



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): **November 16, 2004**

**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 filing 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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SIGNATURE

Securities Purchase Agreement

Form of Indenture

Form of Additional Investment Rights

Registration Rights Agreement

Press Release dated November 17, 2004

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### **Item 1.01. Entry into a Material Definitive Agreement**

On November 16, 2004, Vector Group Ltd. (the "Company") agreed to sell \$65.5 million of its 5% Variable Interest Senior Convertible Notes due 2011 (the "Notes"), pursuant to the terms of a Securities Purchase Agreement, dated as of November 16, 2004, among the Company and a number of qualified institutional buyers set forth therein (the "Buyers"), a copy of which is attached hereto as Exhibit 1.1 (the "Purchase Agreement"). Pursuant to the Purchase Agreement, the Buyers will also have the right to purchase an additional \$16.375 million of Notes. The Notes were offered only to qualified institutional buyers in accordance with Rule 144A. The Notes are to be governed by the terms of an Indenture, to be dated as of November 18, 2004 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as Trustee, the form of which is attached hereto as Exhibit 4.1. The Company intends to use the net proceeds of the issuance to redeem the 10% Senior Secured Notes due March 31, 2006 issued by the Company's subsidiary, VGR Holding Inc., and for general corporate purposes.

In connection with the agreed issuance of the Notes, the Company has also entered into a Registration Rights Agreement, dated November 16, 2004, with the Buyers, a copy of which is attached hereto as Exhibit 4.3. The Company has agreed to file a shelf registration statement with the Securities and Exchange Commission covering resales of the Notes and the Company's common stock issuable upon conversion of the Notes.

The Notes will be convertible, at the option of the holder at any time on or prior to maturity, into shares of the Company's common stock. The Notes will be convertible at a conversion price of \$19.57 per share, which is equal to a conversion rate of approximately 51.0986 shares of common stock per \$1,000 principal amount of Notes, subject to adjustment.

Interest on the Notes will be payable quarterly on February 15, May 15, August 15 and November 15 of each year, beginning February 15, 2005. The Notes will accrue interest at 5% per annum, with an additional amount of interest payable on each interest payment date based on the amount of cash dividends paid by the Company on its common stock during the prior three-month period ending on the record date for such interest payment multiplied by the number of shares of the Company's common stock into which the Notes are convertible on such record date (together, the "Total Interest"). Notwithstanding the foregoing, however, during the period from the closing date to and including November 15, 2006, the interest payable on each interest payment date shall be the higher of (i) the Total Interest or (ii) 6 3/4% per annum.

The Notes will mature on November 15, 2011, but the Company must redeem 12.5% of the total aggregate principal amount of the Notes outstanding on November 15, 2009. In addition to such redemption amount, the Company will also redeem on November 15, 2009 and on each accrual period thereafter an additional amount, if any, of the Notes necessary to prevent the Notes from being treated as an "Applicable High Yield Discount Obligation" under the Internal Revenue Code. The holders of the Notes will have the option on November 15, 2009 to require the Company to repurchase some or all of their remaining Notes. The redemption price for such redemptions will equal 100% of the principal amount of the Notes plus accrued and unpaid interest, if any.

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The Notes will be the Company's unsecured and unsubordinated obligations and will rank on a parity in right of payment with all of its existing and future unsecured and unsubordinated indebtedness. In addition, the Notes will effectively rank junior to any future secured indebtedness the Company may incur and junior to liabilities of the Company's subsidiaries.

Upon a fundamental change (as defined in the Indenture), each holder of the Notes may require the Company to repurchase some or all of its Notes at a repurchase price equal to 100% of the aggregate principal amount of the Notes plus accrued and unpaid interest, if any, plus, in certain circumstances, a make-whole premium.

Upon a continuing event of default (as defined in the Indenture), the Trustee or the holders of at least 25% in aggregate principal amount of the outstanding Notes may declare the Notes immediately due and payable at their principal amount together with accrued interest, except that an event of default resulting from a bankruptcy or similar proceeding will automatically cause the Notes to become immediately due and payable without any declaration or other act on the part of the Trustee or any Note holders.

The summary of the foregoing transaction 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 9.01.      *Financial Statements and Exhibits.***

(c) Exhibits

The following Exhibits are filed herewith:

Exhibit 1.1.	Securities Purchase Agreement, dated as of November 16, 2004, among Vector Group Ltd. and the Buyers.
Exhibit 4.1.	Form of Indenture, to be dated as of November 18, 2004, among Vector Group Ltd. 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.	Form of Additional Investment Rights, to be dated as of November 18, 2004, among Vector Group Ltd. and the Buyers.
Exhibit 4.3.	Registration Rights Agreement, dated as of November 16, 2004, among Vector Group Ltd. and the Buyers.
Exhibit 99.1	Press Release dated November 17, 2004.

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**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 Sieten  
Joselynn D. Van Sieten  
Vice President and Chief Financial Officer

Date: November 17, 2004

## SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (the "AGREEMENT"), dated as of November 16, 2004, by and among Vector Group Ltd., a Delaware corporation, with headquarters located at 100 S.E. Second Street, Miami, Florida 33131 (the "COMPANY"), and the investors listed on the Schedule of Buyers attached hereto (individually, a "BUYER" and collectively, the "BUYERS").

## WHEREAS:

A. Each of the Company and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the "1933 ACT"), and Rule 506 of Regulation D ("REGULATION D") as promulgated by the United States Securities and Exchange Commission (the "SEC") under the 1933 Act.

B. The Company has authorized the issuance of 5% Variable Interest Senior Convertible Notes Due 2011 (the "NOTES"), which Notes shall be convertible into the Company's common stock, par value \$.10 per share (the "COMMON STOCK"), and shall be issued pursuant to and by the provisions of an Indenture dated as of the Closing Date (as defined below) between the Company and Wells Fargo Bank, N.A., as trustee (the "TRUSTEE"), in substantially the form attached hereto as Exhibit A (the "INDENTURE").

C. Each Buyer wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) that aggregate principal amount of Notes, in substantially the form attached hereto as Exhibit B (as amended or modified from time to time, collectively, the "INITIAL NOTES"), set forth opposite such Buyer's name in column (3) on the Schedule of Buyers (which aggregate amount for all Buyers shall be \$65,500,000) (as converted, collectively, the "INITIAL CONVERSION SHARES"), and (ii) a right, in substantially the form attached hereto as Exhibit C (the "ADDITIONAL INVESTMENT RIGHTS"), to acquire up to that principal amount of additional Notes (which aggregate amount for all Buyers shall be \$16,375,000), in substantially the form attached hereto as Exhibit D (as amended or modified from time to time, collectively, the "ADDITIONAL NOTES" and together with the Initial Notes and any senior convertible notes issued in replacement of the Initial Notes or the Additional Notes in accordance with the terms thereof, the "NOTES") to be issued pursuant to the provisions of the Indenture, set forth opposite such Buyer's name in column (4) on the Schedule of Buyers (such Additional Notes as converted, the "ADDITIONAL CONVERSION SHARES" and together with the Initial Conversion Shares, the "CONVERSION SHARES").

D. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement, substantially in the form attached hereto as Exhibit E (as amended or modified from time to time, the "REGISTRATION RIGHTS AGREEMENT"), pursuant to which the Company has agreed to provide certain registration rights with respect to the Notes and the Conversion Shares under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

E. The Notes, the Conversion Shares and the Additional Investment Rights collectively are referred to herein as the "SECURITIES".

NOW, THEREFORE, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF NOTES AND ADDITIONAL INVESTMENT RIGHTS.

(a) Purchase of Notes and Additional Investment Rights.

(i) Subject to the satisfaction (or waiver) of the conditions set forth in Sections 5 and 6 below, the Company shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from the Company on the Closing Date (as defined below), (x) a principal amount of Initial Notes as is set forth opposite such Buyer's name in column (3) on the Schedule of Buyers, and (y) Additional Investment Rights to acquire up to that principal amount of Additional Notes as is set forth opposite such Buyer's name in column (4) on the Schedule of Buyers (the "CLOSING"). The principal amount of Additional Notes that may be sold to each Buyer shall be the principal amount that bears the same proportion to the aggregate principal amount of Additional Notes being purchased as the principal amount of Initial Notes set forth opposite such Buyer's name in column (3) on the Schedule of Buyers bears to the aggregate principal amount of the Initial Notes.

(ii) Closing. The date and time of the Closing (the "CLOSING DATE") shall be 10:00 a.m., New York City Time, on November 18, 2004 (or such later date as is mutually agreed to by the Company and each Buyer) after notification of satisfaction (or waiver) of the conditions to the Closing set forth in Sections 5 and 6 below at the offices of Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022.

(iii) Purchase Price. The aggregate purchase price for the Notes and the Additional Investment Rights to be purchased by each Buyer at the Closing (the "PURCHASE PRICE") shall be the amount set forth opposite such Buyer's name in column (5) of the Schedule of Buyers. Each Buyer shall pay \$1.00 for each unit comprised of \$1.00 of principal amount of Initial Notes and related Additional Investment Rights to be purchased by such Buyer at the Closing.

(b) Form of Payment. On the Closing Date, (i) each Buyer shall pay its Purchase Price to the Company for the Initial Notes and the Additional Investment Rights to be issued and sold to such Buyer at the Closing, by wire transfer of immediately available funds in accordance with the Company's written wire instructions, and (ii) the Company shall deliver or caused to be delivered to each Buyer (A) the Initial Notes (for the account of such Buyer as such Buyer shall instruct) which such Buyer is then purchasing, and (B) the Additional Investment Rights (in the amounts as such Buyer shall request so long as the aggregate principal amount of Additional Notes which may be purchased pursuant to the Additional Investment Rights does not exceed \$16,375,000) such Buyer is purchasing, in each case duly executed on behalf of the Company and registered in the name of such Buyer or its designee.



2. BUYERS' REPRESENTATIONS AND WARRANTIES.

Each Buyer represents and warrants with respect to only itself that as of the date hereof and as of the Closing Date:

(a) No Public Sale or Distribution. Such Buyer is (i) acquiring the Notes and the Additional Investment Rights, (ii) upon exercise of the Additional Investment Rights, will acquire the Additional Notes issuable upon exercise of the Additional Investment Rights, and (iii) upon conversion of the Notes, will acquire the Conversion Shares issuable upon conversion of the Notes, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided, however, that by making the representations herein, such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. Such Buyer is acquiring the Securities hereunder in the ordinary course of its business. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities. As used in this Agreement, "PERSON" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(b) Accredited Investor Status. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D (an "ACCREDITED INVESTOR") and a "qualified institutional buyer" within the meaning of Rule 144A under the 1933 Act (a "QIB").

(c) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(d) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Securities which have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer's right to rely on the Company's representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(e) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the

investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(f) Validity; Enforcement. Such Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed. This Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(g) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the Registration Rights Agreement and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder or under the Registration Rights Agreement.

(h) Residency. Such Buyer is a resident of that jurisdiction specified below its address on the Schedule of Buyers.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Buyers that as of the date hereof and the Closing Date, provided that as used in this Section 3, knowledge shall mean the actual knowledge of the executive officers of the Company:

(a) Organization and Qualification. The Company and its "SUBSIDIARIES" (which for purposes of this Agreement means any entity in which the Company, directly or indirectly, owns capital stock or holds an equity or similar interest that exceeds 50% of the aggregate outstanding equity or similar interests of such entity) are entities duly organized and validly existing in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authorization to own their material properties and to carry on their business as now being conducted in all material respects. Each of the Company and its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, "MATERIAL ADVERSE EFFECT" means any material adverse effect on the business, assets, results of operations, or condition (financial or otherwise) of the Company and its

Subsidiaries, taken as a whole, or on the transactions contemplated hereby and the other Transaction Documents taken as a whole or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents. The Company has no Subsidiaries except as set forth on Schedule 3(a).

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Indenture, the Notes, the Additional Investment Rights, the Registration Rights Agreement and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by this Agreement (collectively, the "TRANSACTION DOCUMENTS") and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Notes and the Additional Investment Rights, the reservation for issuance and the issuance of the Conversion Shares issuable upon conversion of the Notes, have been duly authorized by the Company's Board of Directors and (other than the filing with the SEC of one or more Registration Statements as may be required by federal and state securities laws with respect to the Company's obligations under the Registration Rights Agreement and such filings as may be required by The New York Stock Exchange Inc. (the "PRINCIPAL MARKET") with respect to the transactions contemplated hereby) no further consent or authorization is required by the Company, its Board of Directors or its stockholders. This Agreement and the other Transaction Documents being delivered of even date herewith have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. As of the date of issuance of any Additional Notes, such Additional Notes shall have been duly executed and delivered by the Company, and shall constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditor's rights and remedies.

(c) Issuance of Securities. The Notes and the Additional Investment Rights are duly authorized and upon issuance, shall be free from all taxes, liens and charges with respect to the issue thereof. As of the Closing, a number of shares of Common Stock shall have been duly authorized and reserved for issuance, free of pre-emptive rights, and sufficient for the purpose of enabling the Company to satisfy all obligations to issue the Conversion Shares upon conversion of all of the Notes (including the Additional Notes). Upon conversion in accordance with the Indenture, the Conversion Shares will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming the truthfulness of each Buyer's representations and warranties under Section 2 hereof, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and the Additional Investment Rights and reservation for issuance and issuance of the Conversion Shares) will not (i) result in a violation of the Certificate of Incorporation (as defined in Section 3(u)) or the Bylaws (as defined in Section 3(u)), (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) (so long as the Company obtains all consents, authorizations and orders and makes all filings and registrations specified in Section 3(e) below) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the Principal Market) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, except, in the case of clauses (ii) and (iii), such conflicts, defaults, rights, or violations that would not reasonably be expected to have a Material Adverse Effect.

(e) Consents. The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof, other than as may be required by federal and state securities laws and rules and regulations of the Principal Market with respect to the Company's obligations under the Registration Rights Agreement. All consents, authorizations, orders, filings and registrations which the Company is required to obtain or make pursuant to the preceding sentence have been obtained or made on or prior to the Closing Date.

(f) Acknowledgment Regarding Buyer's Purchase of Securities. The Company acknowledges that no Buyer is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. The Company further represents to each Buyer that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives.

(g) No General Solicitation; Placement Agent's Fees. Neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company acknowledges that it has engaged Jefferies & Company, Inc. as placement agent (the "AGENT") in connection with the sale of the Securities. Other than the Agent, the Company has not engaged any placement agent or other agent (other than legal counsel) in connection with the sale of the Securities.

(h) No Integrated Offering. None of the Company, its Subsidiaries, any of their affiliates, and any Person acting on their behalf has, directly or indirectly, made any offers or

sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of the Securities under the 1933 Act or cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. None of the Company, its Subsidiaries, their affiliates and any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would require registration of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings.

(i) Form S-3 Eligibility. The Company is eligible to register the Notes and the Conversion Shares for resale by the Buyers using Form S-3 promulgated under the 1933 Act.

(j) Rule 144A. The Notes satisfy the requirements set forth in Rule 144A(d) (3) under the 1933 Act.

(k) Trust Indenture Act. Assuming the accuracy of the representations and warranties of the Buyers contained in Section 2 hereof and their compliance with the agreements set forth herein, it is not necessary in connection with the offer, sale and delivery of the Securities in the manner contemplated by this Agreement to qualify the Indenture under the Trust Indenture Act of 1939, as amended (the "1939 ACT").

(l) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation or the laws of the State of Delaware which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Buyer's ownership of the Securities. The Company has not adopted a stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(m) SEC Documents; Financial Statements. During the two (2) years prior to the date hereof, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "SEC DOCUMENTS"). The Company has delivered to the Buyers or their respective representatives copies of the SEC Documents filed by the Company during such period not available on the EDGAR system. As of their respective dates, the SEC Documents, as they may have been subsequently amended by filings made by the Company with the SEC prior to the date hereof, complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the

Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(n) Absence of Certain Changes. Except as disclosed in Schedule 3(n), since December 31, 2003, (i) there has been no change or development that has had a Material Adverse Effect, (ii) the Company has not declared or paid any dividends, (iii) the Company has not sold any assets, individually or in the aggregate, in excess of \$1,000,000 outside of the ordinary course of business or (iv) the Company has not made had capital expenditures, individually or in the aggregate, in excess of \$5,000,000. The Company has not taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have knowledge that its creditors intend to initiate involuntary bankruptcy proceedings or knowledge of any fact which would reasonably lead a creditor to do so. The Company is not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Section 3(n), "INSOLVENT" means (i) the present fair saleable value of the Company's assets is less than the amount required to pay the Company's total Indebtedness (as defined in Section 3(v)), (ii) the Company is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (iii) the Company has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted.

(o) No Undisclosed Events, Liabilities, Developments or Circumstances. No event, liability, development or circumstance has occurred or exists with respect to the Company or its Subsidiaries or their respective business, properties, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced.

(p) Conduct of Business; Regulatory Permits. Neither the Company nor its Subsidiaries is in violation of (x) any term of or in default under its Certificate of Incorporation or Bylaws or their organizational charter or certificate of incorporation or bylaws, respectively or (y) any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries, except in either of the foregoing cases, for possible violations which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market which would reasonably be expected to lead to delisting or suspension of the Common Stock by the Principal Market. Since December 31, 2003, (i) the Common Stock has been designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) no executive officer of the Company has received any communication, written or oral, from the SEC or the Principal Market threatening the suspension

or delisting of the Common Stock from the Principal Market. The Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any written notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(q) Foreign Corrupt Practices. Neither the Company, nor any of its Subsidiaries, nor any director, officer, agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(r) Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or executive officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002, as in effect at the applicable time, and the rules and regulations promulgated in connection therewith (the "SARBANES-OXLEY ACT"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(s) Internal Accounting Controls. The Company and each of its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference.

(t) Transactions With Affiliates. Except as set forth in the SEC Documents filed at least ten (10) days prior to the date hereof and other than the transactions disclosed on Schedule 3(t), none of the officers, directors or employees of the Company is presently a party to any transaction with the Company or any of its Subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or, to the knowledge of the Company, any corporation, partnership, trust or other entity in which any such officer, director, or employee has a substantial interest or is an officer, director, trustee or partner, which is required by the rules and regulations of the SEC under the 1934 Act to be so disclosed in the SEC Documents.

(u) Equity Capitalization. As of the date hereof, the authorized capital stock of the Company consists of (i) 100,000,000 shares of Common Stock and (ii) 10,000,000 shares of preferred stock, \$.10 par value per share. As of September 30, 2004, there were approximately 41,734,407 shares of Common Stock issued and outstanding, approximately 9,127,139 shares of Common Stock reserved for issuance pursuant to the Company's stock option and purchase plans, and approximately 5,287,310 shares of Common Stock reserved for issuance pursuant to securities (other than the Notes) exercisable or exchangeable for, or convertible into, shares of Common stock. There were no shares of preferred stock outstanding as of September 30, 2004. Except as disclosed in Schedule 3(u): (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) other than pursuant to the Company's stock option and purchase plans, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is bound to issue additional capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries; (iii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act (except the Registration Rights Agreement); (iv) there are no outstanding equity securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem an equity security of the Company or any of its Subsidiaries; (v) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (vi) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. The Company has furnished to each Buyer true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "CERTIFICATE OF INCORPORATION"), and the Company's Bylaws, as amended and as in effect on the date hereof (the "BYLAWS").

(v) Indebtedness and Other Contracts. All Indebtedness of the Company and each of its Significant Subsidiary is disclosed in Schedule 3(v). For purposes of this Agreement: (x) "INDEBTEDNESS" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently



applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "CONTINGENT OBLIGATION" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(w) Absence of Litigation. Except as set forth in Schedule 3(w), there is no action, suit or proceeding before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of the Company's Subsidiaries or any of the Company's or the Company's Subsidiaries' officers or directors in their capacities as such that would reasonably be expected to have a Material Adverse Effect. Any and all litigation matters disclosed in the SEC Documents sets forth all litigation matters which need to be disclosed in such SEC Documents.

(x) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any such Subsidiary believes that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

(y) Employee Relations. (i) The Company and its Subsidiaries believe that their relations with their employees are satisfactory. No executive officer of the Company (as defined in Rule 501(f) of the 1933 Act) has notified the Company that such officer intends to leave the Company in the foreseeable future or otherwise terminate such officer's employment with the Company in the foreseeable future. No labor dispute with the employees of the Company or any of its Subsidiaries is pending or, to the knowledge of the Company, imminent that would reasonably be expected to have a Material Adverse Effect.

(ii) The Company and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(z) Title. The Company and its Subsidiaries have good and valid title in fee simple to all real property and good and valid title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as (a) is described in Schedule 3(z) or arise from indebtedness reflected therein or (b) do not materially affect the value of such property and do not interfere with the use made of such property by the Company and any of its Subsidiaries in a manner that would reasonably be expected to have a Material Adverse Effect. Any real property and facilities held under lease by the Company and any of its Subsidiaries and material to the business of the Company and its Subsidiaries taken as a whole are, with respect to the Company and its Subsidiaries, in full force and effect, with such exceptions as do not materially interfere with the use made of such property and buildings by the Company and its Subsidiaries.

(aa) Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, trade secrets and other intellectual property rights ("INTELLECTUAL PROPERTY RIGHTS") necessary to conduct their respective businesses as now conducted and which failure to so have would reasonably be expected to have a Material Adverse Effect. None of the Company's or the Subsidiaries' Intellectual Property Rights necessary to conduct their respective businesses as now conducted have expired or terminated, or are expected to expire or terminate, within two years from the date of this Agreement, except where the expiration or termination would not reasonably be expected to have a Material Adverse Effect. The Company has not received written notice and has no knowledge of any infringement by the Company or its Subsidiaries on the Intellectual Property Rights of other Persons. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company, being threatened, by or against the Company or its Subsidiaries regarding its Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(bb) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with any and all Environmental Laws (as hereinafter defined), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. As used in this Agreement, "ENVIRONMENTAL LAWS" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, or releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "HAZARDOUS MATERIALS") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, injunctions, judgments, licenses, orders, permits, or regulations issued, entered, promulgated or approved thereunder.

(cc) Tax Status. The Company and each of its Subsidiaries (i) has made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for the periods to which such returns, reports or declarations apply. Except as disclosed in Schedule 3(cc), there are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

(dd) Ranking of Notes. No Indebtedness of the Company is senior to or ranks pari passu with the Notes in right of payment, whether with respect of payment of interest or upon liquidation or dissolution or otherwise.

(ee) Independent Accountants. PricewaterhouseCoopers LLP, who have certified the consolidated financial statements of the Company as of December 31, 2003, are independent public accountants within the meaning of the 1933 Act;

(ff) Investment Company. Neither the Company nor its Subsidiaries is and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof, will become required to register as an "investment company" or an entity "controlled" by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

(gg) Manipulation of Price. The Company has not, and to its knowledge no one acting on its behalf has within the preceding 12 months, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities or (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities.

(hh) Disclosure. The Company confirms that, after giving effect to the 8-K Filing (as defined below), neither it nor, to its knowledge, any officer, director or agent of the Company has provided any of the Buyers or their respective agents or counsel with any information that constitutes in the Company's reasonable determination material, nonpublic information. The Company understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of the Company. All written disclosure provided to the Buyers regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement, furnished by or on behalf of the Company, taken as a whole, are true and correct and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.

#### 4. COVENANTS.

(a) Best Efforts. Each party shall use its reasonable best efforts timely to satisfy each of the conditions to be satisfied by it as provided in Sections 5 and 6 of this Agreement.

(b) Intentionally Omitted.

(c) Use of Proceeds. The Company will use the proceeds from the sale of the Securities for the (i) repayment of certain outstanding Indebtedness of the Company or any of its Subsidiaries or (ii) general corporate purposes, and shall not use the proceeds for the redemption or repurchase of any of its equity securities.

(d) Financial Information. For so long as any Securities remain outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the 1933 Act, the Company will, during any period in which it is not subject to Section 13 or 15(d) under the 1934 Act, make available to each Buyer and any holder of Securities in connection with any sale thereof and any prospective purchaser of Securities, in each case upon request, the information specified in, and meeting the requirements of, Rule 144A(d)(4) under the 1933 Act (or any successor thereto).

(e) Listing. The Company shall promptly secure the listing of all of the Conversion Shares upon each national securities exchange and automated quotation system, if any, upon which the Common Stock is then listed (subject to official notice of issuance) and shall maintain such listing of all Conversion Shares from time to time issuable under the terms of the Transaction Documents. The Company shall maintain the Common Stock's authorization for quotation on the Principal Market. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market.

(f) Fees and Expenses.

(i) The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by any Buyer) payable with respect to the transactions contemplated hereby, including, without limitation, any fees or commissions payable to the Agent. The Company shall hold each Buyer harmless against, any liability, loss or reasonable expense (including, without limitation, reasonable attorney's fees and out-of-pocket expenses) arising from any claim in respect of any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(ii) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company shall pay or cause to be paid all costs and expenses incident to the performance of its obligations hereunder, including without limitation, all fees, costs and expenses (A) incident to the preparation, issuance, execution, authentication and delivery of the Securities, including any expenses of the Trustee (B) in connection with the admission for trading of the Notes on any securities exchange or inter-dealer quotation system (as well as in connection with the admission of the Notes for trading in the

Private Offerings, Resales and Trading through Automatic Linkages ("PORTAL") system of the National Association of Securities Dealers, Inc. ("NASD") or any appropriate market system), (C) related to any filing with the Principal Market and (D) in connection with satisfying its obligations under Section 4(e).

(g) Pledge of Securities. The Company acknowledges and agrees that the Securities may be pledged by a Holder (as defined in the Registration Rights Agreement) in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including without limitation, Section 2(i) hereof; provided that an Investor and its pledgee shall be required to comply with the provisions of Section 2(i) in order to effect a sale, transfer or assignment of Securities to such pledge. The Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by an Investor.

(h) Disclosure of Transactions and Other Material Information. On the first Business Day following the date of this Agreement, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching the material Transaction Documents (including, without limitation, this Agreement, the Indenture, the form of the Notes, the form of Additional Investment Right and the Registration Rights Agreement) as exhibits to such filing (including all attachments, the "8-K FILING"). From and after the filing of the 8-K Filing with the SEC, no Buyer shall be in possession of any material, nonpublic information received from the Company, any of its Subsidiaries or any of its respective officers, directors, employees or agents, that is not disclosed in the 8-K Filing. The Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors, employees and agents, not to, provide any Buyer with any material, nonpublic information regarding the Company or any of its Subsidiaries from and after the filing of the 8-K Filing with the SEC without the express written consent of such Buyer. Subject to the foregoing, neither the Company nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as, in the reasonable judgment of the Company or its counsel, is required by applicable law or regulations or applicable stock exchange rules (provided that in the case of clause (i) each Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Buyer, or include the name of any Buyer in any filing with the SEC or any regulatory agency or the applicable stock exchange, without the prior written consent of such Buyer, except (i) for disclosure thereof in the 8-K Filing or Registration Statement or similar disclosure as required in future SEC filings or (ii) as required by applicable law or regulations or applicable stock exchange rules or any order of any court or other governmental agency, in which case the Company shall use its reasonable best efforts to provide such Buyer with prior notice of such disclosure.

(i) Additional Notes; Variable Securities. For so long as any Notes or Additional Investment Rights remain outstanding, the Company will not issue any Notes other than to the Buyers as contemplated hereby and the Company shall not issue any other securities that would cause a breach or default under the Notes. For so long as any Notes or Additional Investment Rights remain outstanding, the Company shall not, in any manner, issue or sell any rights, warrants or options to subscribe for or purchase Common Stock or directly or indirectly convertible into or exchangeable or exercisable for Common Stock at a price which varies or may vary with the market price of the Common Stock, including by way of one or more reset(s) to any fixed price unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price (as defined in the Notes) with respect to the Common Stock into which any Note is convertible.

(j) Reservation of Shares. The Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, free of pre-emptive rights, after the Closing Date, a number of shares of Common Stock sufficient for the purpose of enabling the Company to satisfy all obligations to issue the Conversion Shares upon conversion of all of the Notes (including the Additional Notes, if issued).

(k) Conduct of Business. The business of the Company and its Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any governmental entity, except where such violations would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(l) Additional Issuances of Securities.

(i) For purposes of this Section 4(l), the following definitions shall apply.

(1) "CONVERTIBLE SECURITIES" means any stock or securities (other than Options) convertible into or exercisable or exchangeable for shares of Common Stock.

(2) "OPTIONS" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(3) "COMMON STOCK EQUIVALENTS" means, collectively, Options and Convertible Securities.

(ii) From the date hereof until the date that is 120 days following the Closing Date (the "TRIGGER DATE"), the Company hereby agrees that, it will not, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, and (iii) except as provided in Schedule 3(t), file with the SEC a registration statement under the 1933 Act relating to any additional shares of its Common Stock or securities convertible into, or exchangeable or exercisable for, any shares of its Common Stock, whether

any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the sale of the Securities under this Agreement or the issuance of the Conversion Shares, (B) the grant by the Company of employee, director or consultant stock options, (C) the issuance by the Company of any shares of Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof (provided that the terms of such options or warrants are not amended or modified in any manner after the date hereof) or an option or warrant issued or granted in compliance with this paragraph, and (D) the filing of any registration statement in respect of the Notes or the Conversion Shares. In addition, except as provided in Schedule 3(t), the Company agrees to obtain lock-up agreements with each of its executive officers and directors in substantially the form attached hereto as Exhibit I.

(m) Sales by Officers and Directors. From the date hereof until the Trigger Date, the Company shall not, directly or indirectly, permit any officer or director of the Company or any of its Subsidiaries to sell any Common Stock pursuant to a contract, instruction or plan in accordance with Rule 10b5-1 of the 1934 Act.

(n) Regulation M. The Company will not take any action prohibited by Regulation M under the 1934 Act, in connection with the distribution of the Securities contemplated hereby.

(o) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(p) Integration. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the 1933 Act) which will be integrated with the sale of the Securities or the Conversion Shares in a manner which would require the registration under the 1933 Act of the Securities or require stockholder approval under the rules and regulations of the Principal Market and the Company will take all action that is appropriate or necessary to assure that its offerings of other securities will not be integrated for purposes of the 1933 Act or the rules and regulations of the Principal Market with the issuance of Securities contemplated hereby.

(q) Qualification Under Trust Indenture Act. Prior to any registration of the Notes or the Conversion Shares pursuant to the Registration Rights Agreement, or at such earlier time as may be so required, the Company shall qualify the Indenture under the 1939 Act and to enter into any necessary supplemental indentures in connection therewith.

(r) PORTAL. If requested in writing by the Holders not representing less than a majority of the aggregate principal amount of the then outstanding Securities, the Company will

use its commercially reasonable efforts to cause the Securities to be eligible for trading on PORTAL.

(s) Sales by Buyers. Each Buyer will offer the Securities for resale only upon the terms and conditions set forth in the Transaction Documents or as otherwise permitted by applicable law or regulation and, if required, pursuant to prospectus delivery requirements. Each Buyer will solicit offers to buy the Notes only from, and will offer and sell the Notes only to, (A) persons reasonably believed by such Buyer to be a QIB or (B) persons reasonably believed by such Buyer to be an Accredited Investor or (C) persons reasonably believed by such Buyer to be non-U.S. persons referred to in Regulation S under the 1933 Act, and in connection with each such sale, it will take reasonable steps to ensure that the purchaser of such Notes is aware that such sale is being made in reliance on Rule 144A, Regulation D or Regulation S, as applicable.

5. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Notes and the related Additional Investment Rights to each Buyer at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company.

(b) Such Buyer and each other Buyer shall have delivered to the Company the Purchase Price for the Notes and the Additional Investment Rights being purchased by such Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(c) The representations and warranties of such Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

6. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

The obligation of each Buyer hereunder to purchase the Notes and Additional Investment Rights at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer's sole benefit and may be waived by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have executed and delivered to such Buyer (i) each of the Transaction Documents, (ii) the Initial Notes (for the account of such Buyer as such Buyer shall instruct) being purchased by such Buyer at the Closing pursuant to this Agreement and (iii) the



Additional Investment Rights (in such amounts up to the maximum amount purchasable as such Buyer shall request) being purchased by such Buyer at the Closing pursuant to this Agreement.

(b) Such Buyer shall have received the opinions of Marc N. Bell, Vice President, General Counsel and Secretary to the Company and of McDermott Will & Emery LLP, the Company's outside counsel, each dated as of the Closing Date, in substantially the form of Exhibits F-1 and F-2, respectively, attached hereto.

(c) The Buyers shall have purchased Initial Notes in the aggregate principal amount of \$65,500,000.

(d) The Company shall have delivered to such Buyer lock-up agreements with each of the Company's executive officers and directors in substantially the form attached hereto as Exhibit I, except as provided in Schedule 3(t).

(e) The Company shall have delivered to such Buyer a certificate evidencing the formation and good standing of the Company in the Company's jurisdiction of formation issued by the Secretary of State of such jurisdiction, as of a date within ten (10) days of the Closing Date.

(f) The Company shall have delivered to such Buyer a certificate evidencing the Company's qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of each jurisdiction in which the Company's ownership of property or the nature of the business conducted by the Company makes such qualification necessary, as of a date within ten (10) days of the Closing Date.

(g) The Company shall have delivered to such Buyer a certificate, executed by the Secretary or Assistant Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's Board of Directors, (ii) the Certificate of Incorporation and (iii) the Bylaws, each as in effect at the Closing, in the form attached hereto as Exhibit G.

(h) The representations and warranties of the Company shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied in all material respects with the covenants and agreements required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date. Such Buyer shall have received a certificate, executed by an executive officer of the Company, dated as of the Closing Date, in the form attached hereto as Exhibit H.

(i) The Common Stock (i) shall be designated for quotation or listed on the Principal Market and (ii) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (1) in writing by the SEC

or the Principal Market or (2) by falling below the minimum listing maintenance requirements of the Principal Market.

(j) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities by the Company hereunder.

(k) The Securities shall have been approved for trading on PORTAL, subject only to notice of issuance at or prior to the time of purchase.

(l) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have occurred any downgrading, nor shall any public notice have been given of (i) any intended downgrading or (ii) any review or possible change that does not indicate an improvement in the rating accorded any securities of or guaranteed by the Company by any "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g) (2) under the 1933 Act.

(m) The Company shall have delivered to such Buyer such other documents relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

#### 7. TERMINATION.

In the event that the Closing shall not have occurred with respect to a Buyer on or before five (5) Business Days from the date hereof due to the Company's or such Buyer's failure to satisfy the conditions set forth in Sections 5 and 6 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party.

#### 8. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. 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. 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 WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(b) 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.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) 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.

(e) Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Buyers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the holders of at least a majority of the aggregate principal amount of the Notes issued and issuable hereunder, and any amendment to this Agreement made in conformity with the provisions of this Section 8(e) shall be binding on all Buyers and holders of Notes, as applicable. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the holders of the applicable Securities then outstanding. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents, holders of Notes or holders of the Additional Investment Rights, as the case may be. The Company has not, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent

by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

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.

If to a Buyer, to its address and facsimile number set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

with a copy (for informational purposes only) to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 756-2000  
Facsimile: (212) 593-5955  
Attention: Eleazer N. Klein, Esq.

or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes or the Additional Investment Rights. The Company shall not assign this Agreement or

any rights or obligations hereunder without the prior written consent of the holders of at least a majority of the aggregate principal amount of the Initial Notes issued and issuable hereunder. A Buyer may assign some or all of its rights hereunder without the consent of the Company, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(i) Survival. Unless this Agreement is terminated under Section 7, the representations and warranties of the Company and the Buyers contained in Sections 2 and 3 and the agreements and covenants set forth in Sections 4 and 8 shall survive the Closing. Each Buyer shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Buyer and each other holder of the Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "INDEMNITEES") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and reasonable expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "INDEMNIFIED LIABILITIES"), actually incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) the execution, delivery or performance by the Company of the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities or (iii) the status of such Buyer or holder of the Securities as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents; provided that the Company shall not be required to indemnify any of the

Indemnitees to the extent Indemnified Liabilities arise or result from a material misrepresentation or material breach of any representation or warranty made by such Indemnitee contained in the Transaction Documents, or a material breach of any covenant, agreement or obligation by such Indemnitee contained in the Transaction Documents, or the gross negligence, willful misconduct, or bad faith of such Indemnitee. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 8(k) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(l) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Each Buyer and each holder of the Securities shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, each party recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Buyers. Each party hereto therefore agrees that the other parties shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Payment Set Aside. To the extent that the Company makes a payment or payments to the Buyers hereunder or pursuant to any of the other Transaction Documents and such payment or payments are subsequently declared to be fraudulent or preferential and set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

(o) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under any Transaction Document are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Buyer confirms that it has independently participated in the negotiation of the transaction

contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

COMPANY:

VECTOR GROUP LTD.

By:

-----  
Name: Richard J. Lampen  
Title: Executive Vice President

[Signature Page to Securities Purchase Agreement]



IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

BUYERS:

HIGHBRIDGE INTERNATIONAL LLC

By: HIGHBRIDGE CAPITAL MANAGEMENT, LLC

By: /s/ Adam J. Chill

-----  
Name: Adam J. Chill  
Title: Managing Director

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

JEFFERIES PARAGON MASTER FUND, LTD.

By: JEFFERIES ASSET  
MANAGEMENT, LLC, as Manager

By: /s/ Joseph Schenk

-----  
Name: Joseph Schenk  
Title: Executive Vice President

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

BASSO CAPITAL

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

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

CAMDEN ASSET MANAGEMENT

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

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

EBF & ASSOCIATES, LP

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

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

CANYON PARTNERS INC.

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

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

HAMILTON INVESTMENT ADVISERS

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

[Signature Page to Securities Purchase Agreement]

## EXHIBITS

Exhibit A	Indenture
Exhibit B	Form of Initial Notes
Exhibit C	Form of Additional Investment Rights
Exhibit D	Form of Additional Notes
Exhibit E	Registration Rights Agreement
Exhibit F	Form of Outside Company Counsel Opinion
Exhibit G	Form of Secretary's Certificate
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Schedule 3(w)	Litigation
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Schedule 3(cc)	Tax Status



VECTOR GROUP LTD.

AS ISSUER

AND

WELLS FARGO BANK, N.A.

AS TRUSTEE

-----  
INDENTURE

DATED AS OF NOVEMBER 18, 2004

-----  
5% VARIABLE INTEREST SENIOR CONVERTIBLE NOTES DUE 2011  
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EXHIBITS:

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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 November 18, 2004, 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.

"ADDITIONAL INVESTMENT RIGHTS" means the additional investment rights which will be exercisable to purchase up to \$16,375,000 in principal amount of the Securities.

"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 3.08.

"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 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, (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.

13.02(a). "CONVERSION DATE" has the meaning specified in Section

13.02(i). "CONVERSION LIMITATION" has the meaning specified in Section

"CONVERSION PRICE" means, as of any Conversion Date (as defined below) or other date of determination, \$19.57, subject to adjustment as provided herein.

13.01(c). "CONVERSION RATE" has the meaning specified in Section

"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.

13.06(e). "CURRENT MARKET PRICE" has the meaning specified in Section

"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.

"DEPOSITARY" 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.

14.01(b). "EFFECTIVE DATE" has the meaning specified in Section

"EVENT OF DEFAULT" has the meaning specified in Section 5.01.

"EXCHANGE ACT" means the U.S. Securities Exchange Act of 1934, as amended.

13.06(d). "EXPIRATION DATE" has the meaning specified in Section

13.06(d). "EXPIRATION TIME" has the meaning specified in Section

"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.

"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 Depositary 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 PURCHASERS" means Highbridge International LLC, Jefferies Paragon Master Fund, Ltd., Basso Capital, Camden Asset Management, EBF & Associates, LP, Canyon Partners Inc. and Hamilton Investment Management.

"INTEREST PAYMENT DATE" means (i) each February 15, May 15, August 15 and November 15 and ending on the Maturity Date, commencing February 15, 2005 and (ii) the Maturity Date.

"INVESTMENT COMPANY ACT" means the Investment Company Act of 1940 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 Outstanding Securities.

"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 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 November 18, 2004.

"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 Outstanding Securities 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.

"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 November 16, 2004, by and among the Company and the Initial Purchasers, 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.

"SECURITIES PURCHASE AGREEMENT" means the Securities Purchase Agreement, dated as of November 16, 2004, entered into by and among the Company and the Initial Purchasers in connection with the sale of the Securities.

"SECURITY REGISTER" and "SECURITY REGISTRAR" have the respective meanings specified in Section 3.07.

"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 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 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 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 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 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) 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

[RESERVED]

## 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 \$65,500,000 (subject to increase by up to an additional aggregate principal amount of \$16,375,000 in the event the Initial Purchasers exercise the Additional Investment Rights), 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 unsecured and unsubordinated 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 in this Indenture provided 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 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 Depository 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 Outstanding Securities 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 Depository or other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depository 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 Depository) 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 Depository 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 Depository subject to the applicable procedures of the Depository. The Trustee may rely on information furnished by the Depository 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 Depositary'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 Depositary 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 Outstanding Securities have been delivered to the Trustee for cancellation; or (ii) all Outstanding Securities have become due and payable and the Company deposits with the Trustee cash sufficient to pay all amounts due and owing on all outstanding Securities 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 Outstanding Securities 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 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 Outstanding Securities; 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) 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 Outstanding Securities, may declare the Principal Amount plus accrued and unpaid interest and Registration Default Payments, if any, on all Outstanding Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration 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 Outstanding Securities 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 Outstanding Securities 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 Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) 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 Outstanding Security 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 Outstanding Securities, 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

HOLDERS' 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 Outstanding Security 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 Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with 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 Outstanding Security 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 Outstanding Securities.

## 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 (in or outside the Borough of Manhattan, The City of New York) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The Company hereby initially designates \_\_\_\_\_ as one such office or agency of the Company.

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) 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) the sum of (x) \$65,500,000 and (y) the Principal Amount of all Securities issued pursuant to the exercise of Additional Investment Rights, 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 Outstanding Securities held by such Holder on the Redemption Date and (ii) the denominator of which is the aggregate Principal Amount of the Outstanding Securities 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
- (d) the Conversion Price;

Holders;

(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 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;

Date; (iii) the Fundamental Change Settlement

Price; (iv) the Fundamental Change Repurchase

(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 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.

(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 noon, 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 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 the Original Issue Date to and including November 15, 2006, interest on the Securities shall accrue at the rate of 6 3/4% 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 Depository, with respect to that portion of such permanent Global Security held for its account by Cede & Co. for the purpose of permitting the Depository 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) 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 at the Company's request 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 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"); provided, however, that the Conversion Limitation shall not apply to any Initial Purchaser (or any transferee thereof) listed on Schedule I hereto. 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 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 Trading Days up to and including the Stated Maturity, or (ii) on any of the ten 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 up 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 outstanding Securities 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 nonassessable 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 the securities convertible into or exercisable or exchangeable for Common Stock as equal to (x) the sum of (i) the price for a unit of the 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 the 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 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 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 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 Securityholders 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 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 from time to time may 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 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							
	NOVEMBER 18, 2004	NOVEMBER 15, 2005	NOVEMBER 15, 2006	NOVEMBER 15, 2007	NOVEMBER 15, 2008	NOVEMBER 15, 2009	NOVEMBER 15, 2010	NOVEMBER 15, 2011
\$13.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
\$16.31	8.53	6.89	5.32	4.18	3.04	0.25	0.00	0.00
\$19.57	23.67	21.54	19.17	16.71	14.03	10.54	6.54	0.00
\$22.83	22.76	20.39	17.69	14.73	11.32	7.30	2.28	0.00
\$26.10	22.23	19.72	16.85	13.67	10.01	5.75	0.63	0.00
\$29.36	21.92	19.33	16.37	13.08	9.33	5.05	0.16	0.00
\$32.62	21.73	19.09	16.09	12.76	8.99	4.74	0.01	0.00
\$35.88	21.61	18.95	15.93	12.58	8.81	4.60	0.00	0.00
\$39.14	21.53	18.86	15.83	12.47	8.72	4.55	0.00	0.00
\$42.41	21.48	18.80	15.77	12.41	8.67	4.52	0.00	0.00
\$45.67	21.44	18.76	15.73	12.38	8.64	4.51	0.00	0.00
\$48.93	21.42	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 \$48.93 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 \$48.93 (subject to adjustment pursuant to Section 13.06); and if the Stock Price on the Effective Date is less than or equal to \$13.70 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 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 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 law 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 nonassessable 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 noon (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: \_\_\_\_\_  
Name:  
Title:

WELLS FARGO BANK, N.A., as Trustee

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

EXHIBIT A

FORM OF FACE OF SECURITY

[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 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) OR (IV) 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) (IV) 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 DEPOSITORY 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. 92240M AD 0

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 Depository, in accordance with the rules and procedures of the Depository)] 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 February 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 November 18, 2004 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 [November 18, 2004][date of issuance of Notes pursuant to Additional Investment Rights].



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 November 18, 2004 (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 November 18, 2004 to and including November 15, 2006, interest on the Securities shall accrue at the rate of 6 3/4% 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 Depository, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the rules and procedures of the Depository.]

[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 Outstanding Securities, 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 Outstanding Securities 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 it has not utilized any general solicitation or general advertising in connection with the transfer and 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) \_\_\_\_\_ pursuant to the exemption from registration provided by Rule 144 under 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 if box (3) is checked, 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.



TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

NOTICE: To be executed by an executive officer.

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 D

FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

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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 November 18, 2004 (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: -----

## [FORM OF ADDITIONAL INVESTMENT RIGHT]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN OPINION OF COUNSEL, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A PROMULGATED UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

VECTOR GROUP LTD.

## ADDITIONAL INVESTMENT RIGHT

Additional Investment Right No.: \_\_\_\_\_  
 Principal Amount of Additional Notes: \_\_\_\_\_  
 Date of Issuance: November 18, 2004 ("ISSUANCE DATE")

Vector Group Ltd., a Delaware corporation (the "COMPANY"), hereby certifies that, for value received, the receipt and sufficiency of which are hereby acknowledged, [HIGHBRIDGE INTERNATIONAL LLC] [OTHER BUYERS], the registered holder hereof or its permitted assigns (the "HOLDER"), is entitled, subject to the terms set forth below to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the date hereof, but not after 11:59 P.M., New York Time, on the Expiration Date (as defined below), up to a total of \$ \_\_\_\_\_(1), in principal amount of Additional Notes (as defined in the Securities Purchase Agreement (as defined below)). Except as otherwise defined herein, capitalized terms in this Additional Investment Right shall have the meanings set forth in Section 15 or in that certain Securities Purchase Agreement, dated as of November 16, 2004, by and among the Company and the buyers referred to therein, including the Holder (the "SECURITIES PURCHASE AGREEMENT"). This Additional Investment Right (including all Additional Investment Rights issued in exchange, transfer or replacement hereof, each an "AIR" and collectively, the "AIRs") is one of the Additional Investment Rights (as defined in the Securities Purchase Agreement) issued pursuant to Section 1 of the Securities Purchase Agreement.

## 1. EXERCISE OF AIR.

Subject to the terms and conditions hereof, this AIR may be exercised by the Holder hereof on any day beginning after the date hereof and ending on and including the date

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 (1) Insert number set forth opposite such Buyer's name in column 5 of the Schedule of Buyers set forth in the Securities Purchase Agreement.

which is 120 days following the Closing Date (the "EXPIRATION DATE"), in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the "EXERCISE NOTICE"), of such Holder's election to exercise this AIR and (ii) payment to the Company of an amount equal to \$1.00 for each \$1.00 of principal amount of Additional Notes as to which this AIR is being exercised plus accrued interest, if any, from the Closing Date or, if later, the latest Interest Payment Date (as defined in the Indenture) to the Exercise Date (as defined below) (the "EXERCISE PRICE") in cash or wire transfer of immediately available funds. The date the Exercise Notice and the Exercise Price are delivered to the Company (as determined in accordance with the notice provisions hereof) is an "EXERCISE DATE." The Holder of this AIR shall not be required to deliver the original AIR in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice with respect to less than all of the Additional Notes shall have the same effect as cancellation of the original AIR and issuance of a new AIR evidencing the right to purchase the remaining principal amount of Additional Notes. On or before the first Business Day following the Exercise Date, the Company shall transmit by facsimile an acknowledgment of confirmation of receipt of the Exercise Notice and the Exercise Price to the Holder hereof. On or before the third Business Day following the Exercise Date, the Company shall issue and deliver to the address as specified in the Exercise Notice an Additional Note, for the account of such Buyer as such Buyer shall instruct, in the principal amount as to which the Holder of this AIR is entitled pursuant to such exercise. On the Exercise Date, the Holder of this AIR shall be deemed for all corporate purposes to have become the Holder of record of the Additional Note with respect to which this AIR has been exercised, irrespective of the date of delivery of such Additional Note. Upon surrender of this AIR to the Company following one or more partial exercises, the Company shall as soon as practicable and in no event later than three Business Days after receipt of the AIR and at its own expense, issue a new AIR (in accordance with Section 4(d)) representing the right to purchase the principal amount of Additional Notes purchasable immediately prior to such exercise under this AIR, less the principal amount of Additional Notes with respect to which this AIR is exercised. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Additional Notes upon exercise of this AIR.

2. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or through any Fundamental Change (as defined in the Indenture), issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this AIR, and will at all times in good faith carry out all the provisions of this AIR and take all action as may be required to protect the rights of the Holder of this AIR.

### 3. REISSUANCE OF AIRS.

(a) Transfer of AIR. If this AIR is to be transferred, the Holder shall surrender this AIR to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder of this AIR a new AIR (in accordance with Section 3(d)), registered as the Holder of this AIR may request, representing the right to purchase the principal amount of Additional Notes being transferred by the Holder and, if less than the total number of Additional Notes then underlying this AIR is being transferred, a new AIR (in accordance with Section 3(d)) to the Holder of this AIR representing the right to purchase the principal amount of Additional Notes not being transferred.

(b) Lost, Stolen or Mutilated AIR. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this AIR, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder of this AIR to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this AIR, the Company shall execute and deliver to the Holder a new AIR (in accordance with Section 3(d)) representing the right to purchase the principal amount of Additional Notes then underlying this AIR.

(c) AIR Exchangeable for Multiple AIRs. This AIR is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new AIR or AIR (in accordance with Section 3(d)) representing in the aggregate the right to purchase the principal amount of Additional Notes then underlying this AIR, and each such new AIR will represent the right to purchase such principal amount of such Additional Notes as is designated by the Holder of this AIR at the time of such surrender.

(d) Issuance of New AIR. Whenever the Company is required to issue a new AIR pursuant to the terms of this AIR, such new AIR (i) shall be of like tenor with this AIR, (ii) shall represent, as indicated on the face of such new AIR, the right to purchase the principal amount of Additional Notes then underlying this AIR (or in the case of a new AIR being issued pursuant to Section 4(a) or Section 4(c), the principal amount of Additional Notes designated by the Holder of this AIR which, when added to the principal amount of Additional Notes underlying the other new AIR issued in connection with such issuance, does not exceed the principal amount of Additional Notes then underlying this AIR), (iii) shall have an issuance date, as indicated on the face of such new AIR which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this AIR.

4. COVENANTS. On the first Business Day following each Exercise Date, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by the exercise of this AIR in the form required by the 1934 Act. On the Exercise Date, the Company shall confirm that the representations and warranties of the Company set forth in Section 3 of the Securities Purchase Agreement are true and correct as of such Exercise Date as though made at that time (except for representations and warranties that speak as of a specific date) and that the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the Transaction Documents (as defined in the Securities Purchase Agreement) to be performed, satisfied or complied with by the Company at or prior to such Exercise Date; provided, however, that if the Company is unable to make such representations and warranties and unable to perform, satisfy and comply with such covenants, agreements and conditions (such failure, an "EXERCISE DATE DELAY"), the Company shall immediately inform the Holder of such Exercise Date Delay and the Company shall not be required to issue and deliver the Additional Note. The Expiration Date shall be extended for each day that such Exercise Date Delay is in effect.

5. NOTICES. Whenever notice is required to be given under this AIR, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder of this AIR with prompt written

notice of all actions taken pursuant to this AIR, including in reasonable detail a description of such action and the reason therefore.

6. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this AIR may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Holders; provided that no such action may increase the exercise price of any AIRs or decrease the principal amount of Additional Notes obtainable upon exercise of any AIRs without the written consent of the Holder of this AIR. No such amendment shall be effective to the extent that it applies to less than all of the Holders of the AIRs then outstanding.

7. GOVERNING LAW. This AIR shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this AIR 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.

8. CONSTRUCTION; HEADINGS. This AIR shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this AIR are for convenience of reference and shall not form part of, or affect the interpretation of, this AIR.

9. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this AIR shall be cumulative and in addition to all other remedies available under this AIR, the Securities Purchase Agreement and the other Transaction Documents (as defined in the Securities Purchase Agreement), at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder of this AIR to pursue actual damages for any failure by the Company to comply with the terms of this AIR. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder of this AIR and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder of this AIR shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

10. TRANSFER. This AIR may be offered for sale, sold, transferred or assigned without the consent of the Company.

11. CERTAIN DEFINITIONS. For purposes of this AIR, the following terms shall have the following meanings:

(a) "BUSINESS DAY" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.



(b) "COMMON STOCK" means (i) the Company's common stock, par value \$0.10 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification of such Common Stock.

(c) "PERSON" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(d) "REGISTRATION RIGHTS AGREEMENT" means that certain registration rights agreement dated as of the Closing Date (as defined in the Securities Purchase Agreement) by and among the Company and the Purchasers.

(e) "REQUIRED HOLDERS" means the holders of AIRs representing the right to acquire at least a majority of the principal amount of Additional Notes underlying the AIRs then outstanding.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this AIR to be duly executed  
as of the Issuance Date set out above.

VECTOR GROUP LTD.

By:

-----  
Name: Richard J. Lampen  
Title: Executive Vice President

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS  
ADDITIONAL INVESTMENT RIGHT

VECTOR GROUP LTD.

To: Vector Group Ltd.

The undersigned is the holder of Additional Investment Right No. \_\_\_\_\_  
(the "AIR") issued by Vector Group Ltd., a Delaware corporation (the "COMPANY").  
Capitalized terms used herein and not otherwise defined shall have the  
respective meanings set forth in the AIR.

1. The AIR is currently exercisable to purchase a total of \$ \_\_\_\_\_  
principal amount of Additional Notes.

2. The undersigned holder hereby exercises its right to purchase  
\$ \_\_\_\_\_ principal amount of Additional Notes pursuant to the AIR.

3. The holder shall pay the sum of \$ \_\_\_\_\_ to the  
Company in accordance with the terms of the AIR.

4. Pursuant to this exercise, the Company shall deliver to the  
holder \$ \_\_\_\_\_ principal amount of Additional Notes in accordance with the  
terms of the AIR.

5. Following this exercise, the AIR shall be exercisable to  
purchase a total of \$ \_\_\_\_\_ principal amount of Additional Notes.

Please issue the Additional Notes in the following name and to the  
following address:

Issue to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Name of Registered Holder

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

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of AIR]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the within AIR to purchase \$\_\_\_\_\_ principal amount of Additional Notes of Vector Group Ltd., to which the within AIR relates and appoints \_\_\_\_\_ attorney to transfer said right on the books of Vector Group Ltd. with full power of substitution in the premises.

Dated: \_\_\_\_\_, ----

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(Signature must conform in all respects to name of holder as specified on the face of the AIR)

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Address of Transferee

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In the presence of:  
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REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "AGREEMENT"), dated as of November 16, 2004, by and among Vector Group Ltd., a Delaware corporation, with headquarters located at 100 S.E. Second Street, Miami, FL 33131 (the "COMPANY"), and the undersigned buyers (each, a "BUYER", and collectively, the "BUYERS").

WHEREAS:

A. The Company has authorized the issuance of up to \$81,875,000 principal amount of its 5.0% Variable Interest Senior Convertible Notes (the "INITIAL NOTES") pursuant to the Indenture dated on or about November 18, 2004, 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 Securities Purchase Agreement by and among the parties hereto of even date herewith (the "SECURITIES PURCHASE AGREEMENT"), the Company has agreed, upon the terms and subject to the conditions set forth in the Securities Purchase Agreement, to issue and sell to the Buyers an aggregate of \$65,500,000 principal amount of the Notes).

C. In connection with the Securities Purchase Agreement, the Company has agreed, upon the terms and subject to the conditions set forth in the Securities Purchase Agreement, to issue and sell to the Buyers certain additional investment rights (the "ADDITIONAL INVESTMENT RIGHTS"), which will be exercisable to purchase up to an aggregate of \$16,375,000 principal amount of additional Notes (the "ADDITIONAL NOTES" and collectively with the Initial Notes, the "NOTES").

D. To induce the Buyers to execute and deliver the Securities 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 and each of the Buyers hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities 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.

"ADDITIONAL INVESTMENT RIGHTS" has the meaning set forth in the preamble of this Agreement.

"ADDITIONAL NOTES" has the meaning set forth in the preamble of this Agreement.

"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.

"BUYERS" has the meaning set forth in the preamble of this Agreement.

"CLOSING DATE" means the date of the closing of the sale of the Initial Notes as contemplated by the Securities 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 preamble of this Agreement.

"EFFECTIVE DATE" means the date the Registration Statement has been declared effective by the SEC.

"HOLDER" means a Person who is a holder or beneficial owner 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 preamble hereto.

"INITIAL NOTES" 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 Buyers acting on behalf of the Holders) to act as counsel for the Holders in connection therewith, which firm shall be Schulte Roth & Zabel 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 National Association of Securities Dealers, Inc.

"NOTES" has the meaning set forth in the preamble hereto.

"NOTICE AND QUESTIONNAIRE" means a Selling Securityholder Notice and Questionnaire substantially in the form of Exhibit A attached hereto.

"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.

"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.

"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.

"SECURITIES PURCHASE AGREEMENT" has the meaning set forth in the preamble hereto.

"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 (including Notes issuable upon exercise of Additional Investment Rights) 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 or the Expiration Date (as defined in the Additional Investment Rights).

"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 Buyers 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 (i) 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 (ii) 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 been 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 Damages 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 Buyers 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 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 remain outstanding, notice of such commencement or termination of the obligation to pay Registration Default Payments with regard to the 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 Buyers, 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 Buyers and their counsel 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 Buyers 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 Buyers 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 Buyers of the withdrawal of any such orders or suspensions.

e. The Company shall promptly furnish to the Buyers (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 an Investor, 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 Buyers 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(h) 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 (k) 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(k) 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(k) 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 independent certified public accountants of the Company. The Company shall bear its internal expenses (including, without limitation, all salaries and expenses of their 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 each Holder of Transfer Restricted Securities covered by any Shelf Registration Statement, its directors, officers, partners, members and employees and each Person, if any, who controls any such Holder within the meaning of either the 1933 Act or the 1934 Act (collectively referred to for purposes of this Section 5 as a "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 a 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 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 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; 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 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 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 Holder. In no event shall any Holder, its directors, officers, partners, members or employees or any Person, if any, who controls such Holder be liable or responsible for any amount in excess of the amount by which the total amount received by such Holder with respect to its sale of Transfer Restricted Securities pursuant to a Shelf Registration Statement exceeds: (i) the amount paid by such Holder for such Transfer Restricted Securities; plus (ii) the amount of any damages that such Holder, its directors, officers or any Person who controls such 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 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 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 a Holder with respect to the sale by such Holder of Notes or Common Stock, on the other hand; provided, however, that in no case shall an indemnifying party that is a Holder be responsible for any amount in excess of the total price at which the Transfer Restricted Securities are sold by such Holder to a purchaser. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and such 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 Holder on the other 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 Holder on the other 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 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 Holder, on the other, 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 Holder within the meaning of either the 1933 Act or the 1934 Act shall have the same rights to contribution as such 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 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 a 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 Noteholders (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 Buyers hereunder, the Company shall obtain the written consent of the Buyers against which such amendment, qualification, supplement, waiver or consent is to be effective. Notwithstanding the foregoing (except the foregoing proviso), 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 the Buyers, initially at their address set forth in the Securities Purchase Agreement;

(ii) if to any other 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; and

(iii) 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.

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 Buyers or the Company by notice to the other may designate additional or different addresses for subsequent notices or communications.

d. Successors and Assigns. 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 Buyers, 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.

k. Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under any Transaction Document are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Buyer confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other



Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose.

IN WITNESS WHEREOF, each Buyer and the Company 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

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Name: Richard J. Lampen  
Title: Executive Vice President

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

BUYERS:

HIGHBRIDGE INTERNATIONAL LLC

By: HIGHBRIDGE CAPITAL MANAGEMENT, LLC

By: /s/ Adam J. Chill  
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Name: Adam J. Chill  
Title: Managing Director

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

JEFFERIES PARAGON MASTER FUND, LTD.

By: JEFFERIES ASSET MANAGEMENT, LLC, as Manager

By: /s/ Joseph Schenk

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Name: Joseph Schenk  
Title: Executive Vice President

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

BASSO CAPITAL

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

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

CAMDEN ASSET MANAGEMENT

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

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

EBF & ASSOCIATES, LP

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

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

CANYON PARTNERS INC.

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



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

HAMILTON INVESTMENT ADVISERS

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

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Securityholder:  
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- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Transfer Restricted Securities Listed in Item 3 below are held:  
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- (c) Full Legal Name of DTC participant (if applicable and if not the same as (b) above) through which Transfer Restricted Securities listed in Item 3 below are held:  
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2. Address for Notices to Selling Securityholder:  
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Telephone: -----

Fax: -----

Contact Person: -----

3. Beneficial Ownership of Transfer Restricted Securities:
- (a) Type and Principal Amount of Transfer Restricted Securities beneficially owned:  
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- (b) CUSIP No(s). of such Transfer Restricted Securities beneficially owned:  
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4. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the Transfer Restricted Securities listed above in Item 3.

(a) Type and Amount of Other Securities beneficially owned by the Selling Securityholder:

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(b) CUSIP No(s). of such Other Securities beneficially owned:

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5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

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6. Broker-Dealers and their Affiliates

(a) Is the Selling Securityholder a broker-dealer or an affiliate of a broker-dealer:

Yes \_\_\_\_ No \_\_\_\_

If so, please answer the remaining question in this section.

(i) Please advise whether the notes were received by the Selling Securityholder as compensation for investment banking services or as investment shares, and if so please describe the circumstances.

Note that in general we may be required to identify any registered broker-dealer as an underwriter in the prospectus.

(ii) Except as set forth below, if the Selling Securityholder is a registered broker-dealer, the Selling Securityholder does not plan to make a market in the Transfer Restricted Securities. If the Selling Securityholder plans to make a market in the Transfer Restricted Securities, please indicate whether the Selling Securityholder plans to use the prospectus relating to the Transfer Restricted Securities as a market-making prospectus.

(b) Affiliation with Broker-Dealers

Is the Selling Securityholder an affiliate(1) of a registered broker-dealer?

Yes \_\_\_\_ No \_\_\_\_

If so, please answer the remaining question in this section.

- (i) Please describe the affiliation between the Selling Securityholder and any registered broker-dealer.
- (ii) If the notes were purchased by the Selling Securityholder other than in the ordinary course of business, please describe the circumstances.
- (iii) Please advise whether the notes were received by the Selling Securityholder as compensation for investment banking services or as investment shares, and if so please describe the circumstances.
- (iv) If the Selling Securityholder, at the time of its purchase of Transfer Restricted Securities, had any agreements or understandings, directly or indirectly, with any person to distribute the Transfer Restricted Securities, please describe such agreements or undertakings.

Note that if the Selling Securityholder is an affiliate of a broker-dealer and did not purchase its notes in the ordinary course of business or at the time of the purchase had any agreements or understandings, directly or indirectly, to distribute the securities, we may be required to identify the Selling Securityholder as an underwriter in the prospectus.

(c) Beneficial Ownership by Natural Persons:

If the Selling Securityholder is an entity, does any natural person having voting or investing power over the Transfer Restricted Securities held by the Selling Securityholder?(2)

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(1) An "affiliate" of a specified person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

(2) Please answer "Yes" if any natural person, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (a) voting power which includes the power to

If so, please state the person's or persons' name(s):

7. Beneficial Ownership by Natural Persons or by a Board or Committee

Is the Selling Securityholder a reporting entity with the Securities and Exchange Commission?

If the Selling Securityholder is a majority owned subsidiary of a reporting entity, identify the majority stockholder that is a reporting entity.

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, please answer the remaining questions in this section.

- (i) Please name the natural person or person(s) having voting and/or investment control over the Selling Securityholder. (3)
- (ii) If the voting and/or investment control over the Selling Securityholder is held by board or committee, please state the name of the natural person or person(s) on such board or committee.

8. Plan of Distribution:

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Transfer Restricted Securities listed above in Item 3 pursuant to the Shelf Registration Statement only as follows (if at all): Such Transfer Restricted Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Transfer Restricted Securities are sold through underwriters, broker-dealers or agents, the Selling Securityholder will be responsible for underwriting discounts or commissions or agents' commissions. Such Transfer Restricted Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions:

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vote, or to direct the voting of, such security; and/or, (b) investment power which includes the power to dispose, or to direct the disposition of, the Transfer Restricted Securities held by the Selling Securityholder.

(3) Please include any natural person that, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (a) voting power which includes the power to vote, or to direct the voting of, such security; and/or, (b) investment power which includes the power to dispose, or to direct the disposition of, the Transfer Restricted Securities held by the Selling Securityholder.

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing of options, whether such options are listed on an options exchange or otherwise;
- in ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- in block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- in purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- in an exchange distribution in accordance with the rules of the applicable exchange;
- in privately negotiated transactions;
- in short sales;
- in sales pursuant to Rule 144;
- in which broker-dealers may agree with the selling securityholders to sell a specified number of such shares at a stipulated price per share;
- in a combination of any such methods of sale; and
- in any other method permitted pursuant to applicable law.

State any exceptions here:

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Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Transfer Restricted Securities without the prior written agreement of the Company.

The undersigned acknowledges its obligation to comply with the provisions of the 1934 Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Transfer Restricted Securities

pursuant to the Registration Rights Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons as set forth therein.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Securityholder against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned shall promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective.

All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing by hand delivery, first class mail or air courier guaranteeing overnight delivery to the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 6 and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

Once this Notice and Questionnaire is executed by the Selling Securityholder and received by the Company, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the Selling Securityholder with respect to the Transfer Restricted Securities beneficially owned by such Selling Securityholder and listed in Item (3) above. This Agreement shall be governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: \_\_\_\_\_ Beneficial Owner: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO  
VECTOR GROUP LTD.

Vector Group Ltd.

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



VECTOR GROUP LTD. TO SELL UP TO \$81,875,000

## SENIOR CONVERTIBLE NOTES

MIAMI, FL, NOVEMBER 17, 2004 -- Vector Group Ltd. (NYSE: VGR) announced today that it has agreed to sell \$65.5 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 buyers will have the right, for a 120-day period subsequent to the sale of the Notes, to purchase an additional \$16.375 million of Notes. The offering is anticipated to close on November 18, 2004.

The Notes mature in November 2011, but the Company must redeem a minimum of 12.5% of the total aggregate principal amount of the Notes outstanding in November 2009, at which time the holders of the Notes will also have an option to require the Company to repurchase some or all of their remaining Notes. The Notes are convertible into the Company's common stock, at the option of the holder, at an initial conversion price of \$19.57 per share, subject to anti-dilution adjustments. Interest on the Notes is payable quarterly commencing on February 15, 2005. The Notes accrue interest at 5% per annum, with an additional amount of interest payable on each interest payment date based upon the amount of cash dividends per share paid by the Company on its common stock during the prior three-month period ending on the record date for such interest payment multiplied by the number of shares of the Company's common stock into which the Notes are convertible on such record date (together, the "Total Interest"). Notwithstanding the foregoing, however, during the period from the closing date to and including November 15, 2006, the interest payable on each interest payment date shall be the higher of (i) the Total Interest or (ii) 6 3/4% per annum.

The Company intends to use the net proceeds of the issuance to redeem the 10% Senior Secured Notes due March 31, 2006 issued by the Company's subsidiary, VGR Holding Inc., and for general corporate purposes.

The Company has agreed to register the Notes and the shares of common stock issuable upon conversion thereof for resale under the Securities Act of 1933.

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](http://www.VectorGroupLtd.com).

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