits of the applicable Indenture.
4. The Warrants will be the valid, binding and enforceable obligations of the Company.
5. The Guarantees will be the valid, binding and enforceable obligations of the Guarantor.

Insofar as the foregoing opinions relate to the validity, binding effect or enforceability of any agreement or obligation of the Company, (a) we have assumed that the Company and each other party to such agreement or obligation has satisfied or, prior to the issuance of the Securities, will satisfy, those legal requirements that are applicable to it to the extent necessary to make such agreement or obligation enforceable against it, and (b) such opinions are subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

In rendering the opinions expressed in paragraphs 1 through 5 above, we have further assumed that (i) prior to the issuance of the Securities, the Company will authorize the offering and issuance of the Securities and any other Securities issuable on the conversion, exchange or exercise thereof, and will duly authorize, approve and establish the final terms and conditions thereof, which terms will conform to the descriptions thereof in the Registration Statement and, in the case of the Debt Securities, to the terms of the applicable Indenture or, in the case of other Securities, to the terms of any agreement governing such Securities, and will not violate any applicable law, conflict with any matter of public policy, result in a default under or breach of any agreement or instrument binding upon the Company or violate any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; (ii) prior to the issuance of the Securities, the Board of Directors of the Company will duly authorize, establish and approve the terms of the Preferred Stock as contemplated by the Company's Amended and Restated Certificate of Incorporation, and the Company will duly authorize, execute and deliver any applicable Indenture, Warrant Agreement or other agreement necessary with respect to the Securities or contemplated by such Securities, any agreement governing those Securities or the Registration Statement, establish the forms of such Securities as necessary or contemplated by any such agreement or by law and will take any other appropriate additional corporate action, and any such Indenture will conform to the form of Indenture filed as an exhibit to the Registration Statement; (iii) any instruments or receipts evidencing the Securities and any agreement governing the Securities will be governed by New York law; (iv) the Securities will be offered, issued, sold and delivered in compliance with applicable law and any requirements therefor set forth in any corporate action authorizing such Securities and any agreement governing such Securities and in the manner contemplated by the Registration Statement; (v) the Securities will be offered, sold and delivered to, and paid for by, the purchasers thereof at the price specified in, and in accordance with the terms of, an agreement or agreements duly authorized, executed and delivered by the parties thereto, which price, in the case of Common Stock or Preferred Stock, shall not be less than the respective par value thereof; and (vi) if issued in certificated form, certificates representing the Securities will be duly executed and delivered and, to the extent required by any applicable agreement, duly authenticated and countersigned, and if issued in book-entry form, the Securities will be duly registered to the extent required by any applicable agreement.

In rendering the opinions expressed in paragraph 3 above, we have assumed that each series of Debt Securities will be issued with an original aggregate principal amount (or in the case of Debt Securities issued at original issue discount, an aggregate issue price) of \$2,500,000 or more.

We note that any designation in the Securities or any applicable agreement governing those Securities of the U.S. federal courts sitting in New York City as the venue for actions or proceedings relating to such Securities or agreement (notwithstanding any waiver

thereof) is subject to the power of such courts to transfer actions pursuant to 28 U.S.C. §1404(a) or to dismiss such actions or proceedings on the grounds that such a federal court is an inconvenient forum for such an action or proceeding.

We note that by statute New York provides that a judgment or decree rendered in a currency other than the currency of the United States shall be converted into U.S. dollars at the rate of exchange prevailing on the date of entry of the judgment or decree. There is no corresponding federal statute and no controlling Federal court decision on this issue. Accordingly, we express no opinion as to whether a Federal court would award a judgment in a currency other than U.S. dollars or, if it did so, whether it would order conversion of the judgment into U.S. dollars. In addition, to the extent that any Securities or applicable agreement governing those Securities includes a provision relating to indemnification against any loss in obtaining currency due from a court judgment in another currency, we express no opinion as to the enforceability of such provision.

The foregoing opinions are limited to the law of the State of New York and the General Corporation Law of the State of Delaware.

We hereby consent to the use of our name in the prospectus constituting a part of the Registration Statement under the heading "Legal Matters" and in any prospectus supplement related thereto as counsel for the Company that has passed on the validity of the Securities and to the use of this opinion letter as a part (Exhibit 5.1) of the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

The opinions expressed herein are rendered on and as of the date hereof, and we assume no obligation to advise you or any other person, or to make any investigations as to any legal developments or factual matters arising subsequent to the date hereof that might affect the opinions expressed herein.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

By: /s/ Duane McLaughlin

Duane McLaughlin, a Partner



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors  
Western Digital Corporation:

We consent to the use of our report dated August 26, 2021, with respect to the consolidated financial statements of Western Digital Corporation and subsidiaries, and the effectiveness of internal control over financial reporting, incorporated herein by reference and to the reference to our firm under the heading “Experts” in the prospectus.

/s/ KPMG LLP

August 26, 2021  
Santa Clara, California

**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM T-1**

**STATEMENT OF ELIGIBILITY UNDER  
THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2)

**U.S. BANK NATIONAL ASSOCIATION**

(Exact name of Trustee as specified in its charter)

31-0841368

I.R.S. Employer Identification No.

800 Nicollet Mall  
Minneapolis, Minnesota  
(Address of principal executive offices)

55402  
(Zip Code)

David Jason  
U.S. Bank National Association  
1 California Street, Ste 1000  
San Francisco, CA 94111  
(415) 677-3622  
(Name, address and telephone number of agent for service)

**Western Digital Corporation**  
(Issuer with respect to the Securities)

(FOR CO-REGISTRANTS, PLEASE SEE "TABLE OF CO-REGISTRANTS" ON THE FOLLOWING PAGE)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

33-0956711  
(I.R.S. Employer  
Identification No.)

5601 Great Oaks Parkway  
San Jose, California  
(Address of Principal Executive Offices)

95119  
(Zip Code)

**Debt Securities**  
(Title of the Indenture Securities)

**Table of additional registrants**

<u>Name</u>	<u>State or other jurisdiction of incorporation or organization</u>	<u>I.R.S. employer ID #</u>	<u>Primary standard industrial classification code number</u>	<u>Address and telephone # of registrant's principal executive offices</u>
Western Digital Technologies, Inc.	Delaware	95-2647125	3572	5601 Great Oaks Parkway San Jose, California 95119 (408) 717-6000

**FORM T-1**

**Item 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.**

- a) *Name and address of each examining or supervising authority to which it is subject.*  
Comptroller of the Currency  
Washington, D.C.
- b) *Whether it is authorized to exercise corporate trust powers.*  
Yes

**Item 2. AFFILIATIONS WITH THE OBLIGOR. If the obligor is an affiliate of the Trustee, describe each such affiliation.**  
None

**Items 3-15** *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

**Item 16. LIST OF EXHIBITS: List below all exhibits filed as a part of this statement of eligibility and qualification.**

- 1. A copy of the Articles of Association of the Trustee.\*
- 2. A copy of the certificate of authority of the Trustee to commence business, attached as Exhibit 2.
- 3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers, attached as Exhibit 3.
- 4. A copy of the existing bylaws of the Trustee.\*\*
- 5. A copy of each Indenture referred to in Item 4. Not applicable.
- 6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached as Exhibit 6.
- 7. Report of Condition of the Trustee as of June 30, 2021 published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.

\* Incorporated by reference to Exhibit 25.1 to Amendment No. 2 to registration statement on S-4, Registration Number 333-128217 filed on November 15, 2005.

\*\* Incorporated by reference to 305(b)(2), Registration Number 333-229783 filed on June 21, 2021.

**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of San Francisco, California on the 27th of August, 2021.

By: /s/ David A. Jason

\_\_\_\_\_  
David A. Jason

Vice President

**CERTIFICATE OF CORPORATE EXISTENCE**

I, Michael J. Hsu, Acting Comptroller of the Currency, do hereby certify that:

1. The Comptroller of the Currency, pursuant to Revised Statutes 324, et seq, as amended, and 12 USC 1, et seq, as amended, has possession, custody, and control of all records pertaining to the chartering, regulation, and supervision of all national banking associations.
2. "U.S. Bank National Association," Cincinnati, Ohio (Charter No. 24), is a national banking association formed under the laws of the United States and is authorized thereunder to transact the business of banking on the date of this certificate.

IN TESTIMONY WHEREOF, today, July 23, 2021, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the U.S. Department of the Treasury, in the City of Washington, District of Columbia.



\_\_\_\_\_  
Acting Comptroller of the Currency



**CERTIFICATE OF FIDUCIARY POWERS**

I, Michael J. Hsu, Acting Comptroller of the Currency, do hereby certify that:

1. The Office of the Comptroller of the Currency, pursuant to Revised Statutes 324, et seq, as amended, and 12 USC 1, et seq, as amended, has possession, custody, and control of all records pertaining to the chartering, regulation, and supervision of all national banking associations.
2. "U.S. Bank National Association," Cincinnati, Ohio (Charter No. 24), was granted, under the hand and seal of the Comptroller, the right to act in all fiduciary capacities authorized under the provisions of the Act of Congress approved September 28, 1962, 76 Stat. 668, 12 USC 92a, and that the authority so granted remains in full force and effect on the date of this certificate.

IN TESTIMONY WHEREOF, today, July 23, 2021, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the U.S. Department of the Treasury, in the City of Washington, District of Columbia.



\_\_\_\_\_  
Acting Comptroller of the Currency



**Exhibit 6**

**CONSENT**

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: August 27, 2021

By: /s/ David A. Jason

David A. Jason

Vice President



**Exhibit 7**  
**U.S. Bank National Association**  
**Statement of Financial Condition**  
**As of 6/30/2021**

(\$000's)

	6/30/2021
<b>Assets</b>	
Cash and Balances Due From Depository Institutions	\$ 44,435,957
Securities	158,894,854
Federal Funds	2,376
Loans & Lease Financing Receivables	296,741,901
Fixed Assets	6,294,698
Intangible Assets	13,278,545
Other Assets	28,204,350
<b>Total Assets</b>	<b>\$ 547,852,681</b>
<b>Liabilities</b>	
Deposits	\$ 442,902,823
Fed Funds	1,412,092
Treasury Demand Notes	0
Trading Liabilities	1,119,485
Other Borrowed Money	31,883,676
Acceptances	0
Subordinated Notes and Debentures	3,600,000
Other Liabilities	14,222,155
<b>Total Liabilities</b>	<b>\$ 495,140,231</b>
<b>Equity</b>	
Common and Preferred Stock	18,200
Surplus	14,266,915
Undivided Profits	37,622,248
Minority Interest in Subsidiaries	805,087
<b>Total Equity Capital</b>	<b>\$ 52,712,450</b>
<b>Total Liabilities and Equity Capital</b>	<b>\$547,852,681</b>