
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): **April 13, 2005**

VECTOR GROUP LTD.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other
Jurisdiction of
Incorporation)

1-5759

(Commission File
Number)

65-0949535

(I.R.S. Employer
Identification No.)

100 S.E. Second Street, Miami, Florida

(Address of Principal Executive Offices)

33131

(Zip Code)

(305) 579-8000

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement

On April 13, 2005, Vector Group Ltd. (the "Company") completed the sale of \$30.0 million of its 5% Variable Interest Senior Convertible Notes due 2011 (the "Notes") to Jefferies & Company, Inc. (the "Initial Purchaser") in accordance with Rule 144A of the Securities Act of 1933, as amended. The Notes are governed by the terms of an Indenture, dated as of April 13, 2005 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as Trustee, a copy of which is attached hereto as Exhibit 4.1.

The Company will use the net proceeds of the issuance for general corporate purposes, including repaying borrowings by its subsidiary, Liggett Group Inc., under its revolving credit facility.

On April 13, 2005, in connection with the closing of the sale of the Notes, the Initial Purchaser required that Howard M. Lorber, as one of the principal stockholders of the Company, grant the Initial Purchaser the right to borrow the Shares (as defined below) from Mr. Lorber or an entity affiliated with him. Pursuant to this requirement, Mr. Lorber and Lorber Epsilon 1999 Limited Partnership entered into a Master Securities Loan Agreement and accompanying letter agreement (together, the "Agreement") with the Initial Purchaser. Copies of the Agreement are attached hereto as Exhibits 10.1 and 10.2. Under the Agreement, Lorber Epsilon 1999 Limited Partnership has agreed to lend the Initial Purchaser from time to time up to 300,000 shares of the Company's common stock (the "Shares") for the purpose of allowing the Initial Purchaser, in turn, to lend such Shares to its customers (including the purchasers of the Notes) who may, from time to time, sell such Shares short. The Shares must be available through May 18, 2007. Lorber Epsilon 1999 Limited Partnership also agreed with the Initial Purchaser that it will not dispose of the Shares during the period that they must be available under the Agreement, subject to limited exceptions.

In consideration for Mr. Lorber, as one of the Company's principal stockholders, agreeing to lend the Shares in order to facilitate the Company's offering of the Notes and accepting the resulting liquidity risk, the Company and Mr. Lorber entered into a letter agreement (the "Letter Agreement") on April 13, 2005 whereby the Company agreed to pay Mr. Lorber or an affiliate designated by him an annualized fee, payable on a quarterly basis in cash or, by mutual agreement of the Company and Mr. Lorber, in shares of common stock, equal to 1% of the aggregate market value of the Shares. In addition, the Company agreed, among other things, to hold Mr. Lorber harmless on an after-tax basis against any increase, if any, in the income tax rate applicable to dividends paid on the Shares as a result of the Letter Agreement. A copy of the Letter Agreement is attached hereto as Exhibit 10.3.

The summary of the foregoing transactions is qualified in its entirety by reference to the text of the related agreements, which are included as exhibits hereto and are incorporated herein by reference.

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

See Item 1.01, which is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

See Item 1.01, which is incorporated herein by reference.

Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

On April 13, 2005, the Company entered into the Letter Agreement with Mr. Lorber, as one of the principal stockholders of the Company, in connection with his entry into the Agreement to lend the Shares in order to facilitate the Company's offering of the Notes. See Item 1.01, which is incorporated herein by reference. The Audit Committee of the Company approved the Letter Agreement on April 12, 2005 and granted an exception under the Company's Code of Business Conduct and Ethics in order to permit the Company to enter into the Letter Agreement.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

The following Exhibits are filed herewith:

- Exhibit 4.1 Indenture, dated as of April 13, 2005, by and between the Company and Wells Fargo Bank, N.A., relating to the 5% Variable Interest Senior Convertible Notes due 2011 (the "Notes"), including the form of Note.
- Exhibit 4.2 Registration Rights Agreement, dated as of April 13, 2005, by and between the Company and the Initial Purchaser.
- Exhibit 10.1 Master Securities Loan Agreement, dated April 13, 2005, between Lorber Epsilon 1999 Limited Partnership and the Initial Purchaser.
- Exhibit 10.2 Agreement, dated April 13, 2005, between Howard M. Lorber, Lorber Epsilon 1999 Limited Partnership and the Initial Partner.
- Exhibit 10.3 Letter Agreement, dated April 13, 2005, between the Company and Howard M. Lorber.
- Exhibit 99.1 Press Release dated April 13, 2005.

SIGNATURE

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

VECTOR GROUP LTD.

By: /s/ Joselynn D. Van Siclen

Joselynn D. Van Siclen

Vice President and Chief Financial Officer

Date: April 13, 2005

VECTOR GROUP LTD.

as Issuer

and

WELLS FARGO BANK, N.A.

as Trustee

INDENTURE

Dated as of April 13, 2005

5% Variable Interest Senior Convertible Notes due 2011

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EXHIBITS:

Exhibit A Form of Face of Security

Exhibit B Form of Reverse of Security

Exhibit C Form of Trustee's Certificate of Authentication

Exhibit D Fundamental Change Repurchase Notice

INDENTURE, dated as of April 13, 2005, between Vector Group Ltd., a corporation duly organized and existing under the laws of the State of Delaware, as Issuer (the “**Company**”), having its principal office at 100 S.E. Second Street, Miami, Florida 33131, and Wells Fargo Bank N.A., a national banking association, as Trustee (the “**Trustee**”).

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 5% Variable Interest Senior Convertible Notes due 2011 (each, a “**Security**” and collectively, the “**Securities**”) of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid and legally binding obligations of the Company, and to make this Indenture a valid and legally binding agreement of the Company, in accordance with the terms of the Securities and the Indenture, have been done. Further, all things necessary to duly authorize the issuance of the Common Stock of the Company issuable upon the conversion of the Securities, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE I.

Definitions and Other Provisions of General Application

Section 1.01 Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (b) all other terms used herein and not otherwise defined that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and
- (d) 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.

“**Act**,” when used with respect to any Holder, has the meaning specified in Section 1.04.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For 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.

“**Agent Members**” has the meaning specified in Section 3.10(b).

“**Bloomberg**” means Bloomberg Financial Markets (or any successor thereto).

“**Board of Directors**” means, with respect to any Person, either the board of directors of such Person or any committee of that board duly authorized to take the subject action.

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

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York or the city in which the Corporate Trust Office is located are authorized or obligated by law, or executive order or governmental decree to be closed.

“**Buy-In**” has the meaning specified in Section 13.02(c).

“**Buy-In Price**” has the meaning specified in Section 13.02(c).

“**Calculation Agent**” has the meaning specified in Section 14.01(c).

“**Capital Stock**” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, including, without limitation, with respect to partnerships, partnership interests (whether general or limited) and 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, such partnership.

“**Change of Control Event**” means the occurrence, after the Original Issue Date, of one or more of the following events:

(1) any sale, transfer, lease, conveyance or other disposition (in one transaction or a series of related transactions) of all or substantially all of the Company’s property or assets to any Person or group of related Persons (other than to any of the Company’s wholly owned Subsidiaries) as defined in Sections 13(d) and 14(d) of the Exchange Act, including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, other than any sale, transfer, lease, conveyance or other disposition in which (x) Persons who, directly or indirectly, are beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of the Company’s Voting Stock

immediately prior to such transaction, beneficially own, directly or indirectly, immediately after such transaction at least a majority of the total voting power of the outstanding Voting Stock of the corporation or entity purchasing such properties or assets in such sale, lease, conveyance or other disposition and (y) Persons who, directly or indirectly, are beneficial owners of the Company's Voting Stock immediately prior to such transaction, beneficially own, directly or indirectly, immediately after such transaction shares of common stock of the corporation or entity purchasing such properties or assets in such sale, lease, conveyance or other disposition in a proportion that does not, on the whole, materially differ from such ownership immediately prior to the transaction;

(2) the approval by the holders of the Company's Capital Stock of any plan or proposal for liquidation or dissolution;

(3) if any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) (other than Bennett S. LeBow and the LeBow Persons) is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company;

(4) if at any time Bennett S. LeBow and/or any LeBow Person is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act,) either individually or collectively, directly or indirectly, of 65% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company; or

(5) the Company consolidates with, or merges with or into, another Person or any Person consolidates with, or merges with or into, the Company, other than any consolidation or merger in which (x) Persons who, directly or indirectly, are beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of the Company's Voting Stock immediately prior to such transaction, beneficially own, directly or indirectly, immediately after such transaction at least a majority of the total voting power of the outstanding Voting Stock of the continuing or surviving corporation or entity and (y) Persons who, directly or indirectly, are beneficial owners of the Company's Voting Stock immediately prior to such transaction, beneficially own, directly or indirectly, immediately after such transaction shares of common stock of the continuing or surviving corporation or entity in a proportion that does not, on the whole, materially differ from such ownership immediately prior to the transaction.

Notwithstanding the foregoing, a merger or consolidation shall not be deemed to constitute a "Change of Control Event" if (i) at least 90% of the consideration (excluding cash payments for fractional shares or pursuant to statutory appraisal rights) in such merger or consolidation consists of shares of Capital Stock that are, or immediately after the transaction or event will be, traded on a national securities exchange in the United States or quoted on the Nasdaq National Market or The Nasdaq SmallCap Market (or which shall be so traded or quoted when issued or exchanged in connection with such merger or consolidation) (these securities being referred to as "publicly traded securities") and (ii) as a result of such merger or consolidation the Securities become convertible into such publicly traded securities, excluding cash payments for fractional shares.

“**Closing Price**” means, for any security as of any date: (i) the last closing trade price for such security on the principal United States securities exchange or trading market (which, with respect to the Common Stock on the Original Issue Date, is the NYSE) on such date as reported by Bloomberg, (ii) if such securities exchange or trading market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price for such security prior to 4:00:00 p.m. New York City time, as reported by Bloomberg, (iii) if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or (iv) if no last trade price is reported for such security by Bloomberg, the average of the highest bid prices and the lowest ask prices of any market makers for such security in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Price of such security on such date shall be the fair market value as mutually determined by the Company and the Majority Holders.

“**Closing Price Per Share**” means, with respect to the Common Stock, for any day, the Closing Price per share of Common Stock.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Commission**” means the United States 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.

“**Common Stock**” means the shares of Common Stock, par value \$0.10 per share, of the Company as it exists on the Original Issue Date or any other shares of Capital Stock of the Company into which the Common Stock shall be reclassified or changed or, in the event of a merger, consolidation or other similar transaction involving the Company that is otherwise permitted hereunder in which the Company is not the surviving corporation, the common stock, common equity interests, ordinary shares or depositary shares or other certificates representing common equity interests of such surviving corporation or its direct or indirect parent corporation.

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

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or any Vice President, and by its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company with notice provided to the Holders where Securities may be presented for conversion.

“**Conversion Date**” has the meaning specified in Section 13.02(a).

“**Conversion Limitation**” has the meaning specified in Section 13.02(i).

“**Conversion Price**” means, as of any Conversion Date (as defined below) or other date of determination, \$19.40, subject to adjustment as provided herein.

“**Conversion Rate**” has the meaning specified in Section 13.01(c).

“**Corporate Trust Office**” means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the Original Issue Date, located at Sixth & Marquette, N9303-120, Minneapolis, MN 55479; Attn: Corporate Trust Services.

“**Corporation**” means a corporation, association, company, joint-stock company or business trust.

“**Current Market Price**” has the meaning specified in Section 13.06(e).

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

“**Depository**” means The Depository Trust Company, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean such successor Depository.

“**Effective Date**” has the meaning specified in Section 14.01(b).

“**Event of Default**” has the meaning specified in Section 5.01.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Expiration Date**” has the meaning specified in Section 13.06(d).

“**Expiration Time**” has the meaning specified in Section 13.06(d).

“**Fundamental Change**” means any transaction or event resulting in either a Change of Control Event or a Termination of Trading.

“**Fundamental Change Company Notice**” has the meaning specified in Section 11.06(b).

“**Fundamental Change Conversion**” has the meaning specified in Section 13.02(e).

“**Fundamental Change Conversion/Repurchase Period**” means the period beginning upon receipt of the Fundamental Change Company Notice and ending ten (10) Trading Days after the Effective Date.

“**Fundamental Change Repurchase**” has the meaning specified in Section 11.06(a).

“**Fundamental Change Repurchase Notice**” has the meaning specified in Section 11.06(c).

“**Fundamental Change Repurchase Price**” has the meaning specified in the Section 11.06(a).

“**Fundamental Change Settlement Date**” means the Effective Date for a Fundamental Change. With respect to any Fundamental Change Conversion or Fundamental Change Repurchase for which a Notice of Conversion or Fundamental Change Repurchase Notice, as applicable, has been delivered after the Effective Date (and during the Fundamental Change Conversion/Repurchase Period), the Fundamental Change Settlement Date shall mean the date that is three (3) Business Days following the end of the Fundamental Change Conversion/Repurchase Period.

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

“**Global Security**” means a Security in global form registered in the Security Register in the name of a Depository or a nominee thereof.

“**Holder**” or “**Securityholder**” means a Person in whose name a Security is registered in the Security Register.

“**Indemnified Party**” has the meaning specified in Section 6.07.

“**Indenture**” means this instrument 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, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

“**Initial Purchaser**” means Jefferies & Company, Inc.

“**Interest Payment Date**” means (i) each February 15, May 15, August 15 and November 15 and ending on the Maturity Date, commencing May 15, 2005 and (ii) the Maturity Date.

“**Investment Company Act**” means the Investment Company Act of 1940, as amended, and any statute successor thereto, in each case as amended from time to time.

“**Issue Date**” means the date the Securities are originally issued as set forth on the face of the Security under this Indenture.

“**LeBow Persons**” means the immediate family of Bennett S. LeBow and any “person” or “group” under Section 13(d)(3) of the Exchange Act that is controlled by solely by Bennett S. LeBow or his immediate family, any beneficiary of the estate of Bennett S. LeBow or his immediate family or any trust or partnership controlled by any of the foregoing.

“**Majority Holders**” means the Holders of a majority in aggregate Principal Amount of the Securities then Outstanding.

“**Make-Whole Conversion Price**” has the meaning specified in Section 14.01(b).

“**Make-Whole Premium**” has the meaning specified in Section 14.01(b).

“**Make-Whole Premium Table**” has the meaning specified in Section 14.01(b).

“**Maturity Date**,” when used with respect to any Security, means the date on which the principal, the Redemption Price or the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity, on the Redemption Date or a Fundamental Change Repurchase Date, or by declaration of acceleration or otherwise.

“**Maximum Accrual**” has the meaning specified in Section 11.01(b).

“**Minimum Redemption Amount**” has the meaning specified in Section 11.01(a).

“**Notice of Conversion**” has the meaning specified in Section 13.02(a).

“**Notice of Default**” has the meaning specified in Section 5.01.

“**Notice of Redemption**” has the meaning specified in Section 11.03.

“**Notice of Redemption Right**” has the meaning specified in Section 11.02.

“**NYSE**” means the New York Stock Exchange, Inc.

“**Officers’ Certificate**” means a certificate signed by the Chairman of the Board, the President or any Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers’ Certificate given pursuant to Section 10.04 shall be the principal executive, financial or accounting officer of the Company.

“**Opinion of Counsel**” means a written opinion of counsel, who may be external or in-house counsel for the Company, reasonably acceptable to the Trustee.

“**Original Issue Date**” means April 13, 2005.

“**Outstanding**” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation; (ii) Securities, or portions thereof, for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that if such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given to the Holders as herein provided, or provision satisfactory to a Responsible Officer of the Trustee shall have been made for giving such notice; and (iii) Securities that have been paid or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture; provided, however, that, in determining whether the Holders of the requisite Principal Amount of the Securities then Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

"Paying Agent" means any Person (including the Company) authorized by the Company to pay the Principal Amount of, interest and Registration Default Payments, if any, on the Securities to the Holders, including the Redemption Price or the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) on behalf of the Company. The Company shall initially appoint the Trustee to be the Paying Agent and the Company shall provide written notice to the Holders of any change in the Paying Agent hereafter.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Physical Securities" means permanent certificated Securities in registered form issued in denomination of \$1,000 Principal Amount and integral multiples thereof.

"Principal Amount" of a Security means the Principal Amount as set forth on the face of the Security.

"Purchase Agreement" means the Purchase Agreement, dated as of March 30, 2005, entered into by and between the Company and the Initial Purchaser in connection with the sale of the Securities.

"Purchased Shares" has the meaning specified in Section 13.06(d).

"Qualified Institutional Buyer" or **"QIB"** shall have the meaning specified in Rule 144A.

“**Record Date**” for the interest payable on any Interest Payment Date means each February 1, May 1, August 1 and November 1 (whether or not a Business Day) next preceding such Interest Payment Date.

“**record date**” has the meaning specified in Section 13.06(f).

“**Redemption Date**” means November 15, 2009.

“**Redemption Price**” has the meaning specified in Section 11.01(a).

“**Registration Default Payments**” has the meaning specified in the Registration Rights Agreement.

“**Registration Rights Agreement**” means the Registration Rights Agreement, dated as of April 13, 2005, by and between the Company and the Initial Purchaser, for the benefit of themselves and the Holders, as the same may be amended or modified from time to time in accordance with the terms thereof.

“**Responsible Officer**” means any officer of the Trustee within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer of the Trustee to whom such matter is referred because of such officer’s knowledge and familiarity with the particular subject.

“**Restricted Global Security**” means a Global Security representing Restricted Securities.

“**Restricted Security**” or “**Restricted Securities**” has the meaning specified in Section 3.02.

“**Rights Plan**” has the meaning specified in Section 13.06(c).

“**Rule 144**” means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A Information**” has the meaning specified in the Section 10.07(b).

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Security**” or “**Securities**” has the meaning specified in the first paragraph of the Recitals of the Company.

“**Security Register**” and “**Security Registrar**” have the respective meanings specified in Section 3.07(a).

“**Share Delivery Date**” has the meaning specified in Section 13.02(b).

“**Shelf Registration Statement**” means a registration statement under the Securities Act registering the Securities and the Common Stock issuable on conversion thereof for resale pursuant to the terms of the Registration Rights Agreement.

“**Significant Subsidiary**” shall have the meaning ascribed to such term in Regulation S-X under the Exchange Act.

“**Stock Price**” has the meaning specified in Section 14.01(b).

“**Stock Price Cap**” has the meaning specified in Section 14.01(b).

“**Stock Price Threshold**” has the meaning specified in Section 14.01(b).

“**Stated Maturity**” when used with respect to any Security, means the date specified in such Security as the fixed date on which an amount equal to the principal amount of such Security together with accrued and unpaid interest and Registration Default Payments, if any, is due and payable.

“**Subsidiary**” means, with respect to any Person, (a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock or other equity interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person (or a combination thereof) and (b) any partnership (i) the sole general partner or managing general partner of which is such Person or a subsidiary of such Person or (ii) the only general partners of which are such Person or of one or more subsidiaries of such Person (or any combination thereof).

“**Surviving Entity**” has the meaning specified in Section 8.01.

“**Termination of Trading**” means that the Common Stock or other securities into which the Securities are convertible is neither listed for trading on a U.S. national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States.

“**Trading Day**” means (a) if the applicable security is listed or admitted for trading on the NYSE or another national securities exchange, a day on which the NYSE or such other national securities exchange is open for business, (b) if the applicable security is quoted on the Nasdaq National Market or Nasdaq SmallCap Market, a day during which trades may be made thereon or (c) if the applicable security is not so listed, admitted for trading or quoted, any Business Day.

“**Transfer**” for purposes of Section 3.07, has the meaning specified in Section 3.07.

“**Transfer Restricted Security**” means a Security required to bear the restricted legend set forth in the form of Security set forth as Exhibit A attached hereto.

“**Trigger Event**” has the meaning specified in Section 13.06(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as in effect on the date as of which this Indenture was executed, provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

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

“**2001 Indenture**” means the Indenture, dated as of July 5, 2001, between the Company and U.S. Bank, N.A. (formerly known as U.S. Bank Trust National Association), as Trustee, under which the Company’s 6 1/4% Convertible Subordinated Notes due 2008 are issued and outstanding.

“**United States**” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its “possessions” including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

“**Vice President**” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

“**Voting Stock**” of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

“**Weighted Average Price**” means, for any security as of any date, (i) the dollar volume-weighted average price for such security on the principal United States securities exchange or trading market (which, with respect to the Common Stock on the Original Issue Date, is the NYSE) during the period beginning at 9:30:01 a.m., New York City time (or such other time as such exchange or market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York City time (or such other time as such exchange or market publicly announces is the official close of trading) as reported by Bloomberg through its “Volume at Price” functions, (ii) if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York City time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York City time (or such other time as such market publicly announces is the official close of trading) as reported by Bloomberg, or (iii) if no dollar volume-weighted average price is

reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Majority Holders. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

Section 1.02 Compliance Certificates and Opinions. Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirement set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

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

(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 each such individual, such individual has made such examination or investigation as is reasonably necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with; provided, however, with respect to matters of fact, an Opinion of Counsel may rely on an Officer’s Certificate or certificates of public officials.

Section 1.03 Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless

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

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

Section 1.04 Acts of Holders; Record Dates(a) . (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as an “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

(c) The Company may, in the circumstances permitted by the Trust Indenture Act, fix any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 7.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

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

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

Section 1.05 Notices, Etc., to Trustee and Company. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

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

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, Attention: Secretary.

Section 1.06 Notice to Holders; Waiver. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Whenever under this Indenture the Trustee is required to provide any notice by mail, in all cases the Trustee may alternatively provide notice by overnight courier or by telefacsimile, with confirmation of transmission.

Section 1.07 Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision of the Trust Indenture Act which is required hereunder to be a part of and govern this Indenture, the required provision shall control.

Section 1.08 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof, and all Article and Section references are to Articles and Sections, respectively, of this Indenture unless otherwise expressly stated.

Section 1.09 Successors and Assigns. All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10 Severability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture. Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law. This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York.

Section 1.13 Legal Holidays. In any case where any Interest Payment Date, Stated Maturity, Redemption Date or Fundamental Change Settlement Date of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Securities) the payments otherwise required to be made on such date 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 such date; provided, that no interest shall accrue with respect to such payment for the period from and after such Interest Payment Date, Stated Maturity, Redemption Date or Fundamental Change Settlement Date, as the case may be.

ARTICLE II.

Tax Treatment

Section 2.01 Tax Treatment. The parties hereto hereby agree, and each Holder and any beneficial holder of a Security by its purchase of a Security hereby agrees (in the absence of administrative pronouncement or judicial ruling to the contrary):

- (a) to treat the Securities as indebtedness of the Company for all United States federal income tax purposes;
- (b) to treat the Securities as debt instruments that are subject to Treasury Regulation section 1.1275-4(b); and
- (c) to treat the delivery of Common Stock or cash (including cash delivered in lieu of a fractional share) to a Holder of a Security upon conversion of such

Security, or upon a purchase of such Security by the Company at the option of the Holder of a Security where the Company makes a payment in cash (including cash paid in lieu of a fractional share) or elects to pay in Common Stock, as a contingent payment (in an amount equal to the sum of the fair market value of such Common Stock and any cash received) under Treasury Regulation section 1.1275-4(b).

Section 2.02 Comparable Yield and Projected Payment Schedule. Solely for purposes of applying Treasury Regulation section 1.1275-4 to the Securities:

(a) for United States federal income tax purposes, the Company shall accrue interest with respect to outstanding Securities as original issue discount according to the “noncontingent bond method,” as set forth in Treasury Regulation section 1.1275-4(b) using a comparable yield of 10.74%, compounded quarter-annually, and the projected payment schedule referred to below;

(b) the Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount for United States federal income tax purposes accrued on outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount that the Company determines to be relevant under the Code, including the amount of any adjustment made under the noncontingent bond method to account for the amount of any difference between the amount of an actual payment and the amount of a projected payment; and

(c) the Company acknowledges and agrees, and each Holder and any beneficial holder of a Security, by its purchase of a Security shall be deemed to acknowledge and agree, that (i) the comparable yield and the projected payment schedule are not determined for any purpose other than for the purpose of applying Treasury Regulation section 1.1275-4(b)(4) to the Security, (ii) the comparable yield and the projected payment schedule do not constitute a projection or representation regarding the actual amounts payable on the Securities, and (iii) the Company’s application of Treasury Regulation section 1.1275-4(b) shall be binding on each Holder and any beneficial holder of a Security, including the Company’s determination of the comparable yield and the projected payment schedule. A Holder of Securities may obtain the amount of original issue discount, issue date, yield to maturity, comparable yield and projected payment schedule by submitting a written request for it to the Trustee at the Corporate Trust Office. The Company, upon the request of the Trustee, shall provide to the Trustee the amount of original issue discount, issue date, yield to maturity, comparable yield and projected payment schedule.

ARTICLE III. The Securities

Section 3.01 Forms Generally. The Securities and the Trustee’s certificate of authentication shall be in substantially the forms set forth under Exhibits A, B and C, 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 Depository therefor, the Internal Revenue Code of 1986, as amended, and

regulations thereunder, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof.

The Securities shall initially be issued in the form of permanent Global Securities in registered form in substantially the form set forth in this Article. 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, as custodian for the Depositary, as hereinafter provided.

Section 3.02 Legend on Restricted Securities. During the period beginning on the Issue Date and ending on the date two years from such date, any Security, including any Security issued in exchange therefor or in lieu thereof, shall be deemed a “**Restricted Security**” and shall be subject to the restrictions on transfer provided in the legends set forth on the face of the form of Security attached hereto as Exhibit A; provided, however, that the term “Restricted Security” shall not include any Securities as to which restrictions have been terminated in accordance with Section 3.07. All Securities shall bear the applicable legends set forth on the face of the form of Security attached hereto as Exhibit A. Except as provided in Section 3.07 and Section 3.11, the Trustee shall not issue any unlegended Security until it has received an Officers’ Certificate from the Company directing it to do so.

Section 3.03 Title and Terms. The aggregate Principal Amount of Securities that may be authenticated and delivered under this Indenture is initially limited to \$30,000,000, except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.06, 3.07, 3.08 or 9.06. Other than as set forth in the preceding sentence, the Company shall not issue any Securities under this Indenture.

The Securities shall be known and designated as the “**5% Variable Interest Senior Convertible Notes due 2011**” of the Company. The Principal Amount shall be payable at the Stated Maturity, or at the election of the Holder, at the Redemption Date.

The Principal Amount and accrued interest and Registration Default Payments, if any, on the Securities shall be payable at the office or agency of the Company in The City of New York maintained for such purpose and at any other office or agency maintained by the Company for such purpose; provided, however, that at the option of the Company payments may be made by wire transfer or by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

The Securities shall not have the benefit of a sinking fund.

The Securities shall rank *pari passu* with, all other senior unsecured indebtedness of the Company. The Company will not incur or issue any subordinated indebtedness unless such indebtedness is unsecured and subordinated to the Securities on terms no less favorable than those applicable to senior indebtedness which constitutes Designated Senior Indebtedness under the 2001 Indenture.

The Securities shall constitute “Senior Indebtedness,” and the Company hereby designates the Securities as “Designated Senior Indebtedness,” in each case under the 2001 Indenture.

Section 3.04 Denominations. The Securities shall be issuable only in registered form without coupons and in denominations of \$1,000 and any integral multiple of \$1,000 above that amount.

Section 3.05 Execution, Authentication, Delivery and Dating. The Securities shall be executed on behalf of the Company by its Chairman of the Board, its President or one of its Vice Presidents.

Securities bearing the manual or facsimile signatures of individuals who were at the time of execution of the Securities the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of authentication of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities. The Company Order shall specify the amount of Securities to be authenticated, and shall further specify the amount of such Securities to be issued as a Global Security or as Physical Securities. The Trustee, in accordance with such Company Order, shall authenticate and deliver such Securities as provided in this Indenture and not otherwise.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

Section 3.06 Temporary Securities. Pending the preparation of definitive Securities, the Company may execute and, upon Company Order, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancellation of any one or more

temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of definitive Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 3.07 Registration; Registration of Transfer and Exchange; Restrictions on Transfer. (a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 10.02 being herein sometimes collectively referred to as the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Company hereby appoints the Trustee to serve as “**Security Registrar**” (the “**Security Registrar**”) for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security duly endorsed, or accompanied by a written instrument of transfer satisfactory to the Registrar duly executed by the Holder thereof or such Holder’s attorney duly authorized in writing, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate Principal Amount and tenor, each such Security bearing such restrictive legends as may be required by this Indenture (including Sections 3.01, 3.02 and 3.11).

At the option of the Holder and subject to the other provisions of this Section 3.07 and to Section 3.11, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate Principal Amount and tenor, upon surrender of the Securities to be exchanged at the Security Register. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

Except as provided in the following sentence and in Section 3.11, all Securities originally issued hereunder and all Securities issued upon registration of transfer or exchange or replacement thereof shall be Restricted Securities and shall bear the legend required by Sections 3.01 and 3.02, unless the Company shall have delivered to the Trustee (and the Security Registrar, if other than the Trustee) a Company Order and an Opinion of Counsel stating that the Security is not a Restricted Security and may be issued without such legend thereon. Securities which are issued upon registration of transfer of, or in exchange for, Securities which are not Restricted Securities shall not be Restricted Securities and shall not bear such legend.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any

tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.06 not involving any transfer.

The Company shall not be required to exchange or register a transfer of any Security (i) during the 15-day period immediately preceding the mailing of any Notice of Redemption Right of any Security, (ii) after any Notice of Redemption Right has been given by any Holders, except, where such notice provides that such Security is to be redeemed only in part, the Company shall be required to exchange or register a transfer of the portion thereof not to be redeemed, (iii) that has been surrendered for conversion or (iv) as to which a Fundamental Change Repurchase Notice has been delivered and not withdrawn, except, where such Fundamental Change Repurchase Notice provides that such Security is to be purchased only in part, the Company shall be required to exchange or register a transfer of the portion thereof not to be purchased.

(b) Beneficial ownership of every Restricted Security shall be subject to the restrictions on Transfer provided in the legends required to be set forth on the face of each Restricted Security pursuant to Sections 3.01 and 3.02, unless such restrictions on Transfer shall be terminated in accordance with this Section 3.07(b) or Section 3.11. The Holder of each Restricted Security, by such Holder's acceptance thereof, agrees to be bound by such restrictions on Transfer.

The restrictions imposed by this Section 3.07 and by Sections 3.01, 3.02 and 3.11 upon the transferability of any particular Restricted Security shall cease and terminate upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel stating that such Restricted Security has been sold pursuant to an effective Shelf Registration Statement under the Securities Act or Transferred in compliance with Rule 144. Any Restricted Security as to which the Company has delivered to the Trustee such Officers' Certificate and Opinion of Counsel may, upon surrender of such Restricted Security for exchange to the Security Registrar in accordance with the provisions of this Section 3.07, be exchanged for a new Security, of like tenor and aggregate Principal Amount, which shall not bear the restrictive legends required by Sections 3.01 and 3.02. The Company shall inform the Trustee in writing of the effective date of any Shelf Registration Statement registering the Securities under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Shelf Registration Statement.

As used in the preceding two paragraphs, the term "Transfer" encompasses any sale, pledge, transfer or other disposition of any Restricted Security.

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

Section 3.08 Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall

authenticate and deliver in exchange therefor a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable or has been presented for redemption in full, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Security under this Section 3.08, the Company may require payment by the Holder 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.

Every new Security issued pursuant to this Section 3.08 in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

Section 3.09 Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal of and interest and Registration Default Payments, if any, on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.10 Book-Entry Provisions for Global Securities. (a) The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for the Depository and (iii) bear legends as set forth on the face of the form of Security in accordance with Section 3.01.

(b) 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 Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the 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 Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(c) Transfers of the Global Securities shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred or exchanged, in whole or in part, for Physical Securities in accordance with the rules and procedures of the Depositary and the provisions of Section 3.11. In addition, Physical Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in the Global Securities if (A) such Depositary has notified the Company (or the Company becomes aware) that the Depositary (i) is unwilling or unable to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act when the Depositary is required to be so registered to act as such Depositary and, in either such case, no successor Depositary shall have been appointed within 90 days of such notification or of the Company becoming aware of such event; or (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security and the Securities then Outstanding shall have become due and payable pursuant to Section 5.02 and the Trustee requests that Physical Securities be issued; provided that Holders of Physical Securities offered and sold in reliance on Rule 144A shall have the right, subject to applicable law, to request that such Securities be exchanged for interests in the applicable Global Security.

(d) In connection with any transfer or exchange of a portion of the beneficial interest in the Global Security to beneficial owners pursuant to clause (c) of this Section 3.10, the Security Registrar shall (if one or more Physical Securities are to be issued) reflect on its books and records the date and a decrease in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Physical Securities of like tenor and amount.

(e) In connection with the transfer of the entire Global Security to beneficial owners pursuant to clause (c) of this Section 3.10, the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in the Global Security, an equal aggregate Principal Amount of Physical Securities of authorized denominations and the same tenor.

(f) Any Physical Security constituting a Restricted Security delivered in exchange for an interest in the Global Security pursuant to clause (c) or (d) of this Section 3.10 shall, except as otherwise provided by clause (c) of Section 3.11, bear the legend regarding transfer restrictions applicable to the Physical Securities set forth on the face of the form of Security in accordance with Section 3.01.

(g) The holder of the Global Securities 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.

(h) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depositary or other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payment to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depositary subject to the applicable procedures of the Depositary. The Trustee may rely on information furnished by the Depositary with respect to its members, participants and any beneficial owners.

Section 3.11 Cancellation and Transfer Provisions. The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Trustee shall cancel and dispose of all Securities surrendered for registration of transfer, exchange, payment, purchase, repurchase, redemption, conversion (pursuant to Article XIII hereof) or cancellation in accordance with its customary practices. If the Company 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. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Physical Security constituting a Restricted Security to a QIB:

(i) the Security Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating, or has otherwise advised the Company and the Security Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Security stating, or has otherwise advised the Company and the Security Registrar in writing that: (A) it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion; (B) it and any such account is a QIB within the meaning of Rule 144A; (C) it is aware that the sale to it is being made in reliance on Rule 144A; (D) it acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information; and (E) it is aware that the transferor is relying

upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; and

(ii) if the proposed transferee is an Agent Member, and the Securities to be transferred consist of Physical Securities which after transfer are to be evidenced by an interest in the Global Security, upon receipt by the Security Registrar of instructions given in accordance with the Depository's and the Security Registrar's procedures, the Security Registrar shall reflect on its books and records the date and an increase in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the Physical Securities to be transferred, and the Trustee shall cancel the Physical Securities so transferred.

(b) Private Placement Legend. Upon the registration of transfer, exchange or replacement of Securities not bearing the legends required by Sections 3.01 and 3.02, the Security Registrar shall deliver Securities that do not bear such legends. Upon the registration of transfer, exchange or replacement of Securities bearing the legends required by Sections 3.01 and 3.02, the Security Registrar shall deliver only Securities that bear such legends unless there is delivered to the Security Registrar an Opinion of Counsel reasonably satisfactory to the Company and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(c) General. By its acceptance of any Security bearing the legends required by Sections 3.01 and 3.02, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and in such legends and agrees that it will transfer such Security only as provided in this Indenture.

The Security Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 3.11. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Security Registrar.

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 Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are 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 3.12 CUSIP Numbers. In issuing the Securities, the Company may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices delivered, and as a convenience, to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption 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 will promptly notify the Trustee of any change in the “CUSIP” numbers.

ARTICLE IV.
Satisfaction And Discharge

Section 4.01 Satisfaction and Discharge of Indenture.

(a) This Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, on demand of and at the expense of the Company, when either (i) all Securities then Outstanding have been delivered to the Trustee for cancellation; or (ii) all Securities then Outstanding have become due and payable and the Company deposits with the Trustee cash sufficient to pay all amounts due and owing on all Securities then Outstanding not theretofore delivered to the Trustee for cancellation; and if in either case the Company has paid all other sums payable hereunder by the Company. The Trustee shall execute proper instruments acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers’ Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.07 and, if money shall have been deposited with the Trustee pursuant to clause (a)(ii) of this Section 4.01, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive such satisfaction and discharge.

Section 4.02 Application of Trust Money. Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Trustee pursuant to Section 4.01 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, interest and Registration Default Payments, if any, for whose payment such money has been deposited with the Trustee.

ARTICLE V.
Remedies

Section 5.01 Events of Default. “**Event of Default**” wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the Company’s (A) failure to deliver the required number of shares of Common Stock within 30 Business Days after the applicable Conversion Date or (B) notice, written or oral, to any Holder, including by way of public announcement or through any of its agents, at any time, of its intention not to comply with a request for conversion of any

Securities into shares of Common Stock that is tendered in accordance with the provisions of the Securities; or

(b) at any time following the thirtieth consecutive Business Day that a Holder's (i) pro rata share of the number of shares of the Common Stock reserved for the purpose of issuance upon conversion of all Securities is less than the (ii) number of shares of Common Stock that such Holder would be entitled to receive upon a conversion of the full Principal Amount of such Holder's Securities (without regard to the Conversion Limitation); or

(c) a default in the payment of interest or Registration Default Payments, if any, on any Securities when due and payable and such default continues for a period of 5 days; or

(d) a default in the payment of the Principal Amount, the Redemption Price, the Fundamental Change Repurchase Price or any applicable Make-Whole Premium on any Security when it becomes due and payable; or

(e) a default in the performance of any covenant, agreement or condition of the Company in this Indenture or the Securities (other than a default specified in clauses (a) through (d) above), and such default continues for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate Principal Amount of the Securities then Outstanding a written notice specifying such default and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(f) a default by the Company or any Significant Subsidiary in the payment of the principal or interest on any loan agreement or other instrument under which there may be outstanding, or by which there may be evidenced, any debt for money borrowed in excess of \$10.0 million in the aggregate of the Company and any Significant Subsidiary (other than indebtedness for borrowed money secured only by the real property to which the indebtedness relates and which is non-recourse to the Company or to such Significant Subsidiary), whether such debt now exists or shall hereafter be created, resulting in such debt becoming or being declared due and payable prior to its stated maturity, and such acceleration shall not have been rescinded or annulled within 30 days after written notice specifying such default and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder has been received by the Company or such Significant Subsidiary from the Trustee or by the Trustee, the Company and such Significant Subsidiary by the Holders of at least 25% in aggregate Principal Amount of the Securities then Outstanding; provided that if any time before a judgment or decree has been obtained by the Trustee as hereinafter provided, such default is remedied or cured by the Company or such Significant Subsidiary within the applicable cure period, or is waived by the holders of such indebtedness, default under this clause (f) shall be deemed to have been remedied, cured or waived, as the case may be; or

(g) one or more final unsatisfied judgments not covered by insurance aggregating in excess of \$10 million, at any one time, are rendered against the Company or any Significant Subsidiary and not stayed, bonded or discharged within 60 days; or

(h) a failure by the Company to give the Fundamental Change Company Notice when required by Section 11.06 hereof; or

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

(j) the commencement by the Company or any Significant Subsidiary of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company or any Significant Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action.

Section 5.02 Acceleration of Maturity; Rescission and Annulment(a) . (a) If an Event of Default (other than those specified in clauses (i) and (j) of Section 5.01) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate Principal Amount of Securities then Outstanding, may declare the Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, on all Securities then Outstanding to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, shall become immediately due and payable. Notwithstanding the foregoing, in the case of an Event of Default specified in clause (i) or (j) of Section 5.01, the Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, on all Securities then Outstanding will ipso facto become due and payable without any declaration or other Act on the part of the Trustee or any Holder.

Upon demand of the Trustee, following the occurrence of an Event of Default specified in Section 5.01(d), the Company shall pay to the Trustee, for the benefit of the Holders, the amounts specified in Section 5.02(b)(i).

(b) At any time after such a declaration of acceleration 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 V provided, the Majority Holders, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if such rescission and annulment will not conflict with any judgment or decree of a court of competent jurisdiction and if:

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

(A) all overdue interest on the Securities,

(B) the Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, the Redemption Price or the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof), as applicable, on any Securities which have become due otherwise than by such declaration of acceleration, and

(C) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 6.07; and

(ii) all Events of Default, other than the non-payment of the Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, on Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.12.

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

Section 5.03 Collection of Indebtedness and Suits for Enforcement by Trustee. If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the Principal Amount plus accrued but unpaid interest and Registration Default Payments, if any, on the Securities then Outstanding or to enforce the performance of any provision of the Securities or this Indenture. The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities 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. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 5.04 Trustee May File Proofs of Claim. In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on

any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 6.07.

No provision of this Indenture 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 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 of the Company as it deems necessary or advisable.

Section 5.05 Application of Money Collected. Any money and property collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money and property to Holders, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid on the Securities for the Principal Amount, the Redemption Price, the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) or interest and Registration Default Payments, if any, as the case may be, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities; and

THIRD: The balance, if any, to the Company.

Section 5.06 Limitation on Suits. No Holder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in clause (i) or (j) of Section 5.01), unless:

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

(b) the Holders of not less than 25% in aggregate Principal Amount of the Securities then Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

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

(d) no direction, in the opinion of the Trustee, inconsistent with such written request has been given to the Trustee during such 60-day period by the Majority Holders; and

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

Section 5.07 Unconditional Right of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount, the Redemption Price, the Fundamental Change Repurchase Price, any applicable Make-Whole Premium or interest and Registration Default Payments, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date or Fundamental Change Settlement Date, as applicable, and to convert the Securities in accordance with Article XIII, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 5.08 Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 5.09 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.08, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.10 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.11 Control by Holders. The Majority Holders shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that:

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

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

(c) the Trustee may refuse to follow any direction that may involve the Trustee in personal liability for which the Trustee would not otherwise be entitled to indemnification pursuant to the terms of this Indenture.

Section 5.12 Waiver of Past Defaults. The Majority Holders may, on behalf of the Holders of all the Securities, waive any past Default hereunder and its consequences, except a Default:

(a) described in clauses (c), (d), (i) or (j) of Section 5.01; or

(b) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Security then Outstanding affected.

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 5.13 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 Trustee, in either case in respect of the Securities, a court may require any party litigant in such suit to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorney's 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; but the provisions of this Section 5.13 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate Principal Amount of the Securities then Outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the Principal Amount or interest or Registration Default Payments on any Security on or after the Maturity Date of such Security, the Redemption Price, the Fundamental Change Repurchase Price or any applicable Make-Whole Premium. This Section 5.13 shall be in lieu of Section 315(e) of the Trust Indenture Act and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act.

Section 5.14 Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, or extension law

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

ARTICLE VI.
The Trustee

Section 6.01 Certain Duties and Responsibilities. The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act and as set forth herein.

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

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

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trust Indenture Act (as applicable) and the Trustee need perform only those duties as are specifically set forth in this Indenture and no covenants or obligations shall be implied in or read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; provided, however, in case of any such certificates or opinions furnished to the Trustee which by the provisions hereof are furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) Notwithstanding anything to the contrary herein contained, the Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that 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.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability (financial or otherwise). The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request, order or direction of any Holders unless such Holders have offered to the Trustee

security and indemnity reasonably satisfactory to the Trustee against the costs and expenses which may be incurred by it (including repayment of its own funds) in compliance with such request, order or direction.

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

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

Section 6.02 Notice of Defaults. The Trustee shall give the Holders notice of any Default hereunder of which it has actual knowledge or notice per Section 6.03(h) within 10 days after having knowledge of the occurrence thereof. The preceding sentence shall be in lieu of the provision to Section 315(b) of the Trust Indenture Act and such proviso is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act.

Section 6.03 Certain Rights Of Trustee. Subject to the provisions of Section 6.01:

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

(b) unless specifically provided otherwise in this Indenture, any demand, request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order or Officer's Certificate; and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a copy thereof certified by the Secretary or an assistant secretary of the Company to have been duly adopted and in full force and effect on the date thereof;

(c) before the Trustee acts or refrains from acting, it may consult with counsel and may require an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to Section 1.02. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The written advice of the Trustee's 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 the Trustee hereunder in good faith and in reliance thereon;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or

indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney and to consult with the officers and representatives of the Company, including the Company's accountants and attorneys, at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(f) the Trustee shall not be under a duty to review or evaluate any report or information delivered to the Trustee pursuant to the provisions of Section 10.07 for the purposes of making such reports available to it and to the Holders of Securities who may request such information; delivery of such reports, information and documents to the Trustee as may be required under 10.07 is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officers' Certificates);

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and shall not be responsible for the misconduct or negligence of such agents and attorneys appointed with due care;

(h) the Trustee shall not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless either (i) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been received by a Responsible Officer from the Company or any other obligor on such Securities or by any Holder of such Securities and such notice references the Securities and this Indenture. In the absence of any such notice, the Trustee may conclusively assume that no Default or Event of Default exists;

(i) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including the Trustee's officers, directors, agents and employees and each agent, custodian and other Person employed to act hereunder. Such rights, privileges, protections, immunities and benefits, including, without limitation, the right to indemnification, together with the Trustee's right to

compensation and reimbursement of expenses, shall survive the Trustee's resignation or removal and final payment of the Securities;

(k) the permissive rights of the Trustee to take any action under this Indenture shall not be construed as a duty to so act unless so specified herein; and

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

Section 6.04 Not Responsible for Recitals. The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity, sufficiency or priority of this Indenture or of the Securities or of the Common Stock. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 6.05 May Hold Securities. The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Section 6.08 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 6.06 Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 6.07 Compensation and Indemnity. The Company shall pay to the Trustee, the Conversion Agent, the Paying Agent and the Security Registrar (each an "**Indemnified Party**") from time to time compensation for their respective services as Trustee, Conversion Agent, Paying Agent or Security Registrar, as the case may be, as agreed in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse each Indemnified Party upon request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by it in connection with the performance of its duties hereunder. Such expenses shall include the reasonable fees and expenses of each of such Indemnified Party's agents and counsel.

The Company hereby indemnifies each Indemnified Party and its agents, employees, stockholders and directors and officers for, and holds each of them harmless against, any loss, cost, claim, liability or expense (including taxes) incurred by any of them except for such actions to the extent caused by any gross negligence or willful misconduct on the part of such Indemnified Party, arising out of or in connection with the Indenture or the administration of the trust created hereby, including the reasonable costs and expenses of enforcing this Indenture against the Company (including this Section 6.07) and defending themselves against any claim or liability in connection with the exercise or performance of any of their rights, powers or duties hereunder (including the reasonable fees and expenses of counsel). An Indemnified Party shall notify the Company promptly of any claim asserted against such

Indemnified Party for which such Indemnified Party has advised the Trustee that it may seek indemnity hereunder. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. At the Indemnified Party's sole discretion, the Company shall defend the claim and the Indemnified Party shall cooperate and may participate in the defense; provided that any settlement of a claim shall be approved in writing by the Indemnified Party. Alternatively, the Indemnified Party may at its option have separate counsel of its own choosing and the Company shall pay the reasonable fees and expenses of such counsel; provided that the Company shall not be required to pay such fees and expenses if it assumes the Indemnified Party's defense and there is no conflict of interest between or alternative defenses between the Company and the Indemnified Party in connection with such defense as reasonably determined by the Indemnified Party. The Company need not pay for any settlement made without its written consent, which consent shall not be unreasonably withheld.

To secure the Company's payment obligations in this Section 6.07, each Indemnified Party shall have a lien prior to the Securities on all monies or property held or collected by the Trustee, in its capacity as Trustee, except funds held in trust for the benefit of Holders of particular Securities.

When an Indemnified Party incurs expenses or renders services after an Event of Default specified in Section 5.01(h) or (i) occurs, such expenses (including the reasonable fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any Bankruptcy Code.

The obligations of the Company under this Section 6.07 shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee, Conversion Agent, Paying Agent or the Security Registrar.

"Trustee", "Paying Agent", "Conversion Agent", and "Security Registrar" for purposes of this Section 6.07 shall include any predecessor Trustee, Paying Agent, Conversion Agent, and Security Registrar; provided, however, that the bad faith, gross negligence or willful misconduct of any Trustee, Paying Agent, Conversion Agent, and Security Registrar hereunder shall not affect the rights of any other Trustee, Paying Agent, Conversion Agent, and Security Registrar hereunder.

Section 6.08 Disqualification; Conflicting Interests. If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 6.09 Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has, or whose parent banking company has, a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 6.09, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section

6.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10 Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction at the expense of the Trustee for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Majority Holders delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the notice of removal, the Trustee being removed may petition, at the reasonable expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or

(iv) a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Company by a Company Order may remove the Trustee, or (B) subject to Section 5.13, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Company Order, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall

be appointed by Act of the Majority Holders delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Section 6.11 Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

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

Notwithstanding the resignation or removal of the Trustee, the Company's obligations under Section 6.07 shall continue for the benefit of the retiring trustee with respect to expenses and liabilities incurred by it prior to such resignation or removal.

Section 6.12 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee by sale or otherwise, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article VI, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13 Preferential Collection of Claims Against. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the

Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

ARTICLE VII.
Holder's Lists And Reports By Trustee

Section 7.01 Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee:

(a) quarterly, not more than 15 days after each Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Record Date; and

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

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar; provided, however, that no such list need be furnished so long as the Trustee is acting as Security Registrar.

Section 7.02 Preservation of Information; Communications to Holders. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

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

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

Section 7.03 Reports By Trustee. (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than May 15 in each calendar year, commencing on May 15, 2005. Each such report shall be dated as of a date not more than 60 days prior to the date of transmission.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when the Securities are listed on any stock exchange or of any delisting thereof.

ARTICLE VIII.
Consolidation, Merger, Conveyance, Transfer Or Lease

Section 8.01 Company May Consolidate, etc., Only on Certain Terms. The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) either (i) the Company shall be the continuing Person or (ii) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety (the “**Surviving Entity**”), (1) shall be either (a) organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia, or (b) organized under the laws of a jurisdiction outside the United States and has, or immediately after the transaction or event will have, common stock traded on a national securities exchange in the United States or quoted on the NYSE, the Nasdaq National Market or The Nasdaq SmallCap Market and a worldwide total market capitalization of its equity securities before giving effect to the consolidation or merger of at least \$250 million, and (2) the Surviving Entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

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

(c) the Company or the Surviving Entity has delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article VIII and Article IX, respectively, and, if applicable, such supplemental indenture shall provide (i) that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such consolidation, merger, sale or conveyance by a holder of the shares of Common Stock deliverable upon conversion of such Security immediately prior to such consolidation merger, sale or conveyance and (ii) for adjustments of the Conversion Price which shall be nearly as equivalent as may be practicable to the adjustments of the Conversion Price provided for in Article XIII.

The provisions of this Section 8.01 shall similarly apply to successive consolidations, mergers, sales or conveyances.

Section 8.02 Successor Substituted. Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section

8.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE IX.
Supplemental Indentures

Section 9.01 Supplemental Indentures Without Consent of Holders. Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (b) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company; or
- (c) to provide for a successor Trustee with respect to the Securities; or
- (d) to cure any ambiguity or defect, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; provided that such action pursuant to this clause (d) shall not adversely affect the interests of the Holders in any material respect; or
- (e) to add any additional Events of Default for the benefit of the Holders; or
- (f) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities any property or assets; or
- (g) to decrease the Conversion Price of the Securities; provided, however, that such decrease shall be in accordance with the terms of this Indenture or shall not adversely affect the interests of the Holders; or
- (h) to supplement any provision of this Indenture to such extent as shall be necessary to permit or facilitate the discharge of the Securities; provided that such change or modification would not reasonably be expected to adversely affect the interests of the Holders in any material respect; or
- (i) to make any change or modification necessary in connection with the registration of the Securities under the Securities Act as contemplated in the

Registration Rights Agreement; provided that such change or modification does not adversely affect the interests of the Holders; or

(j) to add or modify any other provision herein with respect to matters or questions arising hereunder which the Company and the Trustee may deem necessary or desirable and which would not reasonably be expected to adversely affect the interests of the Holders in any material respect.

Section 9.02 Supplemental Indentures With Consent of Holders. With the consent of the Majority Holders by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Security then Outstanding affected thereby:

(a) reduce the rate of or extend the time for payment of interest, if any, on such Security; or

(b) reduce the Principal Amount of, or extend the Stated Maturity of, such Security; or

(c) make any change that impairs or adversely affects the conversion rights of such Security; or

(d) reduce the Redemption Price, the Fundamental Change Repurchase Price of any Security, the Make-Whole Premium or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise; or

(e) modify the provisions with respect to the right of Holders to cause the Company to redeem Securities on the Redemption Date or to repurchase Securities upon a Fundamental Change in a manner adverse to Holders; or

(f) make any interest or principal on a Security payable in money other than that stated in the Security or other than in accordance with the provisions of this Indenture; or

(g) impair the right of any Holder to receive payment of the Principal Amount of or interest or Registration Default Payments, if any, on a Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities; or

(h) reduce the quorum or voting requirements under this Indenture; or

(i) change the ranking of the Securities in a manner adverse to the Holders; or

(j) make any change in the amendment provisions which require each Holder's consent or in the waiver provisions; or

(k) reduce the percentage in Principal Amount of the Securities then Outstanding, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

(l) modify any of the provisions of this Section 9.02 or Section 5.12, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security then Outstanding affected thereby; or

(m) modify the provisions of the Indenture in a manner adverse to the Holders in any material respect.

It shall not be necessary for any Act of Holders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.03 Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be provided with, and (subject to Section 6.01) shall be fully protected in relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Subject to the preceding sentence, the Trustee shall sign such supplemental indenture if the same does not adversely affect the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 9.04 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article IX, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.05 Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

Section 9.06 Reference in Securities to Supplemental Indentures. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this

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

ARTICLE X. Covenants

Section 10.01 Payments. The Company shall duly and punctually make all payments in respect of the Securities in accordance with the terms of the Securities and this Indenture.

Any payments made or due pursuant to this Indenture shall be considered paid on the applicable date due if by 12:00 noon, New York City time, on such date the Paying Agent holds, in accordance with this Indenture, cash sufficient to pay all such amounts then due. Payment of the Principal Amount and interest, including Redemption Price and Fundamental Change Repurchase Price, any applicable Make-Whole Premium and Registration Default Payments, if any, on the Securities shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

Section 10.02 Maintenance of Office or Agency. The Company shall maintain an office or agency 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 in respect of the Securities and this Indenture may be served, which shall initially be the Corporate Trust Office of the Trustee. The Company shall give prompt written notice to the Trustee of any change in the location, of such office or agency. If, at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03 Money for Security Payments to be Held in Trust. If the Company shall at any time act as its own Paying Agent, it shall, on or before each due date of any payment in respect of any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to make the payment so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of any payment in respect of any Securities, 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.

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.03, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the making of payments in respect of any Security and remaining unclaimed for one year after such payment has become due shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, 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 City of New York, 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 publication, any unclaimed balance of such money then remaining shall be repaid to the Company. In the absence of a written request from the Company to return funds remaining unclaimed for one year after such payment has become due to the Company, the Trustee shall from time to time deliver all unclaimed payments to or as directed by applicable escheat authorities, as determined by the Trustee in its sole discretion, in accordance with the customary practices and procedures of the Trustee. Any such unclaimed funds held by the Trustee pursuant to this Section 10.03 shall be held uninvested and without any liability for interest.

Section 10.04 Statement by Officers as to Default. The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof the Company is in Default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement

of notice provided hereunder) and, if the Company shall be in Default, specifying all such Defaults and the nature and status thereof of which they may have knowledge.

The Company shall promptly deliver to the Trustee and in any event within 30 days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company is taking or proposes to take with respect thereto.

Section 10.05 Existence. Subject to Article VIII, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 10.06 Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 10.07 Reports and Delivery of Certain Information. (a) The Company shall file with the Trustee such annual and quarterly reports, information, documents and other reports, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, within 15 days after the applicable filing date as set forth in the Exchange Act, whether or not Company makes the filing with the Commission. The Company also shall comply with Trust Indenture Act Section 314(a), whether or not the Securities are governed by the Trust Indenture Act. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officers' Certificates). At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall furnish to the Trustee (i) quarterly financial statements within 45 days after the end of each fiscal quarter that are substantially equivalent to those the Company would be required to file with the Commission in a Quarterly Report on Form 10-Q, (ii) annual financial statements within 90 days after the end of each fiscal year that are substantially equivalent to those the Company would be required to file with the Commission in an Annual Report on Form 10-K, including a report thereon by the Company's certified independent accountants, and (iii) accompanying each of the financial statements required by (i) and (ii) above, information substantially equivalent to that required by Regulation S-K Item 303, "Management Discussion and Analysis of Financial Condition and Results of Operations;" provided, that in each case the delivery of materials to the Trustee by electronic means shall be deemed "furnished" to the Trustee for purposes of this Section 10.07; provided, further, that the Company shall be deemed to have satisfied its obligations under each of (i), (ii) and (iii) above if it files such information

with the Commission (if the Commission will accept such filing) or otherwise makes such financial statements and other information available on or through its web site.

(b) At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) and any reports required to be filed by them under the Exchange Act or the Securities Act to such Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. “**Rule 144A Information**” shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 10.08 Resale of Certain Securities. During the period beginning on the Issue Date and ending on the date that is two years from the Issue Date, the Company shall not, and shall not permit any of its “affiliates” (as defined under Rule 144) to, resell any Securities which constitute “restricted securities” under Rule 144 that have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Company’s performance of its agreement in the preceding sentence.

Section 10.09 Book-Entry System. If the Securities cease to trade in the Depository’s book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book entry arrangements that it determines are reasonable for the Securities.

Section 10.10 Registration Default Payments Under the Registration Rights Agreement. If at any time Registration Default Payments become payable by the Company pursuant to the Registration Rights Agreement, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Registration Default Payments that are payable and (ii) the date on which such Registration Default Payments are payable pursuant to the terms of the Registration Rights Agreement. Unless and until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Registration Default Payments are payable. If the Company has paid Registration Default Payments directly to the Persons entitled to such Registration Default Payments, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 10.11 Information for IRS Filings. The Company shall provide to the Trustee on a timely basis such information as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders.

ARTICLE XI.

Redemption Prior to Maturity; Repurchase Upon A Fundamental Change

Section 11.01 Right to Require Redemption(a) . (a) The Company shall have no right at its option to redeem the Securities at any time prior to the Stated Maturity. The Company shall redeem prior to the Stated Maturity any Securities which Holders elect for redemption in accordance with this Article XI on the Redemption Date. Each Holder making an election in accordance with this Article XI shall, by notice given in accordance with Section 11.03, have the right to have its Securities redeemed by the Company, in whole or in part, on the Redemption Date at the Redemption Price; provided, however, that each Holder must (irrespective of the notice requirements of Section 11.02) redeem on the Redemption Date an amount equal to the product of (a) 12.5%, (b) (i) \$30,000,000 less (ii) the Principal Amount of Securities previously converted, redeemed or repurchased, and (c) a fraction (i) the numerator of which is the Principal Amount of the Securities then Outstanding held by such Holder on the Redemption Date and (ii) the denominator of which is the aggregate Principal Amount of the Securities then Outstanding held by all Holders (other than the Company) as of such date (the “**Minimum Redemption Amount**”). The “**Redemption Price**” means the Principal Amount of the Securities to be redeemed, together with accrued and unpaid interest and Registration Default Payments, if any, to, but excluding the Redemption Date.

(b) Applicable High Yield Discount Obligation. Notwithstanding the preceding Section 11.01(a), if the sum of each Holder’s total Minimum Redemption Amount would, but for this provision, exceed an amount equal to the product of: (i) the issue price (as defined in sections 1273(b) and 1274(a) of the Code) of the Securities; and (ii) the yield to maturity (interpreted in accordance with section 163(i) of the Code) of the Securities (such product, the “**Maximum Accrual**”), then all accrued and unpaid interest, and if necessary the Principal Amount of the Securities, in excess of an amount equal to the Maximum Accrual shall be paid in cash by the Company to the Holders on the Redemption Date and at the end of any accrual period thereafter (as defined in section 1272(a)(5) of the Code) to prevent the Securities from being treated as an “Applicable High Yield Discount Obligation” within the meaning of section 163(i)(1) of the Code.

Section 11.02 Notice of Right to Require Redemption. At least 30 days but not more than 60 days before the Redemption Date, the Company shall mail a notice (the “**Notice of Redemption Right**”) of a Holder’s right to require redemption by first-class mail, postage prepaid, to each Holder of Securities.

The Notice of Redemption Right shall state:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) the aggregate Minimum Redemption Amounts of all Holders;
- (d) the Conversion Price;
- (e) the name and address of the Paying Agent and Conversion Agent;

(f) that Securities presented for redemption may be converted at any time before the close of business on the Business Day immediately preceding the Redemption Date;

(g) that Holders who want to convert Securities must satisfy the requirements set forth therein and in this Indenture;

(h) that Securities presented for redemption must be surrendered to the Paying Agent for cancellation to collect the Redemption Price;

(i) that, unless the Company defaults in making payment of such Redemption Price, interest and Registration Default Payments, if any, will cease to accrue on and after the Redemption Date with respect to the Securities to be redeemed;

(j) that if the Holder does not comply with the procedures specified and present Securities to be redeemed to the Paying Agent not later than the Redemption Date, the right to require redemption in excess of such Holder's Minimum Redemption Amount will terminate; and

(k) the CUSIP number of the Securities.

At the Company's written request delivered at least 15 days prior to the date such notice is to be given to the Holders (unless a shorter time period shall be acceptable to the Trustee), the Trustee shall give the Notice of Redemption Right in the Company's name and at the Company's expense.

For purposes of clarification, the redemption of the Minimum Redemption Amount shall occur notwithstanding any failure by any Holder to comply with the procedures specified in this Section 11.02 and present Securities to be redeemed to the Paying Agent.

Section 11.03 Redemption by Holder. At any time after a Holder's timely receipt of a Notice of Redemption Right, but in no event later than five days prior to the Redemption Date, such Holder may require the Company to redeem, in whole or in part, an amount of the Securities held by such Holder in excess of such Holder's Minimum Redemption Amount by delivering a notice (the "**Notice of Redemption**") to the Paying Agent. The Notice of Redemption shall state:

(a) the certificate number (if such Security is held other than in global form) of the Security which the Holder will deliver to be redeemed;

(b) the portion of any Principal Amount of the Security in excess of such Holder's Minimum Redemption Amount which the Holder will deliver to be redeemed; and

(c) that such Security shall be redeemed as of the Redemption Date pursuant to the terms and conditions specified in the Securities and in this Indenture.

Section 11.04 Deposit of Redemption Price. Prior to 10:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities presented for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Securities pursuant to Article XIII. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 11.05 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in principal amount to the unredeemed portion of the Security surrendered. The Company shall not be required to (i) issue, register the transfer of, or exchange any Securities during a period of 10 days before the Redemption Date or (ii) register the transfer of, or exchange any, Securities so presented for redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Section 11.06 Repurchase of Securities at the Option of the Holder Upon Fundamental Change.

(a) General. If, prior to the Stated Maturity, there shall have occurred a Fundamental Change, each Holder shall have the option to require all or a portion (which portion must be in a Principal Amount of \$1,000 or integral multiples thereof) of its Securities to be repurchased (the “**Fundamental Change Repurchase**”) by the Company at the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) on the Fundamental Change Settlement Date in accordance with the following procedures. The “**Fundamental Change Repurchase Price**” means the Principal Amount of the Securities to be repurchased, together with accrued and unpaid interest and Registration Default Payments, if any, to, but excluding, the Fundamental Change Settlement Date.

(b) Company Notice of Fundamental Change. Within 15 days after the Company knows or reasonably should know of the occurrence of a Fundamental Change, the Company shall deliver a written notice of Fundamental Change (the “**Fundamental Change Company Notice**”) by first-class mail or by overnight courier to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Fundamental Change Repurchase Notice to be completed by the Securityholder and shall state:

(i) the events causing a Fundamental Change and the date of such Fundamental Change;

(ii) the last date of the Fundamental Change Conversion/Repurchase Period by which a Holder must deliver a Fundamental Change Repurchase Notice to elect the repurchase option pursuant to this Section 11.06 or deliver a

Notice of Conversion requesting conversion upon a Fundamental Change in accordance with Section 13.02;

(iii) the Fundamental Change Settlement Date;

(iv) the Fundamental Change Repurchase Price;

(v) the Conversion Price applicable on the date of the Fundamental Change Company Notice;

(vi) that Securities may be converted in connection with a Fundamental Change and any Securities as to which a Fundamental Change Repurchase Notice has been given may be converted pursuant to Article XIII hereof only if the Fundamental Change Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(vii) that Securities must be surrendered to the Paying Agent for cancellation to collect payment;

(viii) that the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) for any Security as to which a Fundamental Change Repurchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Fundamental Change Settlement Date and the time of surrender of such Security as described in clause (vii) above;

(ix) the procedures the Holder must follow to exercise rights under this Section 11.06;

(x) the procedures for withdrawing a Fundamental Change Repurchase Notice;

(xi) that, unless the Company defaults in making payment of the Fundamental Change Repurchase Price or any applicable Make-Whole Premium, Securities covered by any Fundamental Change Repurchase Notice will cease to be outstanding and interest and Registration Default Payments, if any, will cease to accrue on and after the Fundamental Change Settlement Date;

(xii) the CUSIP number of the Securities;

(xiii) that a Make-Whole Premium is required to be paid by the Company upon any conversion or redemption in connection with a Fundamental Change; and

(xiv) whether such Make-Whole Premium shall be paid in cash, by delivery of shares of Common Stock or a combination thereof in accordance with Section 14.01(c) (and containing such information required by Section 14.01(c)) and subject to the conditions of Section 14.01(d).

The Company shall, at least three (3) Business Days prior to delivering the Fundamental Change Company Notice, deliver an Officers' Certificate to the Trustee specifying:

(A) the information required by the Fundamental Change Company Notice pursuant to Section 11.06(b),

(B) if the Company elects to pay all or a portion of the Make-Whole Premium in shares of Common Stock, that the conditions to such manner of payment set forth in Section 14.01(d) have been or will be complied with, and

(C) whether the Company desires the Trustee to give the Fundamental Change Company Notice required by Section 11.06(b).

If the Company requests that the Trustee shall give (at the Company's expense) such Fundamental Change Company Notice in the Company's name, the Company shall, in all cases, prepare the text of such Fundamental Change Company Notice. In connection with delivery of the Fundamental Change Company Notice to the Holders, the Company shall publish a notice containing substantially the same information that is required in the Fundamental Change Company Notice in a newspaper published in the English language, customarily published each Business Day and of general circulation in The City of New York, or publish such information on the Company's website or through such other public medium as the Company may use at such time.

(c) Fundamental Change Repurchase Notice. In order to exercise its rights under Section 11.06 hereof, a Holder must deliver to the Paying Agent:

(i) a written notice of repurchase (a "**Fundamental Change Repurchase Notice**"), substantially in the form of Exhibit D attached hereto, at any time during the Fundamental Change Conversion/Repurchase Period:

(A) the certificate number (if such Security is held other than in global form) of the Security which the Holder will deliver to be repurchased;

(B) the portion of the Principal Amount of the Security which the Holder will deliver to be purchased, which portion must be in a Principal Amount of \$1,000 or integral multiples thereof; and

(C) that such Security shall be purchased as of the Fundamental Change Settlement Date pursuant to the terms and conditions specified in the Securities and in this Indenture; and

(ii) the Security (if such Security is held other than in global form) for cancellation prior to, on or after the Fundamental Change Settlement Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) therefor; provided that such Fundamental Change Repurchase Price (plus any applicable Make-Whole Premium) shall be so paid pursuant to this Section 11.06 only if the Security so delivered to the Paying Agent shall

conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

Provisions of this Indenture that apply to the repurchase of all of a Security also apply to the repurchase of such portion of such Security.

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

(d) Payment of Fundamental Change Repurchase Price. The Securities to be repurchased pursuant to this Section 11.06 shall be paid for by (i) the payment of the Fundamental Change Redemption Price in cash and (ii) the payment of the Make-Whole Premium, at the option of the Company and subject to Section 14.01(d), in either cash or shares of Common Stock or a combination thereof.

(e) Procedure Upon Repurchase. The Company shall deposit cash at the time and in the manner as provided in Section 11.10, sufficient to pay the aggregate Fundamental Change Repurchase Price of all Securities to be purchased pursuant to this Section 11.06. The Company shall make deposits relating to payment of the Make-Whole Premium in accordance with Section 14.02.

Section 11.07 Effect of Fundamental Change Repurchase Notice. Upon receipt by the Paying Agent of the Fundamental Change Repurchase Notice specified in Section 11.06(c), the Holder of the Security in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms hereof) with respect to such Security. Such Fundamental Change Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Fundamental Change Settlement Date with respect to such Security (provided the conditions in Section 11.06(c) have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 11.06(c). Securities in respect of which a Fundamental Change Repurchase Notice has been given by the Holder thereof may not be converted pursuant to Article XIII on or after the date of the delivery of such Fundamental Change Repurchase Notice unless such Fundamental Change Repurchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Fundamental Change Repurchase Notice may be withdrawn only by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the procedures set forth in the Fundamental Change Company Notice at any time prior to the close of business on the Business Day prior to the Fundamental Change Settlement Date specifying:

- (a) the Principal Amount of the Security with respect to which such notice of withdrawal is being submitted;

(b) the certificate number (if such Security is held in other than global form) of the Security in respect of which such notice of withdrawal is being submitted; and

(c) the Principal Amount, if any, of such Security which remains subject to the original Fundamental Change Repurchase Notice and which has been or will be delivered for purchase or repurchase by the Company.

There shall be no repurchase of any Securities pursuant to Section 11.06 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Fundamental Change Repurchase Notice) and is continuing an Event of Default (other than a default in the payment of the Fundamental Change Repurchase Price or any applicable Make-Whole Premium with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change Repurchase Price or any applicable Make-Whole Premium with respect to such Securities) in which case, upon such return, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 11.08 Securities Repurchased in Whole or in Part. Any Security which is to be repurchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to, and in exchange for, the portion of the Principal Amount of the Security so surrendered which is not repurchased.

Section 11.09 Covenant to Comply With Securities Laws Upon Repurchase of Securities. In connection with any offer to repurchase Securities under Section 11.06 (provided that such offer or repurchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or repurchase), the Company shall (a) comply with Rule 13e-4 and Rule 14e-1 under the Exchange Act, (b) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (c) otherwise comply with all federal and state securities laws so as to permit the rights and obligations under Section 11.06 to be exercised in the time and in the manner specified in Section 11.06, as applicable.

Section 11.10 Deposit of Fundamental Change Repurchase Price. Prior to 12:00 p.m., New York City time, on the Business Day preceding the Fundamental Change Settlement Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Significant Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day), sufficient to pay the Fundamental Change Repurchase Price of all the Securities or portions thereof which are to be repurchased or as of the

Fundamental Change Settlement Date. The Company shall promptly notify the Trustee in writing of the amount of any deposits of cash made pursuant to this Section 11.10.

Section 11.11 Repayment to the Company. The Trustee or the Paying Agent, as the case may be, shall return to the Company any cash that remains unclaimed, together with interest or dividends, if any, thereon, held by them for the payment of the Fundamental Change Repurchase Price; provided that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 11.10 exceeds the aggregate Fundamental Change Repurchase Price of the Securities or portions thereof which the Company is obligated to repurchase as of the Fundamental Change Settlement Date, then as soon as practicable following the Fundamental Change Settlement Date, the Trustee or the Paying Agent, as the case may be, shall return any such excess to the Company.

ARTICLE XII.
Interest Payments on the Securities

Section 12.01 Interest Rate. (a) Interest on the Securities shall be payable quarterly in arrears on each Interest Payment Date to Holders of record on the Record Date immediately preceding such Interest Payment Date. Interest on the Securities shall accrue at a rate of 5% per annum. On each Interest Payment Date, an additional sum shall be payable as interest on each Security equal to the product of (i) the total number of shares of Common Stock into which such Security was convertible on the Record Date for such Interest Payment Date (without regard to the Conversion Limitation) and (ii) the cash dividends or cash distributions, whether periodic, special, extraordinary, non-recurring or other, paid by the Company in cash per share of Common Stock during the three-month period ending on such Record Date (all such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other transaction during the applicable calculation period). In connection with the foregoing, the Company shall provide notice to the Trustee 30 days prior to each Interest Payment Date, setting forth the Company's calculation of the amount due. Notwithstanding the foregoing, during the period from prior to and including November 15, 2006, interest on the Securities shall accrue at the rate of 6.75% per annum if such rate would produce a greater amount of interest payable on any Interest Payment Date which includes any portion of such period than would result under the first three sentences of this Section 12.01(a). Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Interest on the Securities shall accrue from the most recent date to which interest has been paid, or if no interest has been paid, from the Original Issue Date, until the Principal Amount is paid or duly made available for payment.

(b) Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the Record Date for such interest at the office or agency of the Company maintained for such purpose. Each installment of interest on any Security shall be made by check mailed to the address of the Holder specified in the register of Securities; provided, however, that, with respect to any Holder with an aggregate Principal Amount of Securities in excess of \$2,000,000, at the request of such Holder in writing to the Company, interest on such Holder's Securities shall be paid by wire transfer in immediately available funds in accordance with the written wire transfer instruction supplied by

such Holder from time to time to the Trustee and Paying Agent (if different from the Trustee) at least ten (10) days prior to the applicable Interest Payment Date. In the case of a permanent Global Security, interest payable on any Interest Payment Date will be paid to the Depositary, with respect to that portion of such permanent Global Security held for its account by Cede & Co. for the purpose of permitting the Depositary to credit the interest received by it in respect of such permanent Global Security to the accounts of the beneficial owners thereof.

ARTICLE XIII.

Conversion

Section 13.01 Conversion Privilege. (a) Subject to the further provisions of this Article XIII, at any time or times after the Issue Date, a Holder of a Security may convert the Principal Amount of such Security (or any portion thereof equal to \$1,000 or any integral multiple of \$1,000 in excess thereof) into shares of Common Stock at any time prior to the close of business on the Business Day prior to the Stated Maturity.

(b) Conversion Period. Notwithstanding the foregoing, if such Security is presented for repurchase pursuant to Article XI, such conversion right shall terminate at the close of business on the last day of the Fundamental Change Conversion/Repurchase Period for such Security (unless the Company shall default on payment when due of the Fundamental Change Repurchase Price and any applicable Make-Whole Premium), in which case the conversion right shall extend to the close of business on the date such default is cured and such Security is repurchased).

(c) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Principal Amount pursuant to Section 13.01 shall be determined by dividing (x) such Principal Amount by (y) the Conversion Price (the “**Conversion Rate**”).

(d) Securities Converted in Whole or in Part. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

(e) Rights of Holders. Unless otherwise provided herein, a Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities to Common Stock, and only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article XIII.

Section 13.02 Conversion Procedure.

(a) To convert a Security (or any portion thereof) (if such Security is held other than in global form) into shares of Common Stock on any date (a “**Conversion Date**”), a Holder must (i) complete and manually sign the conversion notice on the back of the Security (or a facsimile of the conversion notice) specifying the Principal Amount of such Security such Holder seeks to convert and deliver such notice (the “**Notice of Conversion**”) to a Conversion Agent, (ii) surrender the Security to a Conversion Agent, (iii) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent and (iv) pay any transfer or similar tax in accordance with Section 13.04, if required. Anything herein to

the contrary notwithstanding, in the case of Global Securities, a Notice of Conversion shall be delivered and such Securities shall be surrendered for conversion in accordance with the rules and procedures of the Depository as in effect from time to time.

(b) The Company will, as soon as practicable after a Conversion Date, but in no event later than three Trading Days following the delivery of a Notice of Conversion (the “**Share Delivery Date**”) (i) provided the Conversion Agent is participating in the Depository’s Fast Automated Securities Transfer Program, such aggregate number of shares of Common Stock to which the applicable Holder shall be entitled to such Holder’s or its nominee’s or nominees’ balance account with the Depository through its Deposit Withdrawal Agent Commission system, or (ii) if the Conversion Agent is not participating in the Depository’s Fast Automated Securities Transfer Program, issue, or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder’s nominee or nominees, certificates for the number of full shares of Common Stock, if any, to which such Holder shall be entitled. The Person or Persons entitled to receive such Common Stock upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock, as of the close of business on the applicable Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the Person or Persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; provided further, that such conversion shall be at the Conversion Price in effect on the Conversion Date as if the stock transfer books of the Company had not been closed. Upon conversion in full of a Security, such Person shall no longer be a Holder of such Security. Except as otherwise provided in Section 13.06, no payment or adjustment will be made for dividends or distributions on shares of Common Stock issued upon conversion of a Security.

Holders converting any Securities or portions thereof shall be entitled to receive any accrued and unpaid interest on the Principal Amount being converted as of a Conversion Date to the extent provided for in this Section 13.02(b). If the Conversion Date occurs between the close of business on the Record Date and the opening of business on the immediately following Interest Payment Date, the Company shall pay to the applicable Holder in cash, on such Interest Payment Date, an amount equal to the accrued and unpaid interest through the Conversion Date on the Principal Amount of Securities such Holder is converting; provided, however, if the Company pays such Holder on such Interest Payment Date an amount equal to the interest otherwise payable to such Holder as if such Holder had not converted any Security or portion thereof prior to such Interest Payment Date, such Holder shall promptly pay to the Company an amount equal to the difference between (1) such interest payment received and (2) the amount of accrued and unpaid interest through the Conversion Date for the Principal Amount converted by such Holder.

(c) Company’s Failure to Timely Convert. If within three (3) Trading Days after the delivery by such Holder of a Notice of Conversion the Company shall, or if following the Company’s request to deliver Common Stock the Conversion Agent shall, fail to issue and deliver or caused to be delivered to such Holder, or such Holder’s nominee or

nominees, such number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of any Securities, and if on or after such Trading Day such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of shares of Common Stock issuable upon such conversion that such Holder anticipated receiving from the Company (a "**Buy-In**"), then the Company shall, within three (3) Business Days after such Holder's request and in such Holder's discretion, either (i) pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to such Holder a certificate or certificates representing such Common Stock and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Price of the Common Stock on the Conversion Date.

(d) If a Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the aggregate Principal Amount of Securities converted.

(e) The conversion by a Holder following its receipt of the Fundamental Change Company Notice during the Fundamental Change Conversion/Repurchase Period shall be a "**Fundamental Change Conversion**." In connection with a Fundamental Change Conversion, a Holder shall be entitled to receive the Make-Whole Premium with respect to any Principal Amount converted in accordance with Article XIV.

(f) Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the applicable Holder, as soon as practicable but in no event later than ten (10) Business Days after receipt of such Security, a new Security equal in Principal Amount to the unconverted portion of the Security surrendered.

(g) If the last day on which Security may be converted is not a Business Day in a place where a Conversion Agent is located, the Securities may be surrendered to that Conversion Agent on the next succeeding Business Day.

(h) Holders that have already delivered a Fundamental Change Repurchase Notice with respect to a Security may not surrender such Security for conversion until the Fundamental Change Repurchase Notice has been withdrawn in accordance with the procedures set forth in Section 11.07.

(i) The Company shall not effect any conversion of a Security, and no Holder shall have the right to convert any portion of such Security, to the extent that after giving effect to such conversion (including any Make-Whole Premium), such Holder (together with such Holder's affiliates) would beneficially own in excess of 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to such conversion (the "**Conversion Limitation**"). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its affiliates shall include the number of

shares of Common Stock issuable upon conversion of a Security with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of any Security beneficially owned by such Holder or any of its affiliates and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Section 13.02(i), in determining the number of outstanding shares of Common Stock, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Form 10-K, 10-Q or Form 8-K, as the case may be; (y) a more recent public announcement by the Company or (z) any other notice by the Company setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of a Holder, the Company shall within three (3) Business Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including any Security, by such Holder or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Company, any Holder may increase or decrease the Conversion Limitation to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the 61st day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder sending such notice and not to any other holder of Securities. Notwithstanding the foregoing, the Conversion Limitation shall not be applicable (i) on any of the ten (10) Trading Days up to and including the Stated Maturity, or (ii) on any of the ten (10) Trading Days up to and including the Effective Date or (iii) during the Fundamental Change Conversion/Repurchase Period.

Section 13.03 No Fractional Shares. The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock to the nearest whole share.

Section 13.04 Taxes on Conversion. If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issuance of shares of Common Stock upon such conversion. However, a Holder shall pay any such tax which is due because such Holder requests the shares of Common Stock to be issued in a name other than such Holder's name. The Conversion Agent may refuse to deliver the certificate representing the shares of Common Stock being issued in a name other than a Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares of Common Stock are to be issued in a name other than such Holder's name. Nothing herein shall preclude any tax withholding required by law or regulation.

Section 13.05 Company to Provide Stock. (a) The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to

permit the conversion of all Securities then Outstanding into shares of Common Stock (including after taking into account any adjustments to the Conversion Price pursuant to Section 13.06).

(b) All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares, shall be duly authorized, validly issued, fully paid and non-assessable, and shall be free from preemptive rights and free of any lien or adverse claim.

(c) The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on the NYSE, the American Stock Exchange, the Nasdaq National Market, The Nasdaq SmallCap Market or other over-the-counter market or such other exchange or market on which the Common Stock is then listed or quoted. Any Common Stock issued upon conversion of a Security hereunder which at the time of conversion was a Transfer Restricted Security shall remain a Transfer Restricted Security.

Section 13.06 Adjustment of Conversion Price. The Conversion Price shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall (i) pay a dividend on its Common Stock in shares of Common Stock, (ii) make a distribution on its Common Stock in shares of Common Stock, (iii) subdivide its outstanding Common Stock into a greater number of shares, or (iv) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior thereto shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive that number of shares of Common Stock which it would have owned had such Security been converted immediately prior to the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective on the opening of business after the record date, in the case of a dividend or distribution, and shall become effective on the opening of business after the effective date, in the case of subdivision or combination.

(b) In case the Company shall issue rights, options or warrants (other than pursuant to a stockholder rights plan) to all or substantially all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock (or securities convertible into or exercisable or exchangeable for Common Stock) at a price per share (or having a conversion, exercise or exchange price per share) less than the Current Market Price per share of Common Stock on the record date with respect to such issuance, (or if no such record date is fixed, the Business Day immediately prior to the date of announcement of such issuance) (treating the conversion, exercise or exchange price per share of such securities convertible into or exercisable or exchangeable for Common Stock as equal to (x) the sum of (i) the price for a unit of such security convertible into or exercisable or exchangeable for Common Stock and (ii) any additional consideration initially payable upon the conversion of such security into or exercise or exchange of such security for Common Stock divided by (y) the number of shares of Common Stock initially underlying such security), the Conversion Price in effect shall be adjusted so that the Conversion Price shall equal the price determined by multiplying the

Conversion Price in effect at the opening of business on the date after such record date (or if no such record date is fixed, the applicable Business Day) by a fraction:

(1) the numerator of which shall be the number of shares of Common Stock outstanding on the close of business on the record date (or, if no such record date is fixed, the date of announcement of such issuance), plus the number of shares which the aggregate subscription or purchase price for the total number of shares of Common Stock underlying the rights options, or warrants so issued (or the aggregate conversion, exercise or exchange price of such securities so offered) would purchase at such Current Market Price of the Common Stock; and

(2) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the record date with respect to such issuance (or, if no such record date is fixed, the date immediately prior to the date of announcement of such issuance), plus the total number of additional shares of Common Stock underlying the rights, options or warrants so issued.

Such adjustment shall be made successively whenever any such rights, options or warrants are issued, and shall become effective on the day following the date of announcement of such issuance.

(c) (i) In case the Company shall distribute to all or substantially all holders of its Common Stock any shares of Capital Stock of the Company (other than Common Stock), evidences of indebtedness or other non-cash assets (including securities of any person other than the Company but excluding (1) the portion of any dividends or distributions paid in cash, (2) dividends or distributions referred to in subsection (a) of this Section 13.06 or (3) distributions made in connection with the liquidation, dissolution or winding up of the Company), or shall distribute to all or substantially all holders of its Common Stock rights, options or warrants to subscribe for or purchase any of its securities (excluding those rights, options and warrants referred to in subsection (b) of this Section 13.06 and also excluding the distribution of rights to all holders of Common Stock pursuant to a Rights Plan or the detachment of such rights to the extent set forth in the second following paragraph), then, in each such case, the Conversion Price shall be adjusted to equal the price determined by multiplying the current Conversion Price by a fraction of which:

(1) the numerator of which shall be the Current Market Price per share of the Common Stock on such record date, less the fair market value on such record date (as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value and which shall be evidenced by an Officer's Certificate delivered to the Trustee and the Conversion Agent) of the portion of the distributed assets (other than cash) so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date); and

(2) the denominator of which shall be such Current Market Price on such record date.

Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of shareholders entitled to receive such distribution.

(ii) In the event that the Company has in effect a preferred shares rights plan (“**Rights Plan**”), upon conversion of the Securities into Common Stock, to the extent that the Rights Plan is still in effect upon such conversion, the Holders will receive, in addition to the Common Stock, the rights described therein (whether or not the rights have separated from the Common Stock at the time of conversion), subject to the limitations set forth in the Rights Plan. If the Rights Plan provides that upon separation of rights under such plan from the Company’s Common Stock that the Holders would not be entitled to receive any such rights in respect of the Common Stock issuable upon conversion of the Securities, the Conversion Price will be adjusted as provided in this Section 13.06(c) (with such separation deemed to be the distribution of such rights), subject to readjustment in the event of the expiration, termination or redemption of the rights. Any distribution of rights or warrants pursuant to a Rights Plan that would allow a Holder to receive upon conversion, in addition to the Common Stock, the rights described therein (whether or not the rights have separated from the Common Stock at the time of conversion), shall not constitute a distribution of rights, options or warrants pursuant to this Article XIII.

(iii) Rights, options or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (A) are deemed to be transferred with such shares of Common Stock; (B) are not exercisable; and (C) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 13.06 (and no adjustment to the Conversion Price under this Section 13.06 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Price shall be made under this clause (c) of Section 13.06. If any such right or warrant, including any such existing rights, options or warrants distributed prior to the Original Issue Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 13.06 was made, in the case of any such rights, options or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants

(assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase.

(d) In case the Company or any of its Subsidiaries shall purchase any shares of the Company's Common Stock by means of a tender offer, then, effective immediately prior to the opening of business on the day after the last date (the "**Expiration Date**") tenders could have been made pursuant to such tender offer (as it may be amended) (the last time at which such tenders could have been made on the Expiration Date is hereinafter sometimes called the "**Expiration Time**"), the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Expiration Date by a fraction of which:

(1) the numerator shall be the product of the number of shares of Common Stock outstanding (including Purchased Shares, but excluding any shares held in the treasury of the Company) immediately prior to the Expiration Time multiplied by the Current Market Price per share of the Common Stock (as determined in accordance with clause (e) of Section 13.06); and

(2) the denominator shall be the sum of (x) the aggregate consideration (determined as set forth below) payable to stockholders of the Company based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "**Purchased Shares**") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares and excluding any shares held in the treasury of the Company) immediately prior to the Expiration Time and the Current Market Price per share of Common Stock (as determined in accordance with clause (f) of Section 13.06).

For purposes of this clause (d) of Section 13.06, the aggregate consideration in any such tender offer shall equal the sum of the aggregate amount of cash consideration and the aggregate fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the Trustee and the Conversion Agent) of any other consideration payable in such tender offer. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any or all such purchases or any or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would have been in effect based upon the number of shares actually purchased. If the application of this clause (d) of Section 13.06 to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 13.06(d). For purposes of this clause (d) of Section 13.06, the term "**tender offer**" shall mean and include both tender offers and exchange offers, all references to "**purchases**" of shares in tender offers (and all similar references) shall mean and include both the purchase of shares in tender offers and the acquisition of shares pursuant to exchange offers, and all references to "**tendered shares**" (and all similar references) shall mean and include shares tendered in both tender offers and exchange offers.

(e) For the purpose of any computation under clauses (b) and (c) of Section 13.06, the current market price (the “**Current Market Price**”) per share of Common Stock on any date shall be deemed to be the average of the daily Closing Prices for the ten (10) consecutive Trading Days commencing 11 Trading Days before the record date with respect to distributions, issuances or other events requiring such computation under Section 13.06. For purposes of any computation under subsection (d) of this Section 13.06, the Current Market Price per share of Common Stock shall be deemed to be the arithmetic average of the daily Closing Prices for the ten (10) consecutive Trading Days commencing on the Trading Day next succeeding the Expiration Date.

(f) For the purpose of this Section 13.06, “**record date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(g) In any case in which this Section 13.06 shall require that an adjustment be made to the Conversion Price, in lieu of the foregoing adjustment, the Company may, at its option, distribute, concurrently with the distribution to the holders of the outstanding Common Stock, shares of Common Stock, rights, options, warrants, any shares of Capital Stock of the Company (other than Common Stock), evidences of indebtedness or other non-cash assets (or the fair market value, as reasonably determined by the Board of Directors of the Company, of the foregoing in cash) that such Holder of Securities would have been entitled to receive, as applicable, had such Security been converted immediately prior to the happening of the record date relating to the event that would have caused such adjustment (without regard to the Conversion Limitation).

(h) In any case in which this Section 13.06 shall require that an adjustment be made following a record date, an announcement date or a Determination Date or Expiration Date, as the case may be, established for purposes of this Section 13.06, the Company may elect to defer (but only until five (5) Business Days following the filing by the Company with the Trustee and the Conversion Agent of the certificate described in Section 13.09) issuing to the Holder of any Security converted after such record date or announcement date or Determination Date or Expiration Date the shares of Common Stock and other capital stock of the Company issuable upon such conversion over and above the shares of Common Stock and other capital stock of the Company issuable upon such conversion only on the basis of the Conversion Rate prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence prepared by the Company of the right to receive such shares.

Section 13.07 No Adjustment. (a) No adjustment need be made for issuances of Common Stock pursuant to a Company plan for reinvestment of dividends or interest or for a change in the par value or a change to no par of the Common Stock.

(b) To the extent that the Securities become convertible into the right to receive cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash due.

(c) No adjustment in the Conversion Price shall be made pursuant to Section 13.06 if the Holders (in their capacity as Holders) may participate in the transaction that would otherwise give rise to an adjustment pursuant to Section 13.06.

(d) No adjustment in the Conversion Price shall be made for issuances of cash dividends or cash distributions, whether periodic, special, extraordinary, non-recurring or other, which the Holder is entitled to receive as interest pursuant to Section 12.01(a).

(e) Other than as described above in Section 13.06, no adjustment to the Conversion Price shall be required for any issuance of Common Stock or convertible or exchangeable securities or rights to purchase Common Stock or convertible or exchangeable securities.

Section 13.08 Notice of Conversion Price Adjustment. Whenever the Conversion Price is adjusted, the Company shall promptly mail to Holders of Securities a notice of the adjustment and file with the Trustee and the Conversion Agent an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. Unless and until the Trustee and the Conversion Agent shall receive an Officers' Certificate setting forth an adjustment of the Conversion Price, the Trustee and the Conversion Agent may assume without inquiry that the Conversion Price has not been adjusted and that the last Conversion Price of which it has knowledge remains in effect.

Section 13.09 Notice of Certain Transactions. In the event that:

(a) the Company takes any action which would require an adjustment in the Conversion Price (other than the issuance of dividends in the form of Common Stock);

(b) the Company consolidates or merges with, or transfers all or substantially all of its property and assets to, another corporation and stockholders of the Company must approve the transaction; or

(c) there is a dissolution or liquidation of the Company,

the Company shall mail to Holders and file with the Trustee a notice stating the proposed record or effective date, as the case may be. The Company shall mail the notice at least twenty (20) days before such date. Failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clause (a), (b) or (c) of this Section 13.09.

Section 13.10 Effect of Reclassification on Conversion Privilege. If there is any reclassification or change of shares of Common Stock issuable upon conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, or any other change for which an

adjustment is provided in Section 13.06); then the Company's such successor, as the case may be, shall, as a condition precedent to such reclassification, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then Outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification by a holder of the number of shares of Common Stock issuable upon conversion of such Security immediately prior to such reclassification. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article XIII. The provisions of this Section 13.10 shall similarly apply to successive reclassifications.

Section 13.11 Trustee's Disclaimer. The Trustee and the Conversion Agent shall have no duty to determine when an adjustment under this Article XIII should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment, and shall be protected in relying upon, an Officers' Certificate including the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee and the Conversion Agent pursuant to Section 13.08. The Trustee and the Conversion Agent make no representation as to the validity or value of any securities or assets issued upon conversion of Securities and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article XIII.

The Trustee and the Conversion Agent shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 13.10, but may accept as conclusive evidence of the correctness thereof, and shall be fully protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee and the Conversion Agent pursuant to Section 13.10.

Section 13.12 Voluntary Decrease. The Company may, from time to time, decrease the Conversion Price by any amount for any period of time if the period is at least 20 days and if the decrease is irrevocable during the period if the Board of Directors determines that such decrease would be in the best interest of the Company or the Board of Directors deems it advisable to avoid or diminish income tax to holders of shares of Common Stock in connection with any stock or rights dividend or distribution or similar event, and the Company provides 15 days prior notice of any increase in the Conversion Price.

Section 13.13 Company Determination Final. Any determination that the Company or the Board of Directors must make pursuant to this Article XIII shall be conclusive if made in good faith and in accordance with the provisions of this Article XIII, absent manifest error, and set forth in a resolution of the Board of Directors.

ARTICLE XIV. Make-Whole Premium

Section 14.01 Make-Whole Premium. (a) If a Fundamental Change occurs, the Company shall pay on the applicable Conversion Date or on the Fundamental Change Settlement

Date, as the case may be, a Make-Whole Premium to Holders of Securities electing any Fundamental Change Conversion or a Fundamental Change Repurchase.

(b) The “**Make-Whole Premium**” shall be determined by reference to the table below (the “**Make-Whole Premium Table**”) and is based on the date that the applicable Fundamental Change becomes effective (the “**Effective Date**”) and the Stock Price. For purposes of this Agreement, “**Stock Price**” means the price paid per share of Common Stock in the transaction constituting the applicable Fundamental Change, determined as follows: (i) if holders of Common Stock receive only cash in the Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock; or (ii) in all other circumstances, the Stock Price shall be the arithmetic average of the Closing Prices Per Share of the Common Stock on the ten (10) Trading Days prior to, but not including, the Effective Date.

The following table shows what the Make-Whole Premium would be for various Stock Prices and Effective Dates set forth below, expressed as a percentage of the Principal Amount of the Securities.

MAKE-WHOLE PREMIUM TABLE
(% of Principal Amount)

Stock Price	Effective Date							
	April 13, 2005	November 15, 2005	November 15, 2006	November 15, 2007	November 15, 2008	November 15, 2009	November 15, 2010	November 15, 2011
\$13.58	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
\$16.17	7.86	6.89	5.32	4.18	3.04	0.25	0.00	0.00
\$19.40	22.80	21.54	19.17	16.71	14.03	10.54	6.54	0.00
\$22.63	21.80	20.39	17.69	14.73	11.32	7.30	2.28	0.00
\$25.87	21.21	19.72	16.85	13.67	10.01	5.75	0.63	0.00
\$29.10	20.87	19.33	16.37	13.08	9.33	5.05	0.16	0.00
\$32.34	20.66	19.09	16.09	12.76	8.99	4.74	0.01	0.00
\$35.57	20.53	18.95	15.93	12.58	8.81	4.60	0.00	0.00
\$38.80	20.45	18.86	15.83	12.47	8.72	4.55	0.00	0.00
\$42.04	20.39	18.80	15.77	12.41	8.67	4.52	0.00	0.00
\$45.27	20.35	18.76	15.73	12.38	8.64	4.51	0.00	0.00
\$48.50	20.33	18.74	15.71	12.36	8.63	4.51	0.00	0.00

If the Stock Price is between two Stock Price amounts listed on the Make-Whole Premium Table or the Effective Date is between two dates listed on the Make-Whole Premium Table, the Make-Whole Premium shall be determined by linear interpolation between the amounts set forth in the Make-Whole Premium Table for the higher and lower Stock Price amounts and the two dates, as applicable, based on a 365-day or 366-day year, as applicable. If the Stock Price on the Effective Date exceeds \$48.50 per share (subject to adjustment pursuant to Section 13.06), (the “**Stock Price Cap**”), the amount of the Make-Whole Premium will be equal to the Make-Whole Premium as if the Stock Price were \$48.50 (subject to adjustment pursuant to Section 13.06); and if the Stock Price on the Effective Date is less than or equal to \$13.58 per share (subject to adjustment pursuant to Section 13.06), (the “**Stock Price Threshold**”), no Make-Whole Premium will be paid. The Stock Prices set forth in the first column are subject to adjustment pursuant to Section 14.03.

(c) Subject to Section 14.01(d), the Company may pay the Make-Whole Premium in shares of Common Stock (other than cash paid in lieu of fractional shares), in cash, in the same form of consideration into which shares of Common Stock have been converted in connection with the applicable Fundamental Change or in any combination of the foregoing. The Fundamental Change Company Notice delivered pursuant to Section 11.06(b) in connection with the Fundamental Change shall state the percentage of any Make-Whole Premium, stated in total principal amount as if all Securities then Outstanding shall be converted or redeemed during the Fundamental Change Conversion/Repurchase Period, that will, subject to Section 14.01(d), be paid in shares of Common Stock (which indication shall be irrevocable). If holders of Common Stock have the right to elect the form of consideration received in a Fundamental Change, then, for purposes of the foregoing, the consideration into which a share of Common Stock has been converted shall be deemed to equal the same percentage of each form of consideration as encompasses the aggregate consideration distributed in respect of all shares of Common Stock participating in the distribution. Unless the Company gives notice to the contrary, the Make-Whole Premium shall, subject to Section 14.01(d), be paid in shares of Common Stock (or, if applicable, in the same form of consideration into which shares of Common Stock have been converted in connection with the applicable Fundamental Change).

If the Company elects, subject to Section 14.01(d), to pay all or any portion of the Make-Whole Premium in shares of Common Stock, the number of shares of Common Stock to be delivered as such payment shall equal the quotient of (x) the dollar amount of such Make-Whole Premium divided by (y) the Make-Whole Conversion Price. For purposes of this Agreement, the “**Make-Whole Conversion Price**” means the price computed as 98% of the arithmetic average of the Weighted Average Price of the Common Stock during each of the ten (10) Trading Days ending on the Trading Day immediately preceding the Effective Date. If the Company elects to pay the Make-Whole Premium in the same form of consideration used to pay for the shares of the Common Stock in connection with the applicable Fundamental Change, the value of the consideration to be delivered in respect of the Make-Whole Premium will be calculated as follows:

(i) securities that are traded on a United States national securities exchange or approved for quotation on the Nasdaq National Market, The Nasdaq Small Cap Market or any similar system of automated dissemination of quotations of securities prices

will be based on 98% of the arithmetic average of the Closing Price of such securities during each of the ten (10) Trading Days ending on the Trading Day immediately preceding the Effective Date (provided that any securities that are issuable as part of such consideration shall meet the conditions set forth in Section 14.01(d) as if such securities were “Common Stock” under that section);

(ii) other securities, assets or property (other than cash) will be valued on 98% of the arithmetic average of the fair market value of such securities, assets or property (other than cash) as determined by two independent nationally recognized investment banks selected by the Trustee; and

(iii) 100% of any cash.

If a Make-Whole Premium is required, the Company or the Trustee, at the expense of the Company, shall from time to time appoint an independent nationally recognized investment bank to serve as calculation agent with respect calculation of the Make-Whole Premium (the “**Calculation Agent**”). The Calculation Agent shall, on behalf and upon request by the Company or the Trustee, calculate (A) the Stock Price and (B) the Make-Whole Premium with respect to such Stock Price based on the Effective Date specified by the Company or the Trustee, and shall deliver its calculation of the Stock Price and the Make-Whole Premium to the Company and the Trustee within five (5) Business Days after the request by the Company or the Trustee. The Company, or at the Company’s request and expense, the Trustee in the name of the Company, (X) shall notify the Holders of the Stock Price and the estimated Make-Whole Premium per \$1,000 Principal Amount of Securities then Outstanding with respect to a Fundamental Change as part of the Fundamental Change Company Notice delivered in connection with a Fundamental Change in accordance with Section 11.06(b) or otherwise in accordance with the notice provisions of the Indenture and (Y) shall notify the Holders promptly upon the opening of business on the Effective Date of the number of shares of Common Stock or the amount of the cash payment (or, at the option of the Company, other securities, assets or property or cash into which all or substantially all of the shares of Common Stock have been converted as of the Effective Date as described above) to be delivered in respect of the Make-Whole Premium, if any, payable in connection with conversions or redemptions upon such Fundamental Change.

(d) Provided that the Company has timely given a Fundamental Change Company Notice containing all the information required under Section 11.06(b), the Company may elect to pay all or any portion of the Make-Whole Premium in shares of Common Stock if, and only if, the following conditions shall have been satisfied (or waived by the applicable Holder):

(i) from and after the delivery of the Fundamental Change Company Notice relating to the Make-Whole Premium through the payment of the Make-Whole Premium, (1) the shares of Common Stock to be issued in connection with the Make-Whole Premium are (x) either registered, approved and/or qualified, as applicable, or exempt from any such registration, approval and qualification, as applicable, under applicable federal and state securities laws such that such shares of Common Stock shall be, upon issue, validly issued and delivered in accordance with applicable federal and state securities laws and

not subject to any transfer restrictions under the Securities Act or other securities laws and (y) listed or quoted for trading on a United States national securities exchange or approved for quotation on the Nasdaq National Market, The Nasdaq Small Cap Market or any similar system of automated dissemination of quotations of securities; and (2) there shall be sufficient authorized but unissued (or issued but not outstanding) shares of Common Stock to issue the shares of Common Stock in connection with the Make-Whole Premium, and such shares of Common Stock will, upon issue, be duly and validly issued and fully paid and non-assessable and free of any preemptive or similar rights; and

(ii) the receipt by the Trustee of an (1) Officers' Certificate stating that the terms of the issuance of the shares of Common Stock are in conformity with this Indenture, (2) an Opinion of Counsel to the effect that the shares of Common Stock to be issued by the Company in payment of the Fundamental Change Conversion in respect of the Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of such Make-Whole Premium will be validly issued, fully paid and non-assessable and (3) an Officer's Certificate, stating that the conditions to the issuance of the shares of Common Stock have been satisfied.

In the event of a Fundamental Change where the Company is not the surviving entity, for each conversion by a Holder after the Effective Date, such Holder shall receive, in lieu of each share of Common Stock payable as part of the Make-Whole Premium, the consideration received in such Fundamental Change for each share of Common Stock (provided that any securities that are issuable as part of such consideration shall meet the conditions set forth in this Section 14.01(d) as if such securities were "Common Stock" under this section).

Promptly after determination of the actual number of shares of Common Stock to be issued in respect of the Make-Whole Premium, the Company shall publish a notice containing this information in a newspaper published in the English language, customarily published each Business Day and of general circulation in The City of New York or publish such information on the Company's web site or through such other public medium as the Company may use at that time.

Section 14.02 Payment of Make-Whole Premium. On or prior to 12:00 p.m. (New York City time) on the Fundamental Change Settlement Date, the Company will deposit with the Trustee or with one or more Paying Agents additional shares of Common Stock, cash and/or other assets or property sufficient to satisfy the entitlement of the Holders of Securities under Section 14.01. Payment of the entitlement pursuant to Section 14.01 to Holders of Securities surrendered for conversion or redemption during the Fundamental Change Conversion/Repurchase Period will be made promptly on the Fundamental Change Settlement Date, by delivering entitlements to securities, mailing checks in respect of cash and/or delivering other assets or property for the amount payable to the Holders of such Securities entitled thereto as they (and their addresses) shall appear in the Security Register. To the extent that the aggregate amount of shares of Common Stock, cash and/or other assets or property deposited by the Company pursuant to this Section exceeds the aggregate entitlement of the Holders of Securities under Section 14.01 that are converted or redeemed in respect of the Fundamental Change and are entitled to receive the Make-Whole Premium, then, promptly after the Fundamental Change Settlement Date, the Paying Agent shall return any such excess to the Company.

Section 14.03 Adjustment to the Make-Whole Premium. Whenever the Conversion Price shall be adjusted from time to time by the Company pursuant to Section 13.06, the Stock Price Threshold and the Stock Price Cap shall be adjusted, and each of the Stock Prices set forth in the Make-Whole Premium Table shall be adjusted, by multiplying each such amount by a fraction the numerator of which is the Conversion Price as so adjusted and the denominator of which is the Conversion Price immediately prior to such adjustment.

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

VECTOR GROUP LTD.

By: /s/ Richard J. Lampen

Name: Richard J. Lampen

Title: Executive Vice President

WELLS FARGO BANK, N.A., as Trustee

By: /s/ Joseph P. O'Donnell

Name: Joseph P. O'Donnell

Title: Assistant Vice President

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EXHIBIT A

FORM OF FACE OF SECURITY

PURSUANT TO SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT. TO OBTAIN (I) THE ISSUE PRICE, (II) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, (III) THE ISSUE DATE, (IV) THE YIELD TO MATURITY, (V) COMPARABLE YIELD, OR (VI) PROJECTED PAYMENT SCHEDULE; CONTACT WELLS FARGO BANK, NATIONAL ASSOCIATION, SIXTH & MARQUETTE, N9303-120, MINNEAPOLIS, MN 55479; ATTENTION: CORPORATE TRUST SERVICES.

[INCLUDE IF SECURITY IS A RESTRICTED SECURITY — THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS A NON-U.S. PURCHASER AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR (C) IT IS AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF SUBPARAGRAPH (a)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF VECTOR GROUP LTD. THAT (A) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THIS SECURITY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY TO (I) VECTOR GROUP LTD. OR ANY SUBSIDIARY THEREOF, (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (IV) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (V) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF SUBPARAGRAPH (a)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL

ACCREDITED INVESTOR, (VI) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (VII) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY OF THE RESALE RESTRICTIONS REFERRED TO IN CLAUSE (A) ABOVE. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS SECURITY PURSUANT TO CLAUSE (A)(VII) ABOVE OR UPON ANY TRANSFER OF THIS SECURITY UNDER RULE 144(K) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER THE TRANSFER OF THIS SECURITY IN VIOLATION OF THE FOREGOING RESTRICTION.

[INCLUDE IF SECURITY IS A GLOBAL SECURITY — THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

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

Vector Group Ltd.

5% Variable Interest Senior Convertible Notes due 2011

CUSIP NO. _____

U.S. \$[]

Vector Group Ltd., a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the “**Company**”), which term includes any successor corporation under the Indenture referred to on the reverse hereof, for value received hereby promises to pay to [], or registered assigns, the principal sum of [] United States Dollars (\$) [INCLUDE IF SECURITY IS A GLOBAL SECURITY — (which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary)] on November 15, 2011 and to pay interest on said principal sum quarterly on February 15, May 15, August 15 and November 15 of each year commencing May 15, 2005 at the rate of 5% per annum plus additional amounts, if any, as provided on the reverse hereof (subject to adjustment and for the period ending on and including November 15, 2006 a minimum rate of 6 3/4% per annum as set forth on the reverse hereto) to Holders of record on the immediately preceding February 1, May 1, August 1 and November 1 which interest has been paid, or if no interest has been paid, from April 13, 2005 until the Principal Amount is paid or duly made available for payment. On each February 15, May 15, August 15 and November 15, an additional sum shall be payable as interest on each Security equal to the product of (i) the number of shares of Common Stock into which such Security was convertible on the immediately preceding February 1, May 1, August 1 and November 1 for such Interest Payment Date (without regard to the Conversion Limitation) and (ii) the cash dividends or cash distributions paid by the Company in cash per share of Common Stock paid during the three-month period ending on immediately preceding February 1, May 1, August 1, and November 1. Except as otherwise provided in the Indenture, the interest payable on this Security pursuant to the Indenture on any February 15, May 15, August 15 and November 15 will be paid to the Person in whose name this Security (or one or more predecessor Securities) is registered at the close of business on the Record Date, which shall be February 1, May 1, August 1 and November 1 (whether or not a Business Day) next preceding such February 15, May 15, August 15 and November 15 respectively. Payment of the principal of and interest accrued on this Security shall be made by check mailed to the address of the Holder of this Security specified in the register of Securities, or, upon written application by a Holder of an aggregate Principal Amount of Securities in excess of U.S. \$2 million to the Security Registrar setting forth wire instructions not later than ten days prior to the relevant payment date, such Holder may receive payment by wire transfer in immediately available funds, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

The Issue Date of this Security is April 13, 2005.

Reference is made to the further provisions of this Security set forth on the reverse hereof, including, without limitation, provisions giving Holder of the Security the right to require redemption of this Security on November 15, 2009, the right to convert this Security into Common Stock of the Company and the right of the Holder of this Security to require the Company to repurchase this Security and upon certain events, in each case, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place. Capitalized terms used but not defined herein shall have such meanings as are ascribed to such terms in the Indenture.

This Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State.

This Security shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

VECTOR GROUP LTD.

By: _____
Authorized Signatory

EXHIBIT B

FORM OF REVERSE OF SECURITY

This Security is one of a duly authorized issue of Securities of the Company, designated as its 5% Variable Interest Senior Convertible Notes due 2011 (the “**Securities**”), all issued or to be issued under and pursuant to an Indenture, dated as of April 13, 2005 (the “**Indenture**”), between the Company and Wells Fargo Bank, N.A., as trustee (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities.

The indebtedness evidenced by the Securities is unsecured and unsubordinated senior indebtedness of the Company and shall rank equally with the Company’s other unsecured and unsubordinated indebtedness. The Company will not incur or issue any subordinated indebtedness unless such indebtedness is unsecured and subordinated to the Securities on terms no less favorable than those applicable to senior indebtedness which constitutes Designated Senior Indebtedness under the 2001 Indenture. The Securities constitute “Senior Indebtedness” and the Company has designated the Securities as “Designated Senior Indebtedness”, in each case under the 2001 Indenture.

1. Interest Rate. Interest on the Securities shall be payable quarterly in arrears on each Interest Payment Date to Holders of record on the Record Date immediately preceding such Interest Payment Date. Interest on the Securities shall accrue at a rate of 5% per annum. On each Interest Payment Date, an additional sum shall be payable as interest on each Security equal to the product of (i) the number of shares of Common Stock into which such Security was convertible on the Record Date for such Interest Payment Date (without regard to the Conversion Limitation) and (ii) the cash dividends or cash distributions, whether periodic, special, extraordinary, non-recurring or other, paid by the Company in cash per share of Common Stock during the three-month period ending on such Record Date (all such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other transaction during the applicable calculation period). Notwithstanding the foregoing, during the period from April 13, 2005 to and including November 15, 2006, interest on the Securities shall accrue at the rate of 6.75% per annum if such rate would produce a greater amount of interest payable on any Interest Payment Date which includes any portion of such period than would result under the first four sentences of this paragraph 1. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Interest on the Securities shall accrue from the most recent date to which interest has been paid, or if no interest has been paid, from the Original Issue Date, until the Principal Amount is paid or duly made available for payment.

2. Redemption Right of the Holder. No sinking fund is provided for the Securities. The Company shall have no right at its option to redeem the Securities at any time prior to the Stated Maturity. Subject to the terms and conditions of the Indenture, the Company shall redeem prior to the Stated Maturity any Securities which Holders elect for redemption in accordance with the Indenture on the Redemption Date. Each Holder making an election shall, by notice given in accordance with the terms of the Indenture, have the right to have its Securities redeemed by the Company, in whole or in part, on the Redemption Date at the Redemption Price; provided, however, that each Holder must redeem on the Redemption Date an amount equal to such Holder's Minimum Redemption Amount.
3. Applicable High Yield Discount Obligation. Notwithstanding the preceding paragraph 2, if the sum of each Holder's total Minimum Redemption Amount would, but for this provision, exceed the Maximum Accrual, then all accrued and unpaid interest, and if necessary the principal amount of the Securities, in excess of an amount equal to the Maximum Accrual shall be paid in cash by the Company to the Holders on the Redemption Date and at the end of any accrual period thereafter (as defined in section 1272(a)(5) of the Code) to prevent the Securities from being treated as an "Applicable High Yield Discount Obligation" within the meaning of section 163(i)(1) of the Code.
4. Repurchase by the Company at the Option of the Holder Upon a Fundamental Change. Subject to the terms and conditions of the Indenture, the Company shall become obligated, at the option of the Holder, to repurchase the Securities if a Fundamental Change occurs at any time prior to the Stated Maturity at the Fundamental Change Repurchase Price, (which Fundamental Change Repurchase Price will be paid in cash) plus any Make-Whole Premium required by the terms of the Indenture on the Fundamental Change Settlement Date.
5. Withdrawal of Fundamental Change Repurchase Notice. Holders have the right to withdraw, in whole or in part, any Fundamental Change Repurchase Notice, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.
6. Payment of Redemption Price and Fundamental Change Repurchase Price. If cash sufficient to pay the Redemption Price or Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms of the Indenture), as the case may be, of all Securities or portions thereof to be redeemed or repurchased on the Redemption Date or on a Fundamental Change Settlement Date, as the case may be, is deposited with the Paying Agent on the Business Day prior to the Redemption Date or the Fundamental Change Settlement Date, as the case may be, the Securities to be redeemed or repurchased will cease to be outstanding and

interest and Registration Default Payments, if any, will cease to accrue on such Securities (or portions thereof) immediately after such Redemption Date or Fundamental Change Settlement Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the Redemption Price or Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms of the Indenture), as the case may be, upon surrender of such Security).

7. **Conversion.** Subject to the terms and conditions of the Indenture, at any time or times after the Issue Date, a Holder of a Security may convert the Principal Amount of such Security (or any portion thereof) into _____ shares of the Company's common stock at the Conversion Price. The Conversion Price in effect at any given time is subject to adjustment. A Holder may convert fewer than all of such Holder's Securities so long as the Securities converted are an integral multiple of \$1,000 Principal Amount. Holders converting any Securities or portions thereof shall be entitled to receive any accrued and unpaid interest on the Principal Amount being converted as of the Conversion Date to the extent provided for in the Indenture. If the Conversion Date occurs between the close of business on the Record Date and the opening of business on the immediately following Interest Payment Date, the Company shall pay to the applicable Holder in cash, on such Interest Payment Date, an amount equal to the accrued and unpaid interest through the Conversion Date on the Principal Amount of Securities such Holder is converting; provided, however, if the Company pays such Holder on such Interest Payment Date an amount equal to the interest otherwise payable to such Holder as if such Holder had not converted any Security or portion thereof prior to such Interest Payment Date, such Holder shall promptly pay to the Company an amount equal to the difference between (1) such interest payment received and (2) the amount of accrued and unpaid interest through the Conversion Date for the Principal Amount converted by such Holder.

[INCLUDE IF SECURITY IS A GLOBAL SECURITY — In the event of a deposit or withdrawal of an interest in this Security, including an exchange, transfer, repurchase or conversion of this Security in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the rules and procedures of the Depositary.]

[INCLUDE IF SECURITY IS A RESTRICTED SECURITY — Subject to certain limitations in the Indenture, at any time when the Company is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), upon the request of a Holder or any beneficial owner of a Restricted Security or holder or beneficial owner of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) and any reports required to be filed by them under the Exchange Act or Securities Act (as defined below) to such Holder or any beneficial owner of Restricted Securities, or holder or beneficial owner of shares of Common Stock issued upon conversion thereof, or to a prospective purchaser of any such

security designated by any such holder, as the case may be, to the extent required to permit compliance by any such Holder with Rule 144A under the Securities Act of 1933, as amended (the “**Securities Act**”) in connection with the resale of any such security. “**Rule 144A Information**” shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).]

If an Event of Default shall occur and be continuing, the Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, through such date on all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Majority Holders. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate Principal Amount of the Securities then Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of any provision of or applicable to this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities, the Holders of not less than 25% in aggregate Principal Amount of the Securities then Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity satisfactory to it, the Trustee shall not have received from the Majority Holders a direction inconsistent with such request, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of said principal hereof or interest hereon on or after the respective due dates expressed herein or for the enforcement of any conversion right.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount, the Redemption Price or Fundamental Change Repurchase Price (plus any Make-Whole Premium required by the terms of the Indenture) of or interest and Registration Default Payments, if any, on, this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security

for registration of transfer at the office or agency of the Company in The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form in denominations of \$1,000 and any integral multiple of \$1,000 above that amount, as provided in the Indenture and subject to certain limitations therein set forth. Securities are exchangeable for a like aggregate Principal Amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

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

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

This Security shall be governed by and construed in accordance with the laws of the State of New York.

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

ASSIGNMENT FORM

If you want to assign this Security, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Security to:

(Print or type name, address and zip code and social security or tax ID number of assignee)

and irrevocably appoint

agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date:

Signed: _____

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____

Note: Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

In connection with any transfer of this Security occurring prior to the date which is the earlier of (i) the date of the declaration by the Commission of the effectiveness of a registration statement under the Securities Act, as amended (the "Securities Act"), covering resales of this Security (which effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) the second anniversary of the Issue Date set forth on the face of this Security, the undersigned confirms that this Security is being transferred:

Check One

- (1) ___ to the Company or a Subsidiary thereof; or
- (2) ___ to a "Qualified Institutional Buyer" pursuant to and in compliance with Rule 144A under the Securities Act; or
- (3) ___ to an institutional accredited investor, as described in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act; or
- (4) ___ pursuant to an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act; or
- (5) ___ pursuant to another available exemption from the registration requirement of the Securities Act.

Unless one of the above boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof, provided that the Company may require, prior to registering any such transfer of the Securities, in its sole discretion, such legal opinions, certifications and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Security Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 3.11 of the Indenture shall have been satisfied.

Date:

Signed: _____

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

NOTICE OF CONVERSION

If you want to convert this Security into Common Stock of the Company, check the box:

To convert only part of this Security, state the Principal Amount to be converted (which must be \$1,000 or an integral multiple of \$1,000):

\$ _____

If you want the stock certificate made out in another person's name, fill in the form below:

(Insert other person's social security or tax ID no.)

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

Account Number: _____
(if electronic book entry transfer)

Transaction Code Number: _____
(if electronic book entry transfer)

Notwithstanding anything to the contrary contained herein, this Notice of Conversion shall constitute a representation by the holder of the Security submitting this Notice of Conversion that, after giving effect to the conversion provided for in this Notice of Conversion, such holder (together with its affiliates) will not have beneficial ownership (together with the beneficial ownership of such Person's affiliates) of a number of shares of Common Stock which exceeds the maximum percentage of the total outstanding shares of Common Stock as determined pursuant to the provisions of Section 13.02(i) of the Indenture.

Date: _____

Signed: _____

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT C

FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Wells Fargo Bank, N.A., as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture.

Date:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Authorized Signatory

C-1

EXHIBIT D

FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

, 20

Attention:

Re: Vector Group Ltd. (the “**Company**”)

5% Variable Interest Senior Convertible Notes Due 2011

This is a Fundamental Change Repurchase Notice as defined in Section 11.06 of the Indenture dated as of April 13, 2005 (the “**Indenture**”) between the Company and Wells Fargo Bank, N.A., as Trustee. Terms used but not defined herein shall have the meanings ascribed to them in the Indenture.

Certificate No(s). of Securities:

I intend to deliver the following aggregate Principal Amount of Securities for purchase by the Company pursuant to Section 11.06 of the Indenture (in multiples of \$1,000):

\$

I hereby agree that the Securities will be purchased as of the Fundamental Change Settlement Date pursuant to the terms and conditions thereof and of the Indenture.

Signed: _____

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of April 13, 2005, by and between Vector Group Ltd., a Delaware corporation, with headquarters located at 100 S.E. Second Street, Miami, FL 33131 (the “**Company**”), and Jefferies & Company, Inc., with an office at 11100 Santa Monica Boulevard, 10th Floor, Los Angeles, CA 90025 (the “**Initial Purchaser**”).

WHEREAS:

A. The Company has authorized the issuance of up to \$30,000,000 principal amount of its 5.0% Variable Interest Senior Convertible Notes due 2011 to be issued pursuant to an Indenture, dated as of the date hereof, between the Company and Wells Fargo Bank, N.A., as Trustee (as the same may be amended from time to time, the “**Indenture**”), which will, among other things, be convertible into shares of the Company’s common stock, par value \$0.10 per share (as converted, the “**Conversion Shares**”), in accordance with the terms of the Notes and the Indenture.

B. In connection with the Purchase Agreement, dated as of March 30, 2005, by and between the Company and the Initial Purchaser (the “**Purchase Agreement**”), the Company (i) agreed to issue and sell to the Initial Purchaser an aggregate of \$25,000,000 principal amount of its 5.0% Variable Interest Senior Convertible Notes due 2011 (the “**Firm Notes**”) and (ii) granted the Initial Purchaser an option to purchase up to an additional \$5,000,000 principal amount of its 5.0% Variable Interest Senior Convertible Notes due 2011 (the “**Option Notes**”, and together with the Firm Notes, the “**Notes**”), in each case, upon the terms and subject to the conditions set forth in the Purchase Agreement.

C. Pursuant to a letter dated March 31, 2005, the Initial Purchaser notified the Company of its election to exercise the option to purchase the Option Notes in full.

D. To induce the Initial Purchaser to execute and deliver the Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “**1933 Act**”), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company agrees with the Initial Purchaser, (i) for the benefit of the Initial Purchaser and (ii) for the benefit of each Holder, as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“1934 Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person whether through the ownership of voting securities or by agreement or otherwise.

“Business Day” means any day other than Saturday, Sunday or any other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

“Closing Date” means the date of the closing of the sale of the Notes as contemplated by the Purchase Agreement.

“Common Stock” means the common stock, par value \$0.10 per share, of the Company, as it exists on the date of this Agreement and any other shares of capital stock or other securities of the Company into which such Common Stock may be reclassified or changed, together with any and all other securities which may from time to time be issuable upon conversion of Notes.

“Company” has the meaning set forth in the preamble of this Agreement.

“Conversion Shares” has the meaning set forth in the recitals hereto.

“Effective Date” means the date the Registration Statement has been declared effective by the SEC.

“Firm Notes” has the meaning set forth in the recitals hereto.

“Holder” means a Person (including the Initial Purchaser) who is a holder or beneficial owner from time to time of any Notes or Conversion Shares; *provided*, that, unless otherwise expressly stated herein, only registered holders of Notes or Conversion Shares shall be counted for purposes of calculating any proportion of holders entitled to take any action or give notice pursuant to this Agreement.

“Holder Information,” with respect to any Holder, means information with respect to such Holder required to be included in any Shelf Registration Statement or the related Prospectus pursuant to the 1933 Act and which information is included therein in reliance upon and in conformity with information furnished to the Company in writing by such Holder specifically for inclusion therein.

“Indenture” has the meaning set forth in the recitals hereto.

“Initial Purchaser” has the meaning set forth in the preamble of this Agreement.

“**Legal Counsel**” means one firm or counsel designated by the Company (and reasonably acceptable to the Initial Purchaser acting on behalf of the Holders) to act as counsel for the Holders in connection therewith, which firm shall be Latham & Watkins LLP.

“**Losses**” has the meaning set forth in Section 5(d) hereof.

“**Majority Holders**” means the Holders of a majority of the then outstanding aggregate principal amount of Notes being registered under a Shelf Registration Statement; *provided*, that Holders of the shares of Common Stock issued upon conversion of Notes shall be deemed to be Holders of the aggregate principal amount of Notes from which such Common Stock was converted; and *provided, further*, that Notes or shares of Common Stock which have been sold or otherwise transferred pursuant to the Shelf Registration Statement shall not be included in the calculation of Majority Holders.

“**NASD**” means the NASD, Inc.

“**Notes**” has the meaning set forth in the recitals hereto.

“**Notice and Questionnaire**” means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex B to the Final Offering Circular of the Company dated March 30, 2005 relating to the Notes.

“**Notice Holder**” means any Holder of Transfer Restricted Securities that has delivered a properly completed and signed Notice and Questionnaire to the Company in accordance with Section 2(b) hereof.

“**Option Notes**” has the meaning set forth in the recitals hereto.

“**Person**” has the meaning set forth in the Indenture.

“**Post-Effective Amendment**” has the meaning set forth in Section 2(b)(ii) of this Agreement.

“**Prospectus**” means the prospectus included in any Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the 1933 Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Notes or the Conversion Shares covered by such Shelf Registration Statement, and all amendments and supplements to such prospectus, including all documents incorporated or deemed to be incorporated by reference in such prospectus.

“**Purchase Agreement**” has the meaning set forth in the recitals hereto.

“**Questionnaire Deadline**” has the meaning set forth in Section 2(b) hereof.

“**Record Holder**” means, with respect to a Registration Default Payments Payment Date, each Person who is registered on the books of the registrar as the holder of Notes

at the close of business on the February 1, May 1, August 1 and November 1, as applicable, immediately preceding such Registration Default Payments Payment Date.

“**Registration Default**” has the meaning set forth in Section 2(e) hereof.

“**Registration Default Payments**” has the meaning set forth in Section 2(e) hereof.

“**Registration Default Payments Payment Date**” means each February 15, May 15, August 15 and November 15.

“**Rule 144**” means Rule 144 under the 1933 Act (or any successor provision promulgated by the SEC).

“**Rule 144A**” means Rule 144A under the 1933 Act (or any successor provision promulgated by the SEC).

“**Rule 144(k)**” means Rule 144(k) under the 1933 Act (or any successor provision promulgated by the SEC).

“**Rule 415**” means Rule 415 under the 1933 Act (or any successor provision promulgated by the SEC).

“**SEC**” means the Securities and Exchange Commission.

“**Shelf Registration**” means a registration effected pursuant to Section 2 hereof.

“**Shelf Registration Period**” has the meaning set forth in Section 2(c) hereof.

“**Shelf Registration Statement**” means any “shelf” registration statement of the Company filed pursuant to the provisions of Section 2 hereof which covers the Transfer Restricted Securities on Form S-3 or on another appropriate form (as determined by the Company) for an offering to be made on a delayed or continuous basis pursuant to Rule 415 and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all documents incorporated or deemed to be incorporated by reference therein.

“**Suspension Period**” has the meaning set forth in Section 2(d) hereof.

“**Transfer Restricted Securities**” means each Note and each Conversion Share issuable upon conversion thereof (and any security issued with respect thereto upon any stock dividend, split or similar event) until the earliest of the date on which such Note or Conversion Share, or any security issued with respect thereto upon any stock dividend, split or similar event, as the case may be: (i) has been transferred pursuant to a Shelf Registration Statement or another registration statement covering such Note or Conversion Share which has been filed with the SEC pursuant to the 1933 Act, in either case after such registration statement has become effective and while such registration statement is effective under the 1933 Act; (ii) has been transferred pursuant to Rule 144; (iii) may be sold or transferred pursuant to Rule 144(k); or

(iv) ceases to be outstanding. Notwithstanding the foregoing, each Note and each Conversion Share issuable upon conversion thereof (and any security issued with respect thereto upon any stock dividend, split or similar event) that has not previously ceased to be a Transfer Restricted Security pursuant to the previous sentence shall cease to be a Transfer Restricted Security on the date that is two (2) years after the later of the Closing Date.

“**Trustee**” means the trustee with respect to the Notes under the Indenture.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included,” or “stated” in the Shelf Registration Statement, any preliminary Prospectus or Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information incorporated or deemed to be incorporated by reference in such Shelf Registration Statement, preliminary Prospectus or Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Shelf Registration Statement, any preliminary Prospectus or Prospectus shall be deemed to mean and include any document filed with the SEC under the 1934 Act, after the date of such Shelf Registration Statement, preliminary Prospectus or Prospectus, as the case may be, which is incorporated or deemed to be incorporated by reference therein.

2. Shelf Registration Statement.

a. The Company shall, at its expense, prepare and file with the SEC within 60 days following the Closing Date a Shelf Registration Statement with respect to resales of the Transfer Restricted Securities by the Holders from time to time on a delayed or continuous basis pursuant to Rule 415 and in accordance with the methods of distribution set forth in such Shelf Registration Statement, and thereafter shall use its reasonable best efforts to cause such Shelf Registration Statement to be declared effective under the 1933 Act within 180 days after the Closing Date. The Company shall supplement or amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for the Shelf Registration Statement, or by the 1933 Act, the 1934 Act or the SEC.

b. (i) The Company shall name each Holder that delivers a properly completed and signed Notice and Questionnaire to the Company as a selling Note holder in the Shelf Registration Statement. A Holder of Transfer Restricted Securities may include such securities in the Shelf Registration Statement only if the Holder sends by first-class registered mail or by courier with delivery confirmation, a properly completed Notice and Questionnaire to the Company. The Company shall deliver the Notice and Questionnaire to the Initial Purchaser within five (5) Business Days of the Closing Date. In order to be included in the Shelf Registration Statement at the time of its effectiveness, the Notice and Questionnaire must be sent on or prior to the 10th Business Day after the date the Notice and Questionnaire is deemed to have been given in accordance with Section 6(c) hereof (or, in the case of a Holder that is a transferee of Transfer Restricted Securities, on or prior to the earlier of (x) the 20th Business Day after the completion of the transfer of Transfer Restricted Securities to the transferee and (y) 9:00 a.m., New York time, on the fifth Business Day prior to initial effectiveness of the Shelf Registration Statement) (in any case, the “**Questionnaire Deadline**”). The Company agrees and undertakes that it shall distribute a Notice and Questionnaire (A) no later than 30 Business Days

prior to the expected effectiveness of the Shelf Registration Statement to each Holder in accordance with Section 6(c) hereof, and (B) in the case of a Holder that is a transferee of Transfer Restricted Securities, upon the request of such transferee Holder given in accordance with Section 6(c) hereof, to such Holder at the address set forth in such request.

(ii) Following the effectiveness of the Shelf Registration Statement, upon receipt of a completed Notice and Questionnaire from a Holder, the Company will, as promptly as practicable, but in any event within ten (10) Business Days after its receipt thereof, file any supplements to the related Prospectus or file any post-effective amendment to the Shelf Registration Statement that is required by applicable law to cause a Holder to be named as a selling securityholder in the Shelf Registration Statement and permit such Holder to deliver the Prospectus to purchasers of Transfer Restricted Securities (a **“Post-Effective Amendment”**) (subject to the right of the Company to suspend the use of the Prospectus as described in Section 2(d) hereof); *provided, however*, that (x) if a supplement to the related Prospectus is required to permit the Holder (or other Holders not included in the Shelf Registration Statement upon effectiveness) to deliver the Prospectus to purchasers of Transfer Restricted Securities, the Company shall not be required to file more than one (1) such supplement during any twenty (20) day period and (y) if a Post-Effective Amendment to the Shelf Registration Statement is required to permit the Holder (or other Holders not included in the Shelf Registration Statement upon effectiveness) to deliver the Prospectus to purchasers of Transfer Restricted Securities, the Company shall not be required to file more than one (1) Post-Effective Amendment to the Shelf Registration Statement in any sixty (60) day period. The Company shall use its reasonable best efforts to cause any such Post-Effective Amendment to become effective under the 1933 Act as promptly as is practicable; *provided*, that if a Notice and Questionnaire is delivered to the Company during a Suspension Period, the Company shall not be obligated to amend the Shelf Registration Statement or supplement the Prospectus until the termination of such Suspension Period.

(iii) Each Holder as to which the Shelf Registration Statement is being effected shall furnish promptly to the Company (x) such other information as the Company may reasonably request for use in connection with the Shelf Registration Statement or Prospectus or in any application to be filed with or under state securities laws and (y) all information required to be disclosed in order to make the information previously furnished to the Company by such Holder not misleading.

c. The Company shall use its reasonable best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended under the 1933 Act in order to permit the Prospectus forming a part thereof to be usable, subject to Section 2(d) hereof, by all Notice Holders until the earliest to occur of: (i) the last date on which, in the opinion of counsel to the Company, the holding period applicable to sales of all Transfer Restricted Securities under Rule 144(k) has expired; (ii) the date as of which all Transfer Restricted Securities have been transferred under Rule 144 under circumstances in which any legend borne by such Notes or Conversion Shares relating to restrictions on transferability thereof, under the 1933 Act or otherwise, is removed; and (iii) such date as of which all Transfer Restricted Securities have been sold pursuant to the Shelf Registration Statement after such registration statement has become effective and while such registration statement is effective under the 1933 Act (in any such case, such period being called the **“Shelf Registration Period”**). The

Company will, in order to fulfill its obligations and this Section 2(c): (x) subject to Section 2(b)(ii) and 2(d), use its reasonable best efforts to prepare and file with the SEC such amendments and Post-Effective Amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement continuously effective for the Shelf Registration Period; (y) subject to Section 2(b)(ii) and 2(d), cause the related Prospectus to be supplemented by any required supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the 1933 Act; and (z) comply in all material respects with the provisions of the 1933 Act with respect to the disposition of all Transfer Restricted Securities covered by the Shelf Registration Statement during the Shelf Registration Period.

d. The Company may suspend the availability of any Shelf Registration Statement and the use of any Prospectus (the period during which the availability of any Shelf Registration Statement and any Prospectus may be suspended herein referred to as the “**Suspension Period**”), without incurring any obligation to pay Registration Default Payments pursuant to Section 2(e), for a period not to exceed: (i) 30 consecutive days at any one time; (ii) 45 days in the aggregate in any three-month period; or (iii) 90 days in the aggregate during any 12-month period, in each case, only for valid business reasons, to be determined in good faith by the Company in its reasonable judgment (which shall not include the avoidance of the Company’s obligations hereunder), including, without limitation, the acquisition or divestiture of assets, pending corporate developments, events listed in Section 3(c), public filings with the SEC and similar events; *provided*, that the Company promptly thereafter complies with the requirements of Section 3(j) hereof, if applicable, and *provided, further*, that, if a Post-Effective Amendment is required by applicable law to cause a Holder to be named as a selling securityholder in the Shelf Registration Statement, the period of time between the filing and the effectiveness of any Post-Effective Amendment shall be not deemed to be a Suspension Period hereunder. The first day of any Suspension Period must be at least two (2) trading days after the last day of any prior Suspension Period.

e. The Company and the Initial Purchaser agree that the Holders of Transfer Restricted Securities will suffer damages, and it would not be feasible to ascertain the extent of such damages with precision, if the Company fails to fulfill its obligations under Section 2 hereof. Accordingly, if: (i) the Shelf Registration Statement is not filed with the SEC on or within 60 days after the Closing Date; (ii) the Shelf Registration Statement has not been declared effective by the SEC within 180 days after the Closing Date; or (iii) the Shelf Registration Statement is filed and declared effective but shall thereafter cease to be effective (without being succeeded within three (3) Business Days by a replacement Shelf Registration Statement filed and declared effective) or usable (including as a result of a Suspension Period) for the offer and sale of Transfer Restricted Securities for a period of time (including any Suspension Period) which exceeds: (x) 30 consecutive days at any time; (y) 45 days in the aggregate in any three-month period; or (z) 90 days in the aggregate in any 12-month period (each such event referred to in clauses (i) through (iii), a “**Registration Default**”), *provided*, that any suspension of the Shelf Registration Statement as a result of the time required by the SEC to declare effective a Post-Effective Amendment to the Shelf Registration Statement in connection with the Company’s obligation to file such an amendment pursuant to Section 2(b)(ii) hereof shall not be included in the calculation of a Registration Default; the Company shall pay to each Notice Holder (who is also a Record Holder), as liquidated damages and not as a penalty, during

any period in which a Registration Default has occurred or is continuing, as partial relief (which remedy shall not be exclusive of any other remedies available at law or in equity), in an amount (the “**Registration Default Payments**”) equal to: (i) one-half of one percent (50 basis points) per annum per \$1,000 principal amount of Notes constituting Transfer Restricted Securities for the period up to and including the 90th day during which such Registration Default has occurred and is continuing; and (ii) one percent (100 basis points) per annum per \$1,000 principal amount of Notes constituting Transfer Restricted Securities for the period including and subsequent to the 91st day during which such Registration Default has occurred and is continuing, it being understood that all calculations pursuant to this and the preceding sentence shall be carried out to five decimal places. Following the cure of all Registration Defaults, Registration Default Payments will cease to accrue with respect to such Registration Defaults. All accrued Registration Default Payments shall be paid by the Company on each Registration Default Payments Payment Date in cash to the date of such cure and Registration Default Payments will be calculated on the basis of a 360-day year consisting of twelve 30-day months. The rate of accrual of the Registration Default Payments with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Registration Defaults. The parties hereto agree that the Registration Default Payments provided in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by Holders by reason of a Registration Default and that such Registration Default Payments are the only monetary damages available to Holders in the event of a Registration Default. Notwithstanding anything in the Agreement to the contrary, Registration Default Payments shall only be payable to Notice Holders.

f. All of the Company’s obligations (including, without limitation, the obligation to pay Registration Default Payments) set forth in the preceding paragraph which are outstanding or exist with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such security shall have been satisfied in full. Notwithstanding the foregoing, no Registration Default Payments shall accrue as to any Transfer Restricted Security from and after the earlier of: (i) the date such security is no longer a Transfer Restricted Security; and (ii) the expiration of the Shelf Registration Period.

g. Immediately upon the occurrence or the termination of a Registration Default, the Company shall give the Trustee, so long as the Notes that are Transfer Restricted Securities remain outstanding, notice of such commencement or termination of the obligation to pay Registration Default Payments with regard to such Notes, and the amount thereof and of the nature of the default giving rise to such commencement or the event giving rise to such termination, as the case may be (such notice to be contained in an Officer’s Certificate (as such term is defined in the Indenture)), and prior to receipt of such Officer’s Certificate the Trustee and the transfer and paying agent shall be entitled to assume that no such commencement or termination has occurred, as the case may be.

3. Registration Procedures.

In connection with any Shelf Registration Statement, the following provisions shall apply:

a. The Company shall: (i) furnish to the Initial Purchaser within a reasonable period of time, but in any event within four (4) Business Days prior to the filing thereof with the SEC to afford the Initial Purchaser a reasonable opportunity for review, a copy of each Shelf Registration Statement, and each amendment thereof, and a copy of each Prospectus, and each amendment or supplement thereto (excluding amendments caused by the filing of a report under the 1934 Act), and shall reflect in each such document, when so filed with the SEC, such comments as the Initial Purchaser, any Notice Holder and/or the Legal Counsel may reasonably propose therein; and (ii) include information regarding the Notice Holders and the methods of distribution they have elected for their Transfer Restricted Securities provided to the Company in Notice and Questionnaires as necessary to permit such distribution by the methods specified therein.

b. Subject to Section 2(d), the Company shall ensure that: (i) any Shelf Registration Statement and any amendment thereto and any Prospectus forming a part thereof and any amendment or supplement thereto comply as to form in all material respects with the 1933 Act and the rules and regulations thereunder; (ii) any Shelf Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (iii) any Prospectus forming a part of any Shelf Registration Statement, and any amendment or supplement to such Prospectus, does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, that the Company makes no representation with respect to any Holder Information.

c. The Company, as promptly as reasonably practicable (but in any event within two (2) Business Days), shall notify the Initial Purchaser and each Notice Holder:

(i) When a Shelf Registration Statement or any Post-Effective Amendment thereto or any Prospectus or any supplement thereto has been filed with the SEC and when the Shelf Registration Statement or any Post-Effective Amendment thereto has become effective which notice and confirmation can be made at the election of the Company by making a public announcement thereof by release made to Reuters Economic Services and Bloomberg Business News;

(ii) of any request, following effectiveness of the Shelf Registration Statement under the 1933 Act, by the SEC or any other federal or state governmental authority for amendments or supplements to the Shelf Registration Statement or the Prospectus or for additional information (other than any such request relating to a review of the Company's 1934 Act filings);

(iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of the Shelf Registration Statement or of any order preventing or suspending the use of any Prospectus or the initiation or threat of any proceedings for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of the Transfer Restricted Securities included in any Shelf Registration Statement for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(v) of the occurrence of, but not the nature of or details concerning, any event or the existence of any condition that requires the making of any changes in the Shelf Registration Statement or the Prospectus or any document incorporated by reference therein so that, as of such date, the statements therein are not misleading and the Shelf Registration Statement or the Prospectus or any document incorporated by reference therein, as the case may be, does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading;

(vi) of the Company's determination that a Post-Effective Amendment to the Shelf Registration Statement is necessary (other than a Post-Effective Amendment pursuant to Section 2(b)(ii)); and

(vii) of the commencement (including as a result of any of the events or circumstances described in paragraph (ii) above) and termination of any Suspension Period.

d. The Company shall use its reasonable best efforts to obtain: (i) the withdrawal of any order suspending the effectiveness of any Shelf Registration Statement and the use of any related Prospectus; and (ii) the lifting of any suspension of the qualification (or exemption from qualification) of any of the Transfer Restricted Securities for offer or sale in any jurisdiction in which they have been qualified for sale, in each case, at the earliest possible time, and shall provide notice to each Notice Holder and the Initial Purchaser of the withdrawal of any such orders or suspensions.

e. The Company shall promptly furnish to the Initial Purchaser (and, upon written request from any Notice Holder, to such Notice Holder), without charge, at least one copy of any Shelf Registration Statement and any Post-Effective Amendment thereto, excluding all documents incorporated or deemed to be incorporated therein by reference and all exhibits thereto.

f. The Company shall promptly furnish to the Legal Counsel (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by a Holder, and all exhibits and (iii) upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto.

g. The Company shall, at the Effective Date, promptly provide each Holder a copy of the Prospectus included in the Shelf Registration Statement at the time of the

Effective Date and during the Shelf Registration Period, promptly deliver to the Initial Purchaser and each Notice Holder, without charge, as many copies of the Prospectus (including each preliminary Prospectus) included in any Shelf Registration Statement, and any amendment or supplement thereto, as such person may reasonably request and except as provided in Sections 2(d) and 3(r) hereof; and the Company hereby consents to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto.

h. The Company shall submit to the SEC, within two (2) Business Days after the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, a request for acceleration of effectiveness of such Registration Statement to a time and date not later than 48 hours after the submission of such request.

i. Prior to any offering of Transfer Restricted Securities pursuant to any Shelf Registration Statement, the Company shall register or qualify or cooperate with the Notice Holders and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Transfer Restricted Securities for offer and sale, under the securities or blue sky laws of such jurisdictions within the United States as any such Notice Holders reasonably request and shall maintain such qualification in effect so long as required and do any and all other acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the Transfer Restricted Securities covered by such Shelf Registration Statement; *provided, however*, that the Company will not be required to: (i) qualify generally to do business as a foreign corporation or as a dealer in securities in any jurisdiction where it is not then so qualified or; (ii) take any action which would subject it to service of process or taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then so subject.

j. If the Transfer Restricted Securities are in certificated form, the Company shall cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities sold pursuant to any Shelf Registration Statement free of any restrictive legends and, with respect of any Notes, in such denominations permitted by the Indenture and registered in such names as Holders may request at least two (2) Business Days prior to settlement of sales of Transfer Restricted Securities pursuant to such Shelf Registration Statement.

k. Subject to the exceptions contained in (i) and (ii) of Section 3(i) above, the Company shall use its reasonable best efforts to cause the Transfer Restricted Securities covered by the applicable Shelf Registration Statement to be registered with or approved by such other federal, state and local governmental agencies or authorities, and self-regulatory organizations in the United States as may be necessary to enable the Holders to consummate the disposition of such Transfer Restricted Securities as contemplated by the Shelf Registration Statement; without limitation to the foregoing, the Company shall provide all such information as may be

required by the NASD in connection with the offering under the Shelf Registration Statement of the Transfer Restricted Securities (including, without limitation, such as may be required by NASD Rule 2710 or 2720), and shall cooperate with each Holder in connection with any filings required to be made with the NASD by such Holder in that regard.

l. Upon the occurrence of any event described in Section 3(c)(iv) or 3(c)(v) hereof, the Company shall promptly prepare and file with the SEC a Post-Effective Amendment to any Shelf Registration Statement, or an amendment or supplement to the related Prospectus, or any document incorporated therein by reference, or file a document which is incorporated or deemed to be incorporated by reference in such Shelf Registration Statement or Prospectus, as the case may be, so that, as thereafter delivered to purchasers of the Transfer Restricted Securities included therein, the Shelf Registration Statement and the Prospectus, in each case, as then amended or supplemented, will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading and, in the case of a Post-Effective Amendment, use its reasonable best efforts to cause it to become effective as promptly as practicable; *provided*, that the Company's obligations under this paragraph (l) shall be suspended if the Company has suspended the use of the Prospectus in accordance with Section 2(d) hereof and given notice of such suspension to Notice Holders, it being understood that the Company's obligations under this Section 3(l) shall be automatically reinstated at the end of such Suspension Period.

m. The Company shall provide, prior to the effective date of any Shelf Registration Statement hereunder, a CUSIP number for the Transfer Restricted Securities registered under such Shelf Registration Statement.

n. The Company shall use its reasonable best efforts to comply with all applicable rules and regulations of the SEC and shall make generally available to its security holders an earnings statement satisfying the provisions of Section 11(a) of the 1933 Act and Rule 158 promulgated by the SEC thereunder (or any similar rule promulgated under the 1933 Act) for a 12-month period commencing on the first day of the first fiscal quarter of the Company commencing after the effective date of any Shelf Registration Statement or each Post-Effective Amendment to any Shelf Registration Statement, which such statements shall be made available no later than 45 days after the end of the 12-month period or 90 days after the end of the 12-month period, if the 12-month period coincides with the fiscal year of the Company.

o. The Company shall use its reasonable best efforts to cause the Indenture to be qualified under the Trust Indenture Act (as defined in the Indenture) not later than the effective date of the first Shelf Registration Statement.

p. The Company shall cause all shares of Common Stock issuable upon conversion of the Notes to be reserved for listing on each securities exchange or quotation system on which the Common Stock is then listed no later than the date the applicable Shelf Registration Statement is declared effective and, shall cause all Common Stock to be so listed when issued, and, in connection therewith, to make such filings as may be required under the 1934 Act and to have such filings declared effective as and when required thereunder.

q. The Company may require each Notice Holder of Transfer Restricted Securities to be sold pursuant to any Shelf Registration Statement to furnish to the Company

such information regarding the Notice Holder and the distribution of such Transfer Restricted Securities sought by the Notice and Questionnaire and such additional information as may, from time to time, be required by the 1933 Act and/or the SEC or any other federal or state governmental authority, and the obligations of the Company to any Notice Holder under this Agreement shall be expressly conditioned on the compliance of such Notice Holder with such request.

r. If reasonably requested in writing in connection with any disposition of Transfer Restricted Securities pursuant to a Shelf Registration Statement, make reasonably available for inspection during normal business hours by a representative for the Notice Holders of such Transfer Restricted Securities and any broker-dealers, attorneys and accountants retained by such Notice Holders, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate executive officers, directors and designated employees of the Company and its subsidiaries to make reasonably available for inspection during normal business hours all relevant information reasonably requested by such representative for the Notice Holders or any such broker-dealers, attorneys or accountants in connection with such disposition, in each case as is customary for similar “due diligence” examinations; *provided, however*, that any information that is designated by the Company, in good faith, as confidential at the time of delivery of such information shall be kept confidential by such Persons, unless disclosure thereof is made in connection with a court, administrative or regulatory proceeding or required by law, or such information has become available to the public generally through the Company or through a third party without an accompanying obligation of confidentiality.

s. Each Notice Holder agrees that, upon receipt of notice of the happening of an event described in Sections 3(c)(ii) through and including 3(c)(vi), it shall forthwith discontinue (and shall cause its agents and representatives to discontinue) disposition of Transfer Restricted Securities and will not resume disposition of Transfer Restricted Securities until such Holder has received copies of an amended or supplemented Prospectus contemplated by Section 3(l) hereof, or until such Notice Holder is advised in writing by the Company that the use of the Prospectus may be resumed or that the relevant Suspension Period has been terminated, as the case may be, *provided*, that the foregoing shall not prevent the sale, transfer or other disposition of Transfer Restricted Securities by a Holder in a transaction which is exempt from, or not subject to, the registration requirements of the 1933 Act, so long as such Holder does not and is not required to deliver the applicable Prospectus or Shelf Registration Statement in connection with such sale, transfer or other disposition, as the case may be; and *provided, further*, that the provisions of this Section 3(q) shall not prevent the occurrence of a Registration Default or otherwise limit the obligation of the Company to pay Registration Default Payments.

t. Each Notice Holder shall promptly notify the Company of any inaccuracies or changes in the information requiring an amendment to the applicable Shelf Registration Statement or Prospectus provided in such Notice Holder’s Notice and Questionnaire that may occur subsequent to the date thereof at any time while the Shelf Registration Statement remains effective.

u. The Company shall use its reasonable best efforts to take all other steps necessary to effect the registration of the Notes covered by the Shelf Registration Statement contemplated hereby.

4. Registration Expenses.

The Company shall bear all fees and expenses incurred in connection with the performance of its obligations under Sections 2 and 3 hereof and shall reimburse the Holders for the reasonable fees and disbursements of the Legal Counsel. Such fees and expenses shall include, without limitation: (i) all registration and filing fees and expenses (including filings made with the NASD); (ii) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws; (iii) all expenses of printing (including printing of Prospectuses and certificates for the Common Stock to be issued upon conversion of the Notes) and the Company's expenses for messenger and delivery services and telephone; (iv) all fees and disbursements of counsel to the Company; (v) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and (vi) all fees and disbursements of the independent certified public accountants of the Company. The Company shall bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Company. Notwithstanding the provisions of this Section 4, each Holder shall bear the expense of any broker's commission, agency fee and underwriter's discount or commission, if any, relating to the sale or disposition of such Holder's Transfer Restricted Securities pursuant to a Shelf Registration Statement.

5. Indemnification and Contribution.

a. The Company shall indemnify and hold harmless the Initial Purchaser and each Holder of Transfer Restricted Securities covered by any Shelf Registration Statement, and each director, officer, partner, member and employee of the Initial Purchaser or such Holder, as applicable, and each Person, if any, who controls the Initial Purchaser or any such Holder, as applicable, within the meaning of either the 1933 Act or the 1934 Act (collectively referred to for purposes of this Section 5 as an "**Indemnified Holder**") against any losses, claims, damages or liabilities, joint or several, or actions in respect thereof, to which any of them may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement, or in any Prospectus, or any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, and will reimburse each such party for any legal or other expenses reasonably incurred by such party in connection with investigating or defending any such action or claim as such expenses are incurred; *provided, however*, that: (i) the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon Holder Information; (ii) with respect to any untrue statement or omission of material fact made in any Shelf Registration Statement, or in any Prospectus, the indemnity agreement contained in this Section 5(a) shall not inure to the benefit of an Indemnified Holder from whom

the Person asserting any such loss, claim, damage or liability purchased the securities concerned, to the extent that any such loss, claim, damage or liability of such Indemnified Holder occurs under the circumstance where it shall have been established that: (w) the Company had previously furnished copies of the Prospectus, and any amendments and supplements thereto, to such Indemnified Holder; (x) delivery of the Prospectus, and any amendment or supplements thereto, was required by the 1933 Act to be made to such Person; (y) the untrue statement or omission of a material fact contained in the Prospectus was corrected in amendments or supplements thereto timely provided to such Indemnified Holder; and (z) there was not received by such Person, at or prior to the written confirmation of the sale of such securities to such Person, a copy of such amendments or supplements to the Prospectus; and (iii) the indemnification provisions of this Section shall not apply to amounts paid in settlement of any loss, claim, damage or liability if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. This indemnity agreement will be in addition to any liability that the Company may otherwise have. This indemnity agreement will not apply to any loss, damage, expense, liability or claim arising from an offer or sale, occurring during a Suspension Period, of Transfer Restricted Securities by a Notice Holder who has previously received notice from the Company of the commencement of the Suspension Period pursuant to Section 3(c)(vii).

b. Each Indemnified Holder, severally and not jointly, agrees to indemnify and hold harmless the Company, each of its directors and officers and each Person, if any, who controls the Company within the meaning of either the 1933 Act or the 1934 Act, to the same extent as the foregoing indemnity from the Company to the Indemnified Holders and shall reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any loss, claim, damage, liability or action, but only with reference to Holder Information supplied by such Indemnified Holder. In no event shall any Indemnified Holder, its directors, officers, partners, members or employees or any Person, if any, who controls such Indemnified Holder be liable or responsible for any amount in excess of the amount by which the total amount received by such Indemnified Holder with respect to its sale of Transfer Restricted Securities pursuant to a Shelf Registration Statement exceeds: (i) the amount paid by such Indemnified Holder for such Transfer Restricted Securities; plus (ii) the amount of any damages that such Indemnified Holder, its directors, officers or any Person who controls such Indemnified Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. This indemnity agreement will be in addition to any liability that such Indemnified Holder may otherwise have.

c. Promptly after receipt by an indemnified party under this Section 5 of notice of any claim or the commencement of any action or proceeding (including any governmental investigation), such indemnified party will, if a claim for indemnification in respect thereof is to be made against the indemnifying party under Section 5(a) or 5(b) hereof, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party to the extent it is not materially prejudiced as a result thereof and, in any event, shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In case any such action or proceeding is brought against any indemnified party, and it notifies the indemnifying

party of the commencement thereof, the indemnifying party will be entitled to participate therein (jointly with any other indemnifying party similarly notified), and to the extent that it may elect, by written notice, delivered to such indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party; *provided, however*, that if the defendants (including any impleaded parties) in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to defend such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to appoint counsel to defend such action and approval by the indemnified party of such counsel, the indemnifying party will not be liable to such indemnified party under this Section 5 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless: (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expense of more than one separate counsel (in addition to any local counsel), approved by the Indemnified Holders in the case of paragraph (a) of this Section 5, representing the indemnified parties under such paragraph (a) who are parties to such action); (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice or commencement of the action; (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; or (iv) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding. Subject to the provisions of the immediately following sentence, no indemnifying party shall be liable for any settlement, compromise or the consent to the entry of judgment in connection with any such action effected without its written consent, but if settled with its written consent or if there be a final judgment for the plaintiff in any such action other than a judgment entered with the consent of such indemnified party, the indemnifying party shall indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. If at any time an indemnified party shall have requested that an indemnifying party reimburse the indemnified party for reasonable fees and expenses of counsel as contemplated by this Section 5(c) and to which it would be entitled under Section 5(a) or 5(b) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if: (x) such settlement is entered into more than 60 days after receipt by such indemnifying party of such request for reimbursement, (y) such indemnifying party shall have received notice of the terms of such settlement at least 45 days prior to such settlement being entered into and (z) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

d. In the event that the indemnity provided in paragraph (a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, each indemnifying party shall contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively, “Losses”) to which the indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company from the sale of the Notes, on the one hand, and an Indemnified Holder with respect to the sale by such Indemnified Holder of Notes or Common Stock, on the other hand; *provided, however*, that in no case shall an indemnifying party that is an Indemnified Holder be responsible for any amount in excess of the total price at which the Transfer Restricted Securities are sold by such Indemnified Holder to a purchaser. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and such Indemnified Holder shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of such Indemnified Holder on the other hand in connection with the statements or omissions which resulted in such Losses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and such Indemnified Holder, on the other hand, shall be deemed to be in the same respective proportions as the total net proceeds from the sale of the Notes (before deducting expenses) received by or on behalf of the Company, on the one hand, and the total proceeds received by such Indemnified Holder with respect to its sale of Transfer Restricted Securities under the Shelf Registration Statement, on the other hand, bear to the total gross proceeds from the sale of the Notes. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company, on the one hand, or relates to Holder Information supplied by such Indemnified Holder, on the other hand, the intent of the parties and their relative knowledge, information and opportunity to correct or prevent such untrue statement or omission. The parties agree that it would not be just and equitable if contribution pursuant to this paragraph (d) were determined by pro rata allocation or any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any Person with respect to claims arising directly out of or relating to such fraudulent misrepresentation who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5(d), each Person who controls such Indemnified Holder within the meaning of either the 1933 Act or the 1934 Act shall have the same rights to contribution as such Indemnified Holder, and each Person who controls the Company within the meaning of either the 1933 Act or the 1934 Act shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

e. The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

f. The provisions of this Section 5 will remain in full force and effect regardless of (i) the termination of this Agreement, (ii) any investigation made by or on behalf of any Indemnified Holder, any underwriter or the Company or any of the officers, directors or

controlling Persons referred to in Section 5 hereof and (iii) the sale by an Indemnified Holder of Transfer Restricted Securities covered by a Shelf Registration Statement.

g. Rules 144 and 144A. The Company covenants that it shall use its reasonable best efforts to file the reports required to be filed by it under the 1933 Act and the 1934 Act in a timely manner so long as the Transfer Restricted Securities remain outstanding. If at any time the Company is not required to file such reports, it will, upon request of any Holder or beneficial owner of Transfer Restricted Securities, make available such information necessary to permit sales pursuant to Rule 144A. The Company further covenants that, for as long as any Transfer Restricted Securities remain outstanding, it will take such further action as any Holder of Transfer Restricted Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Transfer Restricted Securities without registration under the 1933 Act within the limitation of the exemptions provided by Rule 144 and Rule 144A. Upon the written request of any Holder of Transfer Restricted Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements.

6. Miscellaneous.

a. No Inconsistent Agreements. The Company has not, as of the date hereof, entered into nor shall it, on or after the date hereof, enter into, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders herein or otherwise conflicts with the provisions hereof. In addition, the Company shall not grant to any of its Holders (other than the Holders of Transfer Restricted Securities in such capacity) the right to include any of its securities in the Shelf Registration Statement provided for in this Agreement other than the Transfer Restricted Securities.

b. Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company consents in writing and the Company has obtained the written consent of at least the majority of the Holders of the then outstanding Transfer Restricted Securities; *provided*, that with respect to any matter that directly or indirectly affects the rights of the Initial Purchaser hereunder, the Company shall obtain the written consent of the Initial Purchaser against which such amendment, qualification, supplement, waiver or consent is to be effective. Notwithstanding the foregoing, a waiver or consent to departure from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose Transfer Restricted Securities are being sold pursuant to a Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by the Majority Holders.

c. Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail, telecopier, or air courier guaranteeing overnight delivery:

(i) if to any Holder, at the most current address of such Holder maintained by the Registrar under the Indenture or the registrar of the Common Stock (provided that while the Notes or the Common Stock are in book-entry form, notice to the Trustee shall

serve as notice to the Holders), or, in the case of the Notice Holder, the address set forth in its Notice and Questionnaire;

(ii) if to the Company, to:

Vector Group Ltd.
100 S.E. Second Street, 32nd Floor
Miami, Florida 33131
Telephone: (305) 579-8000
Facsimile: (305) 579-8009
Attention: Richard J. Lampen

With a copy (for informational purposes only) to:

McDermott Will & Emery LLP
2049 Century Park East, 34th Floor
Los Angeles, California 90067
Telephone: (310) 284-6110
Facsimile: (310) 277-4730
Attention: Mark J. Mihanovic, Esq.

(iii) if to the Initial Purchaser, to:

Jefferies & Company, Inc.
11100 Santa Monica
10th Floor
Los Angeles, California 90025
Telephone: (310) 575-5261
Facsimile: (310) 575-5166
Attention: Andrew Whittaker

With a copy (for informational purposes only) to:

Latham & Watkins LLP
633 West Fifth Street
Suite 4000
Los Angeles, California 90071
Telephone: (213) 485-1234
Facsimile: (213) 891-8763
Attention: Mary Ellen Kanoff, Esq.

All such notices and communications shall be deemed to have been duly given when received, if delivered by hand or air courier, and when sent, if sent by first-class mail or telecopier.

The Company and the Initial Purchaser by notice to the other may designate additional or different addresses for subsequent notices or communications.

d. Successors and Assigns. Any Person who purchases any Transfer Restricted Securities from the Initial Purchaser shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchaser. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including, without the need for an express assignment or any consent by the Company thereto, subsequent Holders. The Company hereby shall extend the benefits of this Agreement to any Holder and underwriter and any such Holder and underwriter may specifically enforce the provisions of this Agreement as if an original party hereto. In the event that any other Person shall succeed to the Company under the Indenture, then such successor shall enter into an agreement, in form and substance reasonably satisfactory to the Holders, whereby such successor shall assume all of the Company's obligations under this Agreement.

e. Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement; *provided*, that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

f. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

g. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

h. Severability. In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is 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 hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

i. Notes Held by the Company, Etc. Whenever the consent or approval of Holders of a specified percentage of principal amount of Notes or the shares of Common Stock issuable upon conversion thereof is required hereunder, Notes or the shares of Common Stock issued upon conversion thereof held by the Company or its Affiliates (other than subsequent Holders of Notes or the Common Stock issued upon conversion thereof if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Notes) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

j. Termination. This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Shelf Registration Period, except for any liabilities or obligations under Section 2(e), 4 or 5.

IN WITNESS WHEREOF, the Company and the Initial Purchaser have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

VECTOR GROUP LTD.

By: /s/ Richard J. Lampen _____

Name: Richard J. Lampen

Title: Executive Vice President

INITIAL PURCHASER:

JEFFERIES & COMPANY, INC.

By: /s/ Andrew Whittaker _____

Name: Andrew Whittaker

Title: Vice Chairman

Master Securities Loan Agreement

Dated as of: April 13, 2005

Between: Lorber Epsilon 1999 Limited Partnership (“Lender”)
and Jefferies & Company, Inc. (“Borrower”)

1. Applicability.

From time to time the parties hereto may enter into transactions in which Lender will lend to Borrower certain Securities (as defined herein) against a transfer of Collateral (as defined herein). Each such transaction shall be referred to herein as a “Loan” and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in an Annex or Schedule hereto and in any other annexes identified herein or therein as applicable hereunder. Capitalized terms not otherwise defined herein shall have the meanings provided in Section 24.

2. Loans of Securities.

- 2.1 Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, seek to initiate a transaction in which Lender will lend Securities to Borrower. Borrower and Lender shall agree on the terms of each Loan (which terms may be amended during the Loan), including the issuer of the Securities, the amount of Securities to be lent, the basis of compensation, the amount of Collateral to be transferred by Borrower, and any additional terms. Such agreement shall be confirmed (a) by a schedule and receipt listing the Loaned Securities provided by Borrower to Lender in accordance with Section 3.2, (b) through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing. Such confirmation (the “Confirmation”), together with the Agreement, shall constitute conclusive evidence of the terms agreed between Borrower and Lender with respect to the Loan to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any inconsistency between the terms of such Confirmation and this Agreement, this Agreement shall prevail unless each party has executed such Confirmation.
- 2.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, unless otherwise agreed, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 15.

3. Transfer of Loaned Securities.

- 3.1 Unless otherwise agreed, Lender shall transfer Loaned Securities to Borrower hereunder on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of the Loan.
- 3.2 Unless otherwise agreed, Borrower shall provide Lender, for each Loan in which Lender is a Customer, with a schedule and receipt listing the Loaned Securities. Such schedule and receipt may consist of (a) a schedule provided to Borrower by Lender and executed and returned by Borrower when the Loaned Securities are received, (b) in the case of Securities transferred through a Clearing Organization which provides transferors with a notice evidencing such transfer, such notice, or (c) a confirmation or other document provided to Lender by Borrower.
- 3.3 Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

4. Collateral.

- 4.1 Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities.
- 4.2 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. The Collateral will be held by Borrower in a segregated account.
- 4.3 Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Lender shall be obligated to transfer the Collateral (as adjusted pursuant to Section 9) to Borrower no later than the Cutoff Time on such day, or, if such day is not a day on which a transfer of such collateral may be effected under Section 15, the next day on which such a transfer may be effected.
- 4.4 If Borrower transfers Collateral to Lender, as provided in Section 4.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the

absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and Borrower does not transfer Collateral to Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.

- 4.5 Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted, and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.
- 4.6 Prior to the expiration of any letter of credit supporting Borrower's obligations hereunder, Borrower shall, no later than the Extension Deadline, (a) obtain an extension of the expiration of such letter of credit, (b) replace such letter of credit by providing Lender with a substitute letter of credit in an amount at least equal to the amount of the letter of credit for which it is substituted, or (c) transfer such other Collateral to Lender as may be acceptable to Lender.

5. Fees for Loan.

- 5.1 Unless otherwise agreed, (a) Borrower agrees to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan based on the aggregate Market Value of the Loaned Securities on the day for which such Loan Fee is being computed, and (b) Lender agrees to pay Borrower a fee or rebate (a "Cash Collateral Fee") on Collateral consisting of cash, computed daily based on the amount of cash held by Lender as Collateral, in the case of each of the Loan Fee and the Cash Collateral Fee at such rates as set forth on Schedule B. Except as Borrower and Lender may otherwise agree (in the event that cash Collateral is transferred by clearing house funds or otherwise), Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender, and Cash Collateral Fees shall accrue from and including the date on which the cash Collateral is transferred to Lender to, but excluding, the date on which such cash Collateral is returned to Borrower.
- 5.2 Unless otherwise agreed, any Loan Fee or Cash Collateral Fee payable hereunder shall be payable:
- (a) in the case of any Loan of Securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred and (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 15 may not

be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and

- (b) in the case of any Loan of Government Securities, upon the termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower and all Cash Collateral Fees shall be payable immediately by Lender in the event of a Default by Lender.

6. Termination of the Loan.

- 6.1(a) Unless otherwise agreed, either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. The termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of notice given by Lender) or the noncash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other Securities, the third Business Day following such notice.
 - (b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day.
- 6.2 Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.3.

7. Rights in Respect of Loaned Securities and Collateral.

- 7.1 Except as set forth herein and in Sections 8.1 and 8.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others; Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.

8. Distributions.

- 8.1 Lender shall be entitled to receive all Distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower.
- 8.2 Any cash Distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 8.1, shall be paid by the transfer of cash to Lender by Borrower, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Lender is not in Default at the time of such payment. Non-cash Distributions that Lender is entitled to receive pursuant to Section 8.1 shall be added to the Loaned Securities on the date of distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.
- 8.3 Borrower shall be entitled to receive all Distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender.
- 8.4 Any cash Distributions made on or in respect of such Collateral, which Borrower is entitled to receive pursuant to Section 8.3, shall be paid by the transfer of cash to Borrower by Lender, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Borrower is not in Default at the time of such payment. Non-cash Distributions that Borrower is entitled to receive pursuant to Section 8.3 shall be added to the Collateral on the date of distribution and shall be considered such for all purposes, except that if each Loan secured by such Collateral has terminated, Lender shall forthwith transfer the same to Borrower.
- 8.5 Unless otherwise agreed by the parties:
- (a) If (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash Distributions on Loaned Securities under Sections 8.1 and 8.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash Distributions on Collateral under Sections 8.3 and 8.4 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Payor shall (subject to subsections (b) and (c) below), pay such additional amounts as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.

- (b) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that Tax would have been imposed on a Securities Distribution or Collateral Distribution paid directly to the Payee.
- (c) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that such Payee is entitled to an exemption from, or reduction in the rate of, Tax on a Borrower Payment or Lender Payment subject to the provision of a certificate or other documentation, but has failed timely to provide such certificate or other documentation.
- (d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash Distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash Distributions payable to it.

8.6 To the extent that, under the provisions of Sections 8.1 through 8.5, (a) a transfer of cash or other property by Borrower would give rise to a Margin Excess or (b) a transfer of cash or other property by Lender would give rise to a Margin Deficit, Borrower or Lender (as the case may be) shall not be obligated to make such transfer of cash or other property in accordance with such Sections, but shall in lieu of such transfer immediately credit the amounts that would have been transferable under such Sections to the account of Lender or Borrower (as the case may be).

9. Mark to Market.

- 9.1 Borrower shall daily mark to market any Loan hereunder and in the event that at the Close of Trading on any Business Day the Market Value of the Collateral for any Loan to Borrower shall be less than 100% of the Market Value of all the outstanding Loaned Securities subject to such Loan, Borrower shall transfer additional Collateral no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal 100% of the Market Value of the Loaned Securities.
- 9.2 In addition to any rights of Lender under Section 9.1, if at any time the aggregate Market Value of all Collateral for Loans by Lender shall be less than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Deficit"), Lender may, by notice to Borrower, demand that Borrower transfer to Lender additional Collateral so that the Market Value of such additional Collateral, when added to the Market Value of all other Collateral

for such Loans, shall equal or exceed the Margin Percentage of the Market Value of the Loaned Securities.

- 9.3 Subject to Borrower's obligations under Section 9.1, if at any time the Market Value of all Collateral for Loans to Borrower shall be greater than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Excess"), Borrower may, by notice to Lender, demand that Lender transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Margin Percentage of the Market Value of the Loaned Securities.
- 9.4 Borrower and Lender may agree, with respect to one or more Loans hereunder, to mark the values to market pursuant to Sections 9.2 and 9.3 by separately valuing the Loaned Securities lent and the Collateral given in respect thereof on a Loan-by-Loan basis.
- 9.5 Borrower and Lender may agree, with respect to any or all Loans hereunder, that the respective rights of Lender and Borrower under Sections 9.2 and 9.3 may be exercised only where a Margin Excess or Margin Deficit exceeds a specified dollar amount or a specified percentage of the Market Value of the Loaned Securities under such Loans (which amount or percentage shall be agreed to by Borrower and Lender prior to entering into any such Loans).
- 9.6 If any notice is given by Borrower or Lender under Sections 9.2 or 9.3 at or before the Margin Notice Deadline on any day on which a transfer of Collateral may be effected in accordance with Section 15, the party receiving such notice shall transfer Collateral as provided in such Section no later than the Close of Business on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such Collateral no later than the Close of Business on the next Business Day following the day of such notice.

10. Representations.

The parties to this Agreement hereby make the following representations and warranties, which shall continue during the term of any Loan hereunder:

- 10.1 Each party hereto represents and warrants that (a) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder, (b) it has taken all necessary action to authorize such execution, delivery and performance, and (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.
- 10.2 Each party hereto represents and warrants that it has not relied on the other for any tax or accounting advice concerning this Agreement and that it has made its

own determination as to the tax and accounting treatment of any Loan and any dividends, remuneration or other funds received hereunder.

- 10.3 Each party hereto represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 11.1(b).
- 10.4 Borrower represents and warrants that it has, or will have at the time of transfer of any Collateral, the right to grant a first priority security interest therein subject to the terms and conditions hereof.
- 10.5 (a) Borrower represents and warrants that it (or the person to whom it relends the Loaned Securities) is borrowing or will borrow Loaned Securities that are Equity Securities for the purpose of making delivery of such Loaned Securities in the case of short sales, failure to receive securities required to be delivered, or as otherwise permitted pursuant to Regulation T as in effect from time to time.
- (b) Borrower and Lender may agree, as provided in Section 23.2, that Borrower shall not be deemed to have made the representation or warranty in subsection (a) with respect to any Loan.
- 10.6 Lender represents and warrants that it has, or will have at the time of transfer of any Loaned Securities, the right to transfer the Loaned Securities subject to the terms and conditions hereof, and that it owns the Loaned Securities, free and clear of all liens.

11. Covenants.

- 11.1 Each party agrees to be liable as principal with respect to its obligations hereunder.
- 11.2 Promptly upon (and in any event within seven (7) Business Days after) demand by Lender, Borrower shall furnish Lender with Borrower's most recent publicly-available financial statements and any other financial statements mutually agreed upon by Borrower and Lender. Unless otherwise agreed, if Borrower is subject to the requirements of Rule 17a-5(c) under the Exchange Act, it may satisfy the requirements of this Section by furnishing Lender with its most recent statement required to be furnished to customers pursuant to such Rule.

12. Events of Default.

All Loans hereunder may, at the option of the non-defaulting party (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

- 12.1 if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 6;

- 12.2 if any Collateral shall not be transferred to Borrower upon termination of the Loan as required by Sections 4.3 and 6;
- 12.3 if either party shall fail to transfer Collateral as required by Section 9;
- 12.4 if either party (a) shall fail to transfer to the other party amounts in respect of Distributions required to be transferred by Section 8, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15;
- 12.5 if an Act of Insolvency occurs with respect to either party;
- 12.6 if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;
- 12.7 if either party notifies the other of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or
- 12.8 if either party (a) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses 12.1 through 12.7, above, including but not limited to the payment of fees as required by Section 5, and the payment of transfer taxes as required by Section 14, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15.

The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice as promptly as practicable to the defaulting party of the exercise of its option to terminate all Loans hereunder pursuant to this Section 12.

13. Remedies.

- 13.1 Upon the occurrence of a Default under Section 12 entitling Lender to terminate all Loans hereunder, Lender shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Loaned Securities ("Replacement Securities") in the principal market for such Loaned Securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 5, 8, 14 and 16. In the event that Lender shall exercise such rights, Borrower's obligation to return a like amount of the Loaned Securities shall terminate.

Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower's obligations with respect to Distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) in the case of purchases of any other Securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower's obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 13.1 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 13.1, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 17, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.

- 13.2 Upon the occurrence of a Default under Section 12 entitling Borrower to terminate all Loans hereunder, Borrower shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Collateral ("Replacement Collateral") in the principal market for such Collateral in a commercially reasonable manner, (b) to sell a like amount of the Loaned Securities in the principal market for such Loaned Securities in a commercially reasonable manner and (c) to apply and set off the Loaned Securities and any proceeds thereof against (i) the payment of the purchase price for such Replacement Collateral, (ii) Lender's obligation to return any cash or other Collateral, and (iii) any amounts due to Borrower under Sections 5, 8 and 16. In such event, Borrower may treat the Loaned Securities as its own and Lender's obligation to return a like amount of the Collateral shall terminate; provided, however, that Lender shall immediately return any letters of credit supporting any Loan upon the exercise or deemed exercise by Borrower of its termination rights under Section 12. Borrower may similarly apply the Loaned Securities and any proceeds thereof to any other obligation of Lender under this Agreement, including Lender's obligations with respect to Distributions paid to Lender (and not forwarded to Borrower) in respect of Collateral. In the event that (i) the sales

price received from such Loaned Securities is less than (ii) the purchase price of Replacement Collateral (plus the amount of any cash or other Collateral not replaced by Borrower and all other amounts, if any, due to Borrower hereunder), Lender shall be liable to Borrower for the amount of any such deficiency, together with interest on such amounts at a rate equal to (A) in the case of Collateral consisting of Foreign Securities, LIBOR, (B) in the case of Collateral consisting of any other Securities (or other amounts due, if any, to Borrower hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such sale until the date of payment of such deficiency. As security for Lender's obligation to pay such deficiency, Borrower shall have, and Lender hereby grants, a security interest in any property of Lender then held by or for Borrower and a right of setoff with respect to such property and any other amount payable by Borrower to Lender. The purchase price of any Replacement Collateral purchased under this Section 13.2 shall include, and the proceeds of any sale of Loaned Securities shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Borrower exercises its rights under this Section 13.2, Borrower may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Collateral or selling all or a portion of the Loaned Securities, to be deemed to have made, respectively, such purchase of Replacement Collateral or sale of Loaned Securities for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 17, upon the satisfaction of all Lender's obligations hereunder, any remaining Loaned Securities (or remaining cash proceeds thereof) shall be returned to Lender.

13.3 Unless otherwise agreed, the parties acknowledge and agree that (a) the Loaned Securities and any Collateral consisting of Securities are of a type traded in a recognized market, (b) in the absence of a generally recognized source for prices or bid or offer quotations for any security, the non-defaulting party may establish the source therefor in its reasonable discretion, and (c) all prices and bid and offer quotations shall be increased to include accrued interest to the extent not already included therein (except to the extent contrary to market practice with respect to the relevant Securities).

13.4 In addition to its rights hereunder, the non-defaulting party shall have any rights otherwise available to it under any other agreement or applicable law.

14. Transfer Taxes.

All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan and with respect to the transfer of Collateral by Borrower to Lender and by Lender to Borrower upon termination of the Loan or pursuant to Section 4.5 or Section 9 shall be paid by Borrower.

15. Transfers.

- 15.1 All transfers by either Borrower or Lender of Loaned Securities or Collateral consisting of “financial assets” (within the meaning of the UCC) hereunder shall be by (a) in the case of certificated securities, physical delivery of certificates representing such securities together with duly executed stock and bond transfer powers, as the case may be, with signatures guaranteed by a bank or a member firm of the New York Stock Exchange, Inc., (b) registration of an uncertificated security in the transferee’s name by the issuer of such uncertificated security, (c) the crediting by a Clearing Organization of such financial assets to the transferee’s “securities account” (within the meaning of the UCC) maintained with such Clearing Organization, or (d) such other means as Borrower and Lender may agree.
- 15.2 All transfers of cash hereunder shall be by (a) wire transfer in immediately available, freely transferable funds or (b) such other means as Borrower and Lender may agree.
- 15.3 All transfers of letters of credit from Borrower to Lender shall be made by physical delivery to Lender of an irrevocable letter of credit issued by a “bank” as defined in Section 3(a)(6)(A)-(C) of the Exchange Act. Transfers of letters of credit from Lender to Borrower shall be made by causing such letters of credit to be returned or by causing the amount of such letters of credit to be reduced to the amount required after such transfer.
- 15.4 A transfer of Securities, cash or letters of credit may be effected under this Section 15 on any day except (a) a day on which the transferee is closed for business at its address set forth in Schedule A hereto or (b) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.
- 15.5 For the avoidance of doubt, the parties agree and acknowledge that the term “securities,” as used herein (except in this Section 15), shall include any “security entitlements” with respect to such securities (within the meaning of the UCC). In every transfer of “financial assets” (within the meaning of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee under Section 8-501 of the UCC, (b) to enable the transferee to obtain “control” (within the meaning of Section 8-106 of the UCC), and (c) to provide the transferee with comparable rights under any applicable foreign law or regulation.

16. Contractual Currency.

- 16.1 Borrower and Lender agree that (a) any payment in respect of a Distribution under Section 8 shall be made in the currency in which the underlying Distribution of cash was made, (b) any return of cash shall be made in the

currency in which the underlying transfer of cash was made, and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the "Contractual Currency"). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.

- 16.2 If for any reason the amount in the Contractual Currency received under Section 16.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.
- 16.3 If for any reason the amount in the Contractual Currency received under Section 16.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

17. Single Agreement.

Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that (a) each shall perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligation by Borrower or by Lender (the "Defaulting Party") in any Loan hereunder shall constitute a default by the Defaulting Party under all such Loans hereunder, and (b) the non-defaulting party shall be entitled to set off claims and apply property held by it in respect of any Loan

hereunder against obligations owing to it in respect of any other Loan with the Defaulting Party.

18. APPLICABLE LAW.

THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

19. Waiver.

The failure of a party to this Agreement to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. All waivers in respect of a Default must be in writing.

20. Survival of Remedies.

All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Securities or Collateral and termination of this Agreement.

21. Notices and Other Communications.

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise to the individuals and at the facsimile numbers and addresses specified with respect to it in Schedule A hereto, or sent to such party at any other place specified in a notice of change of number or address hereafter received by the other party. Any notice, statement, demand or other communication hereunder will be deemed effective on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice by a party to the other party by telephone shall be deemed effective only if (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying party.

22. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

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

TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

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

23. Miscellaneous.

23.1 Except as otherwise agreed by the parties, this Agreement supersedes any other agreement between the parties hereto concerning loans of Securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

24. Definitions.

For the purposes hereof:

24.1 "Act of Insolvency" shall mean, with respect to any party, (a) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party's seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (b) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (i) is consented to or not timely contested by such party, (ii) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (iii) is not dismissed within 15 days, (c) the making by such party of a general assignment for the benefit of creditors, or (d)

the admission in writing by such party of such party's inability to pay such party's debts as they become due.

- 24.2 "Bankruptcy Code" shall have the meaning assigned in Section 25.1
- 24.3 "Borrower" shall have the meaning assigned in Section 1.
- 24.4 "Borrower Payment" shall have the meaning assigned in Section 8.5(a).
- 24.5 "Broker-Dealer" shall mean any person that is a broker (including a municipal securities broker), dealer, municipal securities dealer, government securities broker or government securities dealer as defined in the Exchange Act, regardless of whether the activities of such person are conducted in the United States or otherwise require such person to register with the U.S. Securities and Exchange Commission or other regulatory body.
- 24.6 "Business Day" shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of determining the Market Value of any Securities hereunder, such term shall mean a day on which regular trading occurs in the principal market for the Securities whose value is being determined. Notwithstanding the foregoing, (a) for purposes of Section 9, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any Collateral consisting of Securities under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 15, and (b) in no event shall a Saturday or Sunday be considered a Business Day.
- 24.7 "Cash Collateral Fee" shall have the meaning assigned in Section 5.1.
- 24.8 "Clearing Organization" shall mean (a) The Depository Trust Company, or, if agreed to by Borrower and Lender, such other "securities intermediary" (within the meaning of the UCC) at which Borrower (or Borrower's agent) and Lender (or Lender's agent) maintain accounts, or (b) a Federal Reserve Bank, to the extent that it maintains a book-entry system.
- 24.9 "Close of Business" shall mean the time established by the parties in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.
- 24.10 "Close of Trading" shall mean, with respect to any Security, the end of the primary trading session established by the principal market for such Security on a Business Day, unless otherwise agreed by the parties.
- 24.11 "Collateral" shall mean cash, securities issued or guaranteed by the United States government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the Borrower or an affiliate thereof.

- 24.12 “Collateral Distributions” shall have the meaning assigned in Section 8.5(a).
- 24.13 “Confirmation” shall have the meaning assigned in Section 2.1.
- 24.14 “Contractual Currency” shall have the meaning assigned in Section 16.1.
- 24.15 “Customer” shall mean any person that is a customer of Borrower under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation).
- 24.16 “Cutoff Time” shall mean a time on a Business Day by which a transfer of cash, securities or other property must be made by Borrower or Lender to the other, as shall be agreed by Borrower and Lender in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.
- 24.17 “Default” shall have the meaning assigned in Section 12.
- 24.18 “Defaulting Party” shall have the meaning assigned in Section 17.
- 24.19 “Distribution” shall mean, with respect to any Security at any time, any distribution made on or in respect of such Security, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) Securities received as a result of split ups of such Security and distributions in respect thereof, (d) interest payments, (e) all rights to purchase additional Securities, and (f) any cash or other consideration paid or provided by the issuer of such Security in exchange for any vote, consent or the taking of any similar action in respect of such Security (regardless of whether the record date for such vote, consent or other action falls during the term of the Loan). In the event that the holder of a Security is entitled to elect the type of distribution to be received from two or more alternatives, such election shall be made by Lender, in the case of a Distribution in respect of the Loaned Securities, and by Borrower, in the case of a Distribution in respect of Collateral.
- 24.20 “Equity Security” shall mean any security (as defined in the Exchange Act) other than a “nonequity security,” as defined in Regulation T.
- 24.21 “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.
- 24.22 “Extension Deadline” shall mean, with respect to a letter of credit, the Cutoff Time on the Business Day preceding the day on which the letter of credit expires.
- 24.23 “FDIA” shall have the meaning assigned in Section 25.4.
- 24.24 “FDICIA” shall have the meaning assigned in Section 25.5.

- 24.25 “Federal Funds Rate” shall mean the rate of interest (expressed as an annual rate), as published in Federal Reserve Statistical Release H.15(519) or any publication substituted therefor, charged for federal funds (dollars in immediately available funds borrowed by banks on an overnight unsecured basis) on that day or, if that day is not a banking day in New York City, on the next preceding banking day.
- 24.26 “Foreign Securities” shall mean, unless otherwise agreed, Securities that are principally cleared and settled outside the United States.
- 24.27 “Government Securities” shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.
- 24.28 “Lender” shall have the meaning assigned in Section 1.
- 24.29 “Lender Payment” shall have the meaning assigned in Section 8.5(a).
- 24.30 “LIBOR” shall mean for any date, the offered rate for deposits in U.S. dollars for a period of three months which appears on the Reuters Screen LIBO page as of 11:00 a.m., London time, on such date (or, if at least two such rates appear, the arithmetic mean of such rates).
- 24.31 “Loan” shall have the meaning assigned in Section 1.
- 24.32 “Loan Fee” shall have the meaning assigned in Section 5.1.
- 24.33 “Loaned Security” shall mean any Security transferred in a Loan hereunder until such Security (or an identical Security) is transferred back to Lender hereunder, except that, if any new or different Security shall be exchanged for any Loaned Security by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become a Loaned Security in substitution for the former Loaned Security for which such exchange is made. For purposes of return of Loaned Securities by Borrower or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Loaned Securities, as adjusted pursuant to the preceding sentence.
- 24.34 “Margin Deficit” shall have the meaning assigned in Section 9.2.
- 24.35 “Margin Excess” shall have the meaning assigned in Section 9.3.
- 24.36 “Margin Notice Deadline” shall mean the time agreed to by the parties in the relevant Confirmation, Schedule B hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of mark-to-market obligations as provided in Section 9 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice).
- 24.37 “Margin Percentage” shall mean, with respect to any Loan as of any date, a percentage agreed by Borrower and Lender, which shall be not less than 100%,

unless (a) Borrower and Lender agree otherwise, as provided in Section 23.2, and (b) Lender is not a Customer. Notwithstanding the previous sentence, in the event that the writing or other confirmation evidencing the agreement described in clause (a) does not set out such percentage with respect to any such Loan, the Margin Percentage shall not be a percentage less than the percentage obtained by dividing (i) the Market Value of the Collateral required to be transferred by Borrower to Lender with respect to such Loan at the commencement of the Loan by (ii) the Market Value of the Loaned Securities required to be transferred by Lender to Borrower at the commencement of the Loan.

- 24.38 “Market Value” shall have the meaning set forth in Annex I or otherwise agreed to by Borrower and Lender in writing. Notwithstanding the previous sentence, in the event that the meaning of Market Value has not been set forth in Annex I or in any other writing, as described in the previous sentence, Market Value shall be determined in accordance with market practice for the Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such source, plus accrued interest to the extent not included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8, unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary). If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation. The determinations of Market Value provided for in Annex I or in any other writing described in the first sentences of this Section 24.38 or, if applicable, in the preceding sentence shall apply for all purposes under this Agreement, except for purposes of Section 13.
- 24.39 “Payee” shall have the meaning assigned in Section 8.5(a).
- 24.40 “Payor” shall have the meaning assigned in Section 8.5(a).
- 24.41 “Plan” shall mean: (a) any “employee benefit plan” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any “plan” as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; or (c) any entity the assets of which are deemed to be assets of any such “employee benefit plan” or “plan” by reason of the Department of Labor’s plan asset regulation, 29 C.F.R. Section 2510.3-101.
- 24.42 “Regulation T” shall mean Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.
- 24.43 “Retransfer” shall mean, with respect to any Collateral, to pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer such

Collateral, or to re-register any such Collateral evidenced by physical certificates in any name other than Borrower's.

24.44 "Securities" shall mean securities or, if agreed by the parties in writing, other assets.

24.45 "Securities Distributions" shall have the meaning assigned in Section 8.5(a).

24.46 "Tax" shall have the meaning assigned in Section 8.5(a).

24.47 "UCC" shall mean the New York Uniform Commercial Code.

25. Intent.

25.1 The parties recognize that each Loan hereunder is a "securities contract," as such term is defined in Section 741 of Title 11 of the United States Code (the "Bankruptcy Code"), as amended (except insofar as the type of assets subject to the Loan would render such definition inapplicable).

25.2 It is understood that each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code.

25.3 It is understood that the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code.

25.4 The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial contract," as such terms are defined in the FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to the Loan would render such definitions inapplicable).

25.5 It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment obligation under any Loan hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation," respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

25.6 Except to the extent required by applicable law or regulation or as otherwise agreed, Borrower and Lender agree that Loans hereunder shall in no event be "exchange contracts" for purposes of the rules of any securities exchange and that

Loans hereunder shall not be governed by the buy-in or similar rules of any such exchange, registered national securities association or other self-regulatory organization.

26. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS.

- 26.1 WITHOUT WAIVING ANY RIGHTS GIVEN TO LENDER HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANED SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL DELIVERED TO LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF BORROWER'S OBLIGATIONS IN THE EVENT BORROWER FAILS TO RETURN THE LOANED SECURITIES.**
- 26.2 LENDER ACKNOWLEDGES THAT, IN CONNECTION WITH LOANS OF GOVERNMENT SECURITIES AND AS OTHERWISE PERMITTED BY APPLICABLE LAW, SOME SECURITIES PROVIDED BY BORROWER AS COLLATERAL UNDER THIS AGREEMENT MAY NOT BE GUARANTEED BY THE UNITED STATES.**

(Signature Page Follows)

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

LENDER:

LORBER EPSILON 1999 LIMITED PARTNERSHIP

By: LORBER EPSILON 1999 LLC, Its General Partner

By: /s/ Howard M. Lorber

Title: Manager

Date: April 13, 2005

BORROWER:

JEFFERIES & COMPANY, INC.

By: /s/ Andrew Whittaker

Title: Vice Chairman

Date: April 13, 2005

Annex I

Market Value

Unless otherwise agreed by Borrower and Lender:

1. If the principal market for the Securities to be valued is a national securities exchange in the United States, their Market Value shall be determined by their last sale price on such exchange at the most recent Close of Trading or, if there was no sale on the Business Day of the most recent Close of Trading, by the last sale price at the Close of Trading on the next preceding Business Day on which there was a sale on such exchange, all as quoted on the Consolidated Tape or, if not quoted on the Consolidated Tape, then as quoted by such exchange.
2. If the principal market for the Securities to be valued is the over-the-counter market, and the Securities are quoted on The Nasdaq Stock Market ("Nasdaq"), their Market Value shall be the last sale price on Nasdaq at the most recent Close of Trading or, if the Securities are issues for which last sale prices are not quoted on Nasdaq, the last bid price at such Close of Trading. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
3. Except as provided in Section 4 of this Annex, if the principal market for the Securities to be valued is the over-the-counter market, and the Securities are not quoted on Nasdaq, their Market Value shall be determined in accordance with market practice for such Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such a source. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
4. If the Securities to be valued are Foreign Securities, their Market Value shall be determined as of the most recent Close of Trading in accordance with market practice in the principal market for such Securities.
5. The Market Value of a letter of credit shall be the undrawn amount thereof.
6. All determinations of Market Value under Sections 1 through 4 of this Annex shall include, where applicable, accrued interest to the extent not already included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8 of the Agreement), unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary.
7. The determinations of Market Value provided for in this Annex shall apply for all purposes under the Agreement, except for purposes of Section 13 of the Agreement.

Annex II

Term Loans

This Annex sets forth additional terms and conditions governing Loans designated as “Term Loans” in which Lender lends to Borrower a specific amount of Loaned Securities (“Term Loan Amount”) against a pledge of cash Collateral by Borrower for an agreed upon Cash Collateral Fee until a scheduled termination date (“Termination Date”). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the “Agreement”).

1. The terms of this Annex shall apply to Loans of Equity Securities only if they are designated as Term Loans in a Confirmation therefor provided pursuant to the Agreement and executed by each party, in a schedule to the Agreement or in this Annex. All Loans of Securities other than Equity Securities shall be “Term Loans” subject to this Annex, unless otherwise agreed in a Confirmation or other writing.
2. The Confirmation for a Term Loan shall set forth, in addition to any terms required to be set forth therein under the Agreement, the Term Loan Amount, the Cash Collateral Fee and the Termination Date. Lender and Borrower agree that, except as specifically provided in this Annex, each Term Loan shall be subject to all terms and conditions of the Agreement, including, without limitation, any provisions regarding the parties’ respective rights to terminate a Loan.
3. In the event that either party exercises its right under the Agreement to terminate a Term Loan on a date (the “Early Termination Date”) prior to the Termination Date, Lender and Borrower shall, unless otherwise agreed, use their best efforts to negotiate in good faith a new Term Loan (the “Replacement Loan”) of comparable or other Securities, which shall be mutually agreed upon by the parties, with a Market Value equal to the Market Value of the Term Loan Amount under the terminated Term Loan (the “Terminated Loan”) as of the Early Termination Date. Such agreement shall, in accordance with Section 2 of this Annex, be confirmed in a new Confirmation at the commencement of the Replacement Loan and be executed by each party. Each Replacement Loan shall be subject to the same terms as the corresponding Terminated Loan, other than with respect to the commencement date and the identity of the Loaned Securities. The Replacement Loan shall commence on the date on which the parties agree which Securities shall be the subject of the Replacement Loan and shall be scheduled to terminate on the scheduled Termination Date of the Terminated Loan.
4. Borrower and Lender agree that, except as provided in Section 5 of this Annex, if the parties enter into a Replacement Loan, the Collateral for the related Terminated Loan need not be returned to Borrower and shall instead serve as Collateral for such Replacement Loan.
5. If the parties are unable to negotiate and enter into a Replacement Loan for some or all of the Term Loan Amount on or before the Early Termination Date,
(a) the party requesting

termination of the Terminated Loan shall pay to the other party a Breakage Fee computed in accordance with Section 6 of this Annex with respect to that portion of the Term Loan Amount for which a Replacement Loan is not entered into and (b) upon the transfer by Borrower to Lender of the Loaned Securities subject to the Terminated Loan, Lender shall transfer to Borrower Collateral for the Terminated Loan in accordance with and to the extent required under the Agreement, provided that no Default has occurred with respect to Borrower.

6. For purposes of this Annex, the term "Breakage Fee" shall mean a fee agreed by Borrower and Lender in the Confirmation or otherwise orally or in writing. In the absence of any such agreement, the term "Breakage Fee" shall mean, with respect to Loans of Government Securities, a fee equal to the sum of (a) the cost to the non-terminating party (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of the termination of the Terminated Loan, and (b) any other loss, damage, cost or expense directly arising or resulting from the termination of the Terminated Loan that is incurred by the non-terminating party (other than consequential losses or costs for lost profits or lost opportunities), as determined by the non-terminating party in a commercially reasonable manner, and (c) any other amounts due and payable by the terminating party to the non-terminating party under the Agreement on the Early Termination Date.

Schedule A

Names and Addresses for Communications

Lorber Epsilon 1999 Limited Partnership
c/o Vector Group Ltd.
100 S. E. Second Street, 32nd Floor
Miami, Florida 33131
Attention: Howard M. Lorber

Jefferies & Company, Inc.
11100 Santa Monica Boulevard, 10th Floor
Los Angeles, California 90025
Attention: Ronald Johnson

Schedule A-1

Schedule B

Supplemental Provisions

A. IDENTIFICATION AND AMOUNT OF LOANED SECURITIES:

Issuer: Vector Group Ltd.
Amount: Up to 300,000 shares of common stock of the Issuer

B. COLLATERAL:

Cash in an amount equal to the daily Market Value of the Loaned Securities

C. FEES:

Loan Fee: ___%

Cash Collateral Fee: ___%

At all times, the net of the two fees should result in a net benefit of 25 basis points to be retained by Lender.

Schedule B-1

April 13, 2005

Andrew Whittaker
Executive Vice President
Jefferies & Company, Inc.
11100 Santa Monica Boulevard
10th Floor
Los Angeles, California 90025

Dear Andrew:

On the terms set forth in the Master Securities Loan Agreement dated as of April 13, 2005 (the "Loan Agreement"), between the undersigned and Jefferies & Company, Inc. ("Jefferies"), and for other good and valuable consideration, the receipt of which is hereby acknowledged, notwithstanding any other agreement, the undersigned has agreed to lend or re-lend, in case the loan is terminated, to Jefferies 300,000 shares (the "Borrowed Shares") of common stock of Vector Group Ltd., a Delaware corporation ("Vector"), owned beneficially and of record by the undersigned. The undersigned hereby agrees not to dispose of or encumber or otherwise impair in any fashion at any time, the availability of such Borrowed Shares during the Availability Period. The "Availability Period" shall mean the period commencing on November 18, 2004 and ending on the date that is thirty (30) months after the date thereof. The undersigned also will use commercially reasonable efforts to cooperate with Vector to assure that the Form S-3 registration statement relating to the Borrowed Shares is available and effective for the loan of the Borrowed Shares during the Availability Period.

Notwithstanding any of the covenants or agreements set forth herein, in no event shall any such covenants or agreements: (1) prohibit the undersigned from selling or otherwise disposing of any or all of the Borrowed Shares in a "Change of Control Transaction" (as such term is defined herein) or (2) affect or be deemed to affect the rights and obligations of Mr. Lorber as a director or officer of Vector (including relating to any Board of Director vote), or the right of the undersigned or any affiliate thereof to vote any shares of common stock of Vector owned thereby, in favor of any Change of Control Transaction (provided that if any affiliate of the undersigned acquires the Borrowed Shares pursuant to a transaction described in the first bullet point below, such affiliate shall assume the obligations hereunder) or on any other matter in the sole discretion of the undersigned or any such affiliate, provided, however, that the rights of the undersigned or any affiliate thereof set forth in this sentence do not alter the undersigned's or any such affiliate's obligation to loan to Jefferies, and not to dispose of, any new or different security exchanged for the Borrowed Shares in connection with a recapitalization, merger, consolidation, stock purchase or other corporate action. For purposes of this letter, a "Change of Control Transaction" means:

- the acquisition by any “person” or group under Section 13(d)(3) of the Exchange Act (collectively, “Person”) unaffiliated with Mr. Lorber of beneficial ownership, directly or indirectly, through a purchase, merger, or other acquisition transaction or series of transactions, of shares of Vector’s capital stock entitling such Person to exercise more than 50% of the total voting power of all shares of Vector’s capital stock entitling the holders thereof to vote generally in elections of directors, or
- any consolidation of Vector with, or merger of Vector into, any other Person, any merger of another Person into Vector, or any sale or transfer of all or substantially all of Vector’s assets to another Person, other than a merger or sale of assets that (x) is effected solely to change Vector’s jurisdiction of incorporation and results in a reclassification, conversion, or exchange of outstanding shares of common stock solely into shares of common stock, or (y) does not have the result that Vector’s shareholders immediately before such transaction beneficially own, directly or indirectly, immediately following such transaction, less than 50% of the combined total voting power of all shares of capital stock of the Person resulting from such transaction entitling the holders thereof to vote generally in elections of directors.

This Letter and the Loan Agreement shall terminate in the event that: (i) Vector has redeemed all of Vector's issued and outstanding 5% Variable Interest Senior Convertible Notes due 2011 (the "Notes") in accordance with the terms of the indenture governing the Notes, or (ii) all of the issued and outstanding Notes have been converted by the holders thereof into commonstock of Vector in accordance with the terms of the indenture governing the Notes.

LORBER EPSILON 1999 LIMITED PARTNERSHIP

By: LORBER EPSILON 1999 LLC,
Its General Partner

By: /s/ Howard M. Lorber
Howard M. Lorber
Manager

April 13, 2005

Mr. Howard M. Lorber
c/o Vector Group Ltd.
100 S.E. Second Street, 32nd Floor
Miami, FL 33131

Dear Mr. Lorber:

This letter agreement will confirm the understandings between Vector Group Ltd. (“Vector”) and you, as a stockholder of Vector, in connection with Vector’s private placement of \$30 million of 5% Variable Interest Senior Convertible Notes due 2011 (the “Notes”), which closed on April 13, 2005. Prior to the offering, Jefferies & Company, Inc. (“Jefferies”), the initial purchaser of the Notes, advised Vector that, to successfully market the offering, buyers of convertible securities must be able to borrow shares of Vector common stock on normal terms in order to hedge purchases of the Notes. Based on the existing public float of Vector’s stock, Jefferies indicated that there was not a sufficient number of shares available in the market to borrow. Accordingly, Jefferies stated to Vector that the proposed investors in the Notes would only proceed with the private placement if you and your affiliates, as a principal stockholder of Vector, agreed for a period of 30 months from November 18, 2004 (the “Availability Period”), to permit Jefferies to borrow up to 300,000 shares of Vector common stock as needed. On April 13, 2005, in order to facilitate Vector’s placement of the Notes, you and your affiliates agreed with Jefferies not to dispose of the 300,000 shares during the Availability Period and to make the shares available for borrowing by Jefferies during that period. We understand that you will receive from Jefferies only a minimal spread of approximately 25 basis points on any shares actually borrowed.

In order to appropriately compensate you and your affiliates for agreeing to lend the shares and accepting the resulting liquidity risk, Vector has agreed with you as follows:

(i) During the period from the date hereof to May 18, 2007, notwithstanding any conversion or redemption of the Notes, Vector will pay to you, or an affiliate designated by you, an annualized fee of 1.0% of the aggregate market value of 300,000 shares of Vector common stock. The fee will be payable on a quarterly basis, with the first payment to be made on July 1, 2005, based on the aggregate market value of the 300,000 shares during the preceding quarter.

(ii) The fee will be payable in cash or, by mutual agreement of Vector and you, in treasury shares of Vector common stock (valued at market value).

(iii) The market value of the Vector common stock for the purposes of clauses (i) and (ii) above will be determined based on the average closing price of the Vector common stock during the relevant quarter.

(iv) Promptly following the date hereof, Vector will use all reasonable efforts to file and keep in effect a Registration Statement on Form S-3 or other applicable form to register the resale under the Securities Act of 1933 of the shares of Vector common stock subject to the stock loan arrangement.

(v) Vector will hold you and your affiliates harmless on an after-tax basis against the increase, if any, in the income tax rate applicable to payments to you or your affiliates in respect of dividends paid by the Company on the 300,000 shares as a result of you or your affiliates having entered into the stock loan arrangements. Any such indemnification against additional income tax shall fully consider the income tax effect of receiving any and all such payments.

(vi) In the event of any change in capitalization affecting the Vector common stock, including, without limitation, a stock dividend or other distribution, stock split, spin-off, reorganization or recapitalization, the aggregate number of shares upon which the fee and any tax indemnity shall be computed shall be appropriately adjusted.

Vector represents to you that (i) Vector has the requisite corporate power and authority to enter into and perform its obligations under this letter agreement; (ii) this letter agreement has been approved by the Audit Committee of Vector's Board of Directors; and (iii) any necessary exceptions or waivers under Vector's Code of Business Conduct and Ethics have been obtained in order to permit Vector to enter into and perform this letter agreement.

This letter agreement contains all the understandings between Vector and you pertaining to the matters referred to herein, and supercedes all undertakings and agreements, whether oral or in writing, previously entered into by Vector and you with respect hereto. No provision of this letter agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by you and a duly authorized officer of Vector. No waiver by Vector or you of any breach by the other party hereto of any condition or provision of this letter agreement to be performed by such other party shall be deemed a waiver of another similar or dissimilar condition or provision at the same time, any prior time or any subsequent time. If any provision of this letter agreement or the application of any such provision to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this letter agreement or the application of such provision to such person or circumstances other than those to which it is so determined to be invalid and unenforceable, shall not be affected thereby, and each provision hereof shall be validated and shall be enforced to the fullest extent permitted by law. This letter agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of laws principles. This letter agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

Please indicate your agreement with the foregoing by signing this letter agreement in the space provided below.

Very truly yours,

VECTOR GROUP LTD.

By: /s/ Richard J. Lampen

Richard J. Lampen
Executive Vice President

The foregoing letter agreement
is consented and agreed to as of the
date first written above.

/s/ Howard M. Lorber

Howard M. Lorber

DRAFT RELEASE



NEWS

FOR IMMEDIATE RELEASE

Contact: Paul Caminiti/Brandy Bergman/Carrie Bloom
Citigate Sard Verbinnen
212/687-8080

VECTOR GROUP LTD. COMPLETES SALE OF SENIOR CONVERTIBLE NOTES

MIAMI, FL, April 13, 2005 — Vector Group Ltd. (NYSE: VGR) announced today that it has completed the sale of \$30 million of its 5% Variable Interest Senior Convertible Notes due 2011 (the “Notes”) directly to qualified institutional buyers pursuant to Rule 144A of the Securities Act of 1933, as amended.

The Company intends to use the net proceeds of the issuance for general corporate purposes, including repaying borrowings by Liggett under its revolving credit facility.

This press release does not constitute an offer to sell or a solicitation of an offer to buy the Notes. The Notes and the common stock issuable upon conversion thereof have not been registered under the Securities Act of 1933, as amended, or any state securities laws. Unless so registered, the Notes and the common stock issuable upon conversion of the Notes may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended, and applicable state securities laws.

This press release contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The Company has tried, whenever possible, to identify these forward-looking statements using words such as “anticipates”, “believes”, “estimates”, “expects”, “plans”, “intends” and similar expressions. These statements reflect the Company’s current beliefs and are based upon information currently available to it. Accordingly, such forward-looking statements involve known and unknown risks, uncertainties and other factors which could cause the Company’s actual results, performance or achievements to differ materially from those expressed in, or implied by, such statements.

Vector Group is a holding company that indirectly owns Liggett Group Inc., Vector Tobacco Inc. and a controlling interest in New Valley Corporation. Additional information concerning the Company is available on the Company’s website, www.VectorGroupLtd.com.

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