

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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) **August 6, 2008**

Affiliated Managers Group, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-13459

(Commission File Number)

04-3218510

(IRS Employer Identification No.)

600 Hale Street

Prides Crossing, Massachusetts
(Address of Principal Executive Offices)

01965

(Zip Code)

(617) 747-3300

(Registrant's Telephone Number, Including Area Code)

N/A

(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))

Item 1.01. Entry into a Material Definitive Agreement.

Affiliated Managers Group, Inc. (the "Company") issued \$400.0 million aggregate principal amount (on August 6, 2008) and an additional \$60.0 million aggregate principal amount (on August 11, 2008) of its 3.95% Convertible Senior Notes due 2038 (the "Notes") pursuant to an Indenture between the Company and The Bank of New York Mellon Trust Company, N.A. (the "Indenture"). A copy of the Indenture is attached hereto as Exhibit 4.1 and incorporated herein by reference.

The Notes will mature on August 15, 2038 (the "Maturity Date"), subject to earlier conversion, redemption or repurchase and will bear interest at an annual rate of 3.95%, payable semi-annually in arrears on February 15 and August 15 of each year, beginning February 15, 2009. The Company will pay "contingent interest" on or after August 15, 2013 if the trading price of a Note for each of the five trading days immediately preceding an interest period equals or exceeds 120% of the principal amount of the Note. The contingent interest payable per Note would equal 0.25% of the average trading price of a Note during the five trading days immediately preceding the interest period.

The Notes are convertible at the option of the holder at any time prior to the close of business on the business day immediately preceding the Maturity Date under the following circumstances: (1) during any fiscal quarter after the fiscal quarter ending September 30, 2008 (and only during such fiscal quarter), if the last reported sale price of the Company's common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter is equal to or more than 130% of the conversion price of the Notes on the last day of such preceding fiscal quarter; (2) during the five business-day period after any five consecutive trading-day period (the "measurement period"), in which the trading price per \$1,000 principal amount of the Notes for each day of that measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate of the Notes on each such day; (3) upon the occurrence of specified corporate transactions; or (4) after the Notes have been called for redemption.

In addition, holders may convert their Notes at their option at any time beginning on February 15, 2038, and ending on the close of business on the business day immediately preceding the Maturity Date. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of its common stock or a combination thereof at the Company's election. The initial conversion rate for the Notes will be 7.9586 shares of the Company's common stock per

\$1,000 principal amount of Notes, equivalent to an initial conversion price of approximately \$125.65 per share of common stock. Such conversion rate will be subject to adjustment upon certain customary events and will also be increased by a number of additional shares of common stock, for holders who elect to convert their Notes in connection with certain corporate transactions that occur prior to August 15, 2013. The conversion rate will not be adjusted for accrued interest, including any additional interest (as described below) and any contingent interest.

The Company may redeem the Notes, in whole or in part, for cash, at any time on or after August 15, 2013, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus any accrued and unpaid interest (including any contingent interest and any additional interest) to, but excluding, the redemption date. In addition, holders may require the Company to repurchase all or a portion of their Notes for cash on each of

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August 15, 2013, August 15, 2018, August 15, 2023, August 15, 2028 and August 15, 2033 at a purchase price equal to 100% of the principal amount of the Notes to be repurchased, plus any accrued and unpaid interest (including any contingent interest and any additional interest) to, but excluding, the repurchase date. Holders also may require the Company to repurchase all or a portion of their Notes for cash upon the occurrence of certain fundamental corporate changes.

The Indenture contains customary events of default, which include the Company's failure to pay principal or interest, failure to comply with covenants in the Indenture (including the obligation to convert the Notes), defaults under certain other indebtedness and certain judgments or bankruptcy events.

The Company will not file a shelf registration statement for the resale of the Notes or any common stock issuable upon conversion of the Notes. As a result, holders may only resell their Notes or common stock pursuant to an exemption from the registration requirements of the Securities Act. The Company will pay a one-time payment of 0.25% on the Notes ("additional interest"), if at any time during the six-month to one-year period following the Notes' original issuance date (1) the Company fails to timely file annual or quarterly reports with the Securities and Exchange Commission (the "Commission") or (2) the Notes are not otherwise freely tradable by holders other than the Company's affiliates. The Company also will pay additional interest on the Notes at an annual rate equal to 0.25% of the aggregate principal amount of the Notes outstanding unless (1) the restrictive legend on the Notes has been removed and (2) the Notes are freely tradable by holders other than Company affiliates as of August 11, 2009. In no event will additional interest accrue at an annual rate in excess of 0.50% in the aggregate. The Company may also be required to pay "supplementary interest" at a rate per year equal to 0.25% of the outstanding principal amount of the Notes, upon failure to provide the trustee with certain information.

The Notes will be treated as contingent payment debt instruments for U.S. federal income tax purposes.

The description of the Indenture and the Notes above is a summary only, and is qualified in its entirety by reference to the full text of the Indenture and the form of Note included therein.

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

The information provided in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 8.01. Other Events.

On August 12, 2008, the Company issued a press release announcing the closing of the offering of the Notes. A copy of the press release is attached hereto as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>No.</u>	<u>Description</u>
4.1	Indenture related to the 3.95% Convertible Senior Notes due 2038, dated as of August 6, 2008, between Affiliated Managers Group, Inc. and The Bank of New York Mellon Trust Company, N.A.
99.1	Press Release issued by Company dated August 12, 2008.

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SIGNATURE

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

AFFILIATED MANAGERS GROUP, INC.

Date: August 12, 2008

By: /s/ John Kingston, III
Name: John Kingston, III
Title: Executive Vice President,
General Counsel and Secretary

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EXHIBIT INDEX

Exhibit No.	Description
4.1	Indenture related to the 3.95% Convertible Senior Notes due 2038, dated as of August 6, 2008, between Affiliated Managers Group, Inc. and The Bank of New York Mellon Trust Company, N.A.
99.1	Press Release issued by Company dated August 12, 2008.

AFFILIATED MANAGERS GROUP, INC.

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

as Trustee

INDENTURE

Dated as of August 6, 2008

3.95% Convertible Senior Notes due 2038

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INDENTURE dated as of August 6, 2008 between Affiliated Managers Group, Inc., a Delaware corporation, as issuer (hereinafter sometimes called the "Company", as more fully set forth in Section 1.01) and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (hereinafter sometimes called the "Trustee", as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 3.95% Convertible Senior Notes due 2038 (hereinafter sometimes called the "Notes", as more fully set forth in Section 1.01), in an aggregate principal amount not to exceed \$400,000,000 (or \$460,000,000 if the Initial Purchaser exercises its option to purchase additional Notes in full as set forth in the Purchase Agreement), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Repurchase Notice, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided for; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute these presents a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE I

DEFINITIONS

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

- (i) the terms defined in this Article 1 have the meaning assigned to them in this Article and include the plural as well as the singular;
- (ii) “or”, where the context so requires, may mean “and/or”;

(iii) all accounting terms not otherwise defined herein have the meaning assigned to them in accordance with U.S. generally accepted accounting principles in effect from time to time;

(iv) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any part of Article, Section or other subdivision; and

(v) references to currency shall mean the lawful currency of the United State of America.

“**Additional Interest**” means any additional interest payable pursuant to Section 5.10 or any Supplementary Interest payable pursuant to Section 7.01.

“**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 or cause the direction of 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.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

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

“**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the banking institutions in The City of New York are authorized or obligated by law or executive order to close or be closed.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Cash Settlement Averaging Period**” means, with respect to any Note surrendered for conversion, the twenty consecutive Trading Day period beginning on and including the third Trading Day after the Conversion Date for such Note; *provided that*, with respect to any Conversion Date occurring during the period beginning on February 15, 2038, and ending at close of business on the Business Day immediately prior to the Maturity Date, the “Cash Settlement Averaging Period” means the twenty consecutive Trading Days beginning on and including the twenty-second Scheduled Trading Day prior to the Maturity Date.

“**close of business**” means 5:00 p.m. (New York City time).

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

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Common Stock**” means, subject to Section 15.06, shares of common stock of the Company, par value \$0.01 per share, at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and that are not subject to redemption by the Company; *provided that* if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“**Company**” means Affiliated Managers Group, Inc., a Delaware corporation, and subject to the provisions of Article 12, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by any two Officers and delivered to the Trustee.

“**Contingent Debt Regulations**” has the meaning specified in Section 17.01(a).

“**Contingent Interest**” means such interest payable as described in Article 14.

“**Contingent Interest Period**” means (i) the period commencing on, and including, August 15, 2013 and ending on, and including, February 14, 2014, and (ii) each six-month period from and including February 15 to and including August 14 or from and including August 15 to and including February 14 thereafter.

“**Continuing Director**” means a director who either was a member of the Board of Directors on July 30, 2008 or who becomes a member of the Board of Directors subsequent to that date and whose election, appointment or nomination for election by the stockholders of the Company is duly approved by a majority of the continuing directors on the Board of Directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the Board of Directors in which such individual is named as nominee for director.

“**Conversion Agent**” shall have the meaning specified in Section 5.02.

“**Conversion Date**” shall have the meaning specified in Section 15.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 15.01(a).

“**Conversion Price**” means as of any date, \$1,000, divided by the Conversion Rate as of such date.

“**Conversion Rate**” shall have the meaning specified in Section 15.01(a).

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“**Conversion Trigger Price**” shall have the meaning specified in Section 15.01(b)(iv).

“**Corporate Trust Office**” means the designated office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 222 Berkeley Street, 2nd Floor, Boston, Massachusetts 02116, or such other address as the Trustee may designate from time to time by notice to the Noteholders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Noteholders and the Company).

“**Custodian**” means The Bank of New York Mellon Trust Company, N.A., as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

“**Daily Conversion Value**” means, for each of the twenty consecutive Trading Days during the Cash Settlement Averaging Period, one-twentieth (1/20th) of the product of (a) the then-applicable Conversion Rate on such Trading Day and (b) the Daily VWAP of the Common Stock on such Trading Day.

“**Daily Measurement Value**” is equal to the Specified Dollar Amount, divided by 20.

“**Daily Settlement Amount**,” for each of the twenty consecutive Trading Days during the Cash Settlement Averaging Period, shall consist of:

- (a) cash equal to the lesser of the Daily Measurement Value and the Daily Conversion Value for such Trading Day; and
- (b) to the extent such Daily Conversion Value for such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to the Daily Share Amount.

“**Daily Share Amount**” means, to the extent the Daily Conversion Value exceeds the Daily Measurement Value, (i) the difference between the Daily Conversion Value and the Daily Measurement Value, divided by (ii) the Daily VWAP of the Common Stock for such Trading Day.

“**Daily VWAP**” for the Common Stock means the per share volume-weighted average price on the New York Stock Exchange as displayed under the heading “Bloomberg VWAP” on Bloomberg page “AMG.N <equity> AQR” (or any successor page thereto) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day as determined in a commercially reasonable manner by the Board of Directors, in consultation with a nationally recognized investment banking firm, using a volume-weighted method) and will be determined without regard to after hours trading or any other trading outside of the regular trading session.

“**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

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“**Defaulted Interest**” means any interest on any Note that is payable, but is not punctually paid or duly provided for, on any February 15 or August 15.

“**Depository**” means, with respect to the Global Notes the Person specified in Section 2.06 as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “Depository” shall mean or include such successor.

“**Designated Institution**” shall have the meaning specified in Section 15.11.

“**Distributed Property**” shall have the meaning specified in Section 15.04(c).

“**Effective Date**” shall have the meaning specified in Section 15.03(a).

“**Event of Default**” shall have the meaning specified in Section 7.01.

“**Ex-Dividend Date**” means, with respect to any issuance, dividend or distribution in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property, the first date on which the shares of the Common Stock (or other security) trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

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

“**Exchange Election**” shall have the meaning specified in Section 15.11.

“**Expiration Date**” shall have the meaning specified in Section 15.04(e).

“**Fiscal Quarter**” means a fiscal quarter of any Fiscal Year.

“**Fiscal Year**” means a fiscal year of the Company, currently ending on December 31 of each calendar year.

“**Fundamental Change**” means the occurrence after the original issuance of the Notes of any of the following events:

(a) any “person” or “group” (within the meaning of Section 13(d) of the Exchange Act) other than the Company or its Subsidiaries files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s Common Equity representing more than 50% of the voting power of the Company’s Common Equity;

(b) consummation of any share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s Subsidiaries;

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provided however, that a share exchange, consolidation or merger transaction in which the holders of more than 50% of the total voting power of all shares of the Company’s Capital Stock entitled to vote generally in elections of directors immediately prior to such transaction have the right to exercise, directly or indirectly, 50% or more of the total voting power of all shares of the Capital Stock entitled to vote generally in elections of directors of the continuing or surviving Person immediately after giving effect to such transaction, will not constitute a “Fundamental Change”;

- (c) the first day on which Continuing Directors cease to constitute at least a majority of the Board of Directors;
- (d) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or
- (e) the Common Stock ceases to be listed on a United States national securities exchange,

provided however, in the case of a transaction or event described in clause (b) above, if at least 90% of the consideration received or to be received by holders of the Common Stock, excluding cash payments for fractional shares, in such transaction or transactions consists of shares of Publicly Traded Securities and as a result of such transaction or transactions, the Notes become convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 15.02(a)), such event shall not be a Fundamental Change and, for the avoidance of doubt, an event that is not a Fundamental Change pursuant to clause (b) above as a result of this proviso shall not be a Fundamental Change solely because such event could also be described by clause (a) above.

For purposes of this definition, whether a “person” is a “beneficial owner” shall be determined in accordance with Rule 13d-3 under the Exchange Act and “person” includes any syndicate or group that would be deemed to be a “person” under Section 13(d)(3) of the Exchange Act.

“**Fundamental Change Company Notice**” shall have the meaning specified in Section 16.04(b).

“**Fundamental Change Expiration Time**” shall have the meaning specified in Section 16.04(b)(ix).

“**Fundamental Change Repurchase Date**” shall have the meaning specified in Section 16.04(a).

“**Fundamental Change Repurchase Notice**” shall have the meaning specified in Section 16.04(a)(i).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 16.04(a).

“**Global Note**” shall have the meaning specified in Section 2.06(b).

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“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Initial Purchaser**” means Banc of America Securities LLC.

“**Interest Payment Date**” means each February 15 and August 15 of each year, beginning on February 15, 2009; *provided however*, that if any Interest Payment Date falls on a date that is not a Business Day, such payment of interest (or principal in the case of the Maturity Date) will be postponed until the next succeeding Business Day, and no interest or other amount will be paid as a result of such postponement.

“**Interest Record Date**,” with respect to any Interest Payment Date, shall mean the February 1 or August 1 (whether or not such day is a Business Day) immediately preceding the applicable February 15 or August 15 Interest Payment Date, respectively.

“**Last Reported Sale Price**” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in

composite transactions for the principal U.S. national securities exchange on which the Common Stock is listed for trading. The last reported sale price will be determined without reference to after-hours or extended market trading. If the Common Stock is not listed for trading on a U.S. national securities exchange on the relevant date, then the "Last Reported Sale Price" will be the closing sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) for the Common Stock on the relevant date as reported by the OTC Bulletin Board or, if not so reported, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by Pink Sheets LLC or a similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Legal Holiday**" is a day that is not a Business Day.

"**Make-Whole Conversion Rate Adjustment**" shall have the meaning specified in Section 15.03(a).

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change as described in clause (a) or (b) of the definition thereof (in the case of any fundamental change described in clause (b) of the definition thereof, determined without regard to the proviso in such definition, but subject to the paragraph immediately following clause (e) of the definition thereof)..

"**Market Disruption Event**" means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted, as the case may be, to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m. New York City time on any Trading Day for the Common Stock for an aggregate one-half hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding

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limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

"**Maturity Date**" means August 15, 2038.

"**Measurement Period**" shall have the meaning specified in Section 15.01(b)(i).

"**Merger Event**" shall have the meaning specified in Section 15.06.

"**Note**" or "**Notes**" shall mean any note or notes, as the case may be, authenticated and delivered under this Indenture.

"**Noteholder**" or "**holder**", as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), shall mean any person in whose name at the time a particular Note is registered on the Note Register.

"**Note Register**" shall have the meaning specified in Section 2.06(a).

"**Note Registrar**" shall have the meaning specified in Section 2.06(a).

"**Notice of Conversion**" shall have the meaning specified in Section 15.02(b).

"**Notice of Default**" shall have the meaning specified in Section 7.01(f).

"**Offering Memorandum**" means the final offering memorandum dated July 30, 2008 relating to the offering and sale of the Notes.

"**Officer**" means, with respect to the Company, the Chairman of the Board of Directors, the Chief Executive Officer, a President, a Senior Vice President, the Chief Operating Officer, the Chief Financial Officer, the General Counsel, the Treasurer or a Secretary.

"**Officers' Certificate**," when used with respect to the Company, means a certificate signed by two Officers and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section. One of the officers giving an Officers' Certificate pursuant to Section 5.08 shall be the principal executive, financial or accounting officer of the Company.

"**opening of business**" means 9:00 a.m. (New York City time).

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section.

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 9.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

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(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, for the payment or repurchase of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent); *provided that*, if any such Note is repurchased, the holder thereof shall have delivered a Repurchase Notice or a Fundamental Change Repurchase Notice in accordance with Section 16.01 and Section 16.04, respectively;

(c) Notes that have been paid pursuant to Section 2.07 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.07 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course; and

(d) Notes converted pursuant to Article 15.

“**Paying Agent**” shall have the meaning specified in Section 5.02.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Portal Market**” means The Portal Market operated by The NASDAQ Stock Market, Inc. or any successor thereto.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.07 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Publicly Traded Securities**” means shares of common stock or common equity interests that are traded on a national securities exchange or that will be so traded when issued or exchanged in connection with a Fundamental Change described in clause (b) of the definition thereof.

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of July 30, 2008, between the Company and the Initial Purchaser.

“**Record Date**” shall have the meaning specified in Section 15.04(f).

“**Redemption Date**” means the date specified in a notice of redemption on which the Notes may be redeemed in accordance with the terms of the Notes and this Indenture.

“**Redemption Price**” shall have the meaning specified in Section 3.01.

“**Reference Property**” shall have the meaning specified in Section 15.06(b).

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“**Repurchase Company Notice**” shall have the meaning specified in Section 16.01(a).

“**Repurchase Date**” shall have the meaning specified in Section 16.01(a).

“**Repurchase Expiration Time**” shall have the meaning specified in Section 16.01(a)(vii).

“**Repurchase Notice**” shall have the meaning specified in Section 16.01(b).

“**Repurchase Price**” shall have the meaning specified in Section 16.01(a).

“**Resale Restriction Termination Date**” shall have the meaning specified in Section 2.06(d).

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**Restricted Securities**” shall have the meaning specified in Section 2.06(d).

“**Rule 144A**” means Rule 144A as promulgated under the Securities Act.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day.

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

“**Settlement Amount**” has the meaning specified in Section 15.02(a).

“**Settlement Method**” means, with respect to a conversion of Notes, the relative proportions of cash and/or shares of Common Stock with which such conversion is settled under this Indenture, as elected (or deemed elected) by the Company.

“**Settlement Notice**” has the meaning specified in Section 15.02(a)(iii).

“**Specified Dollar Amount**” means the amount of cash per \$1,000 principal amount of converted Note specified in the Settlement Notice related to such converted Note.

“**Spin-Off**” shall have the meaning specified in Section 15.04(c).

“**Stock Price**” means (a) in the case of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change in which holders of Common Stock receive solely cash consideration in connection with such Make-Whole Fundamental Change, the amount of cash paid per share of

over the period of five consecutive Trading Days ending on the Trading Day immediately preceding the Effective Date of such Make-Whole Fundamental Change. The Board of Directors will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, during such five consecutive Trading Days.

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 12.01(a).

“**Supplementary Interest**” shall have the meaning specified in Section 7.01.

“**Tax Original Issue Discount**” means the amount of ordinary interest income on a Note that must be accrued as original issue discount for U.S. federal income tax purposes pursuant to Treasury regulation Section 1.1275-4 or any successor thereto.

“**Trading Day**” means a day during which trading in the Common Stock generally occurs and there is no Market Disruption Event.

“**Trading Price**” with respect to the Notes, on any date of determination means the average of the secondary market bid quotations obtained by the Trustee for \$5.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company; *provided* that, if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for \$5.0 million principal amount of Notes from a U.S. nationally recognized securities dealer, then (i) for purposes of any determination of whether Contingent Interest is payable pursuant to Article 14 or of the amount of any Contingent Interest, the Trading Price of the Notes on any date of determination shall equal the product of (x) the applicable Conversion Rate for the Notes and (y) the average Last Reported Sale Price of the Common Stock for the five Trading Days ending on such date of determination and (ii) for purposes of any determination of whether the condition to conversion under Section 15.01(b)(i) is met, the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate.

“**Trigger Event**” shall have the meaning specified in Section 15.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture, except as provided in Section 11.03 and

Section 15.06; *provided however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by 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 Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**Weighted Average Consideration**” shall have the meaning specified in Section 15.06(c)(iv).

Section 1.02. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in, and made a part of, this Indenture. All terms used in this Indenture that are defined by the Trust Indenture Act, defined by reference in the Trust Indenture Act to another statute or defined by the rules and regulations promulgated by the Commission under the Trust Indenture Act have the meanings so assigned to them therein.

ARTICLE II

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. Designation and Amount. The Notes shall be designated as the “3.95% Convertible Senior Notes due 2038.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to \$400,000,000 (or \$460,000,000 if the Initial Purchaser exercises its option to purchase additional Notes in full as set forth in the Purchase Agreement), subject to Section 2.11 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.06, Section 2.07, Section 2.08, Section 3.06, Section 11.04, Section 15.02, Section 16.03 and Section 16.06 hereof.

Section 2.02. Form of Notes. The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, which are incorporated in and made a part of this Indenture.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian, the Depository or by The NASDAQ Stock Market, Inc. in order for the Notes to be tradable on The Portal Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or

required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

The Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal, accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, and premium, if any (including any Redemption Price, Repurchase Price or Fundamental Change Repurchase Price), on the Global Note shall be made to the holder of such Note on the date of payment, unless a record date or other means of determining holders eligible to receive payment is provided for herein.

The terms and provisions contained in the Form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 2.03. Date and Denomination of Notes; Payments of Interest. The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Note attached as Exhibit A hereto. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Interest Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest (including Contingent Interest, if any, and Additional Interest, if any) shall be payable at the office or agency of the Company maintained by the Company for such purposes in The Borough of Manhattan, City of New York, which shall initially be the office of the Paying Agent at 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration. The Company shall pay interest (including Contingent Interest, if any, and Additional Interest, if any) (a) on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register (or upon written application by such Person to the Trustee and Paying Agent (if different from the Trustee) not later than the relevant Interest Record Date, by wire transfer in immediately available funds to such Person's account within the United States, if such Person is entitled to interest on an aggregate principal amount in excess of

\$2,000,000, which application shall remain in effect until the Noteholder notifies the Trustee and Paying Agent to the contrary) or (b) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

Any Defaulted Interest shall forthwith cease to be payable to the Noteholder on the relevant Interest Record Date by virtue of its having been such Noteholder, and such Defaulted Interest shall be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen days and not less than ten days prior to the date of the proposed payment, and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class mail, postage prepaid, to each holder at its address as it appears in the Note Register, not less than ten days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03.

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. Payments of Contingent Interest and Additional Interest. Whenever in this Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of "Contingent Interest" and "Additional Interest" both as provided for in this Indenture to the extent that, in such context, Contingent Interest or Additional Interest is, was or would be payable in respect thereof pursuant

to the provisions of this Indenture or express mention of the payment of Contingent Interest (if applicable) or Additional Interest (if applicable) in any provisions hereof shall not be construed as excluding Contingent Interest or Additional Interest, as the case may be, in those provisions hereof where such express mention is not made.

Section 2.05. Execution, Authentication and Delivery of Notes. The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of any of its Officers.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 18.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Notes shall cease to be such officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Section 2.06. Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depository.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 5.02 being herein sometimes collectively referred to as the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby appointed “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.06, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the

designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 5.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, redemption, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Noteholder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be charged to the Noteholder for any exchange or registration of transfer of Notes, but the Company or the Trustee may require payment of a sum sufficient to cover any tax, assessments or other governmental charges that may be imposed in connection therewith as a result of the name of the Noteholder of the new Notes issued upon such exchange or registration of transfer of Notes being different from the name of the Noteholder of the old Notes presented or surrendered for such exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Note selected for redemption or, if a portion of any Note is selected for redemption, such portion thereof selected for redemption or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 16 hereof.

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

(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depository or the nominee of the Depository. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Note in certificated form, shall be effected through the Depository (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor.

(c) Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.06(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee

to a successor Depository or a nominee of such successor Depository and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Depository (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depository in accordance with customary procedures of the Depository and in compliance with this Section.

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to the Global Note. Initially, the Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days or (iii) an Event of Default in respect of the Notes has occurred and is continuing, upon the request of the beneficial owner of the Notes, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, will authenticate and deliver Notes in certificated form to each such beneficial owner of the related Notes (or a portion thereof) in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, and upon delivery of the Global Note to the Trustee such Global Note shall be canceled.

Notes in certificated form issued in exchange for all or a part of the Global Note pursuant to this Section 2.06(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such definitive Notes to the Persons in whose names such definitive Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, redeemed, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and instructions existing between the Depository and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Notes in certificated form, converted, canceled, redeemed, repurchased or transferred to a transferee who receives Notes in certificated form therefor or any definitive Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(d) Every Note that bears or is required under this Section 2.06(d) to bear the legend set forth in this Section 2.06(d) (together with any Common Stock issued upon conversion of the Notes and required to bear the legend set forth in Section 2.06(e), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.06(d) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the holder of each such Restricted Security, by such holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in Section 2.06(d) and Section 2.06(e), the term "transfer" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the "**Resale Restriction Termination Date**") that is the later of (1) the date that is one year after the last date of original issuance of the Notes, and (2) such later date, if any, on which the Notes are freely tradable pursuant to Rule 144 under the Securities Act without volume restrictions by holders other than Affiliates of the Company, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof which shall bear the legend set forth in Section 2.06(e), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFEFED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS THE LATER OF ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS SECURITY IS FREELY TRADABLE PURSUANT TO RULE 144 UNDER THE SECURITIES ACT WITHOUT VOLUME RESTRICTIONS BY HOLDERS OTHER THAN AFFILIATES OF AFFILIATED MANAGERS GROUP, INC. (THE "COMPANY") ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN

RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED OR OTHERWISE BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 OR ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.06, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.06(d). The Company shall notify the Trustee upon the occurrence of the Resale Restriction Termination Date (which notice shall confirm that neither the Company nor any "affiliates" (as defined in Rule 144 under the Securities Act) have resold any of the Notes) and promptly after a registration statement with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act.

(e) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of such Note shall bear a legend in substantially the following form (unless the Note or such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or pursuant to the exemption from registration provided by Rule 144 under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD,

ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS THE LATER OF ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS SECURITY IS FREELY TRADABLE PURSUANT TO RULE 144 UNDER THE SECURITIES ACT WITHOUT VOLUME RESTRICTIONS BY HOLDERS OTHER THAN AFFILIATES OF AFFILIATED MANAGERS GROUP, INC. (THE "COMPANY") ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED OR OTHERWISE BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 OR ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE TRANSFER AGENT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRANSFER AGENT. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.06(e).

(f) Any Note or Common Stock issued upon the conversion or exchange of a Note that is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Notes or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

(g) Notwithstanding any provision of Section 2.06 to the contrary, in the event Rule 144 as promulgated under the Securities Act (or any successor rule) is amended to change the one-year holding period thereunder (or the corresponding period under any successor rule), from and after receipt by the Trustee of the Officers' Certificate and Opinion of Counsel provided for in this Section 2.06(g), (i) each reference in Section 2.06(d) to "one year" and in the restrictive legend set forth in such paragraph to "ONE YEAR" shall be deemed for all purposes hereof to be references to such changed period, (ii) each reference in Section 2.06(e) to "one year" and in the restrictive legend set forth in such paragraph to "ONE YEAR" shall be deemed for all purposes hereof to be references to such changed period and (iii) all corresponding references in the Notes (including the definition of Resale Restriction Termination Date) and the restrictive legends thereon shall be deemed for all purposes hereof to be references to such changed period; *provided* that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws. The provisions of this Section 2.06(g) will not be effective until such time as the Opinion of Counsel and Officers' Certificate have been received by the Trustee hereunder. This Section 2.06(g) shall apply to successive amendments to Rule 144 (or any successor rule) changing the holding period thereunder.

(h) 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 Note (including any transfers between or among Depository participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(i) The Trustee shall have no responsibility for any actions taken or not taken by the Depository.

Section 2.07. Mutilated, Destroyed, Lost or Stolen Notes. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. Upon the issuance of any substitute Note, the Company or the Trustee may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and

any other expenses connected therewith. In case any Note that has matured or is about to mature or is about to be redeemed or has been tendered for repurchase pursuant to Article 16 hereof or is about to be converted into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender.

Section 2.08. Temporary Notes. Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.09. Cancellation of Notes Paid, Etc. All Notes surrendered for the purpose of payment, redemption, repurchase, conversion, exchange or registration of transfer, shall, if surrendered to the Company or any Paying Agent or any Note Registrar or any Conversion

Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall return canceled Notes to the Company upon the Company's written request. If the Company shall acquire any of the Notes, such acquisition shall not operate as satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.10. CUSIP Numbers. The Company in issuing the Notes may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in all notices issued to Noteholders as a convenience to holders of the Notes; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company will promptly notify the Trustee in writing of any change in the “CUSIP” numbers.

Section 2.11. Open-Market Repurchases. The Company may from time to time repurchase the Notes in open market purchases or negotiated transactions without prior notice to Noteholders.

ARTICLE III

REDEMPTION

Section 3.01. Company’s Right to Redeem; Notices to Trustee. Prior to August 15, 2013, the Notes shall not be redeemable at the Company’s option. On or after August 15, 2013, the Company, at its option, may redeem the Notes for cash at any time, in whole or in part, at a redemption price (the “**Redemption Price**”) equal to 100% of the principal amount of the Notes redeemed, plus any accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on the Notes redeemed up to, but not including, the Redemption Date; *provided however*, that, in no event shall a Redemption Date be a Legal Holiday; *provided further*, that, if the Redemption Date is on a date that is after an Interest Record Date and on or prior to the corresponding Interest Payment Date, the Redemption Price shall be 100% of the principal amount of the Notes redeemed but shall not include accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and Additional Interest, if any. Instead, the Company shall pay such interest, Contingent Interest, if any, and Additional Interest, if any, on the Interest Payment Date to the holder of record on the corresponding Interest Record Date. If the Company elects to redeem Notes pursuant to this Section 3.01, it shall notify the Trustee in writing of such election together with the Redemption Date, the Conversion Rate, the principal amount of Notes to be redeemed and the Redemption Price. Notwithstanding the foregoing, no Notes may be redeemed by the Company if the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or prior to the Redemption Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Redemption Price with respect to such Notes).

The Company shall give the notice to the Trustee provided for in this Section 3.01 by a Company Order, at least 45 days but not more than 60 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee).

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Section 3.02. Selection of Notes to Be Redeemed. If less than all of the Notes are to be redeemed, unless the procedures of the Depository provide otherwise, the Trustee shall select the Notes to be redeemed by lot, on a pro rata basis or by another method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange or quotation association on which the Notes are then traded or quoted). The Trustee may select for redemption portions of the principal amount of Notes that have denominations larger than \$1,000.

Notes and portions of Notes that the Trustee selects shall be in principal amounts of \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Company promptly (but in any case within 7 days of the Company Order referred to in Section 3.01) of the Notes or portions of the Notes selected to be redeemed and, in the case of any Notes selected for partial redemption, the method it has chosen for the selection of the Note.

Following a notice of redemption, Notes and portions of Notes are convertible, pursuant to Section 15.01(b)(v), by the holder until the close of business on the Business Day prior to the Redemption Date. If any Note selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Note so selected, the converted portion of such Note shall be deemed (so far as may be) to be from the portion selected for redemption. Notes that have been converted during a selection of Notes to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.03. Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall provide a notice of redemption by electronic transmission or first-class mail, postage prepaid, to each holder of Notes to be redeemed. Simultaneously with the providing of such notice, the Company shall also publish a notice containing the information set forth in the notice of redemption in a newspaper 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 that time.

The notice shall identify the Notes to be redeemed and shall state (along with any other information the Company wishes to include):

- (i) the Redemption Date;
- (ii) the Redemption Price;
- (iii) the Conversion Rate and the Conversion Price;
- (iv) the name and address of the Paying Agent and Conversion Agent;
- (v) that Notes may be converted at any time before the close of business on the Business Day prior to the Redemption Date;
- (vi) that Notes called for redemption and not converted shall be redeemed on the Redemption Date;

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- (vii) that holders who want to convert their Notes must satisfy the requirements set forth in the Notes;

(viii) that Notes called for redemption must be surrendered to the Paying Agent (by effecting book-entry transfer of the Notes or delivering Notes in certificated form, together with necessary endorsements, as the case may be) to collect the Redemption Price;

(ix) if fewer than all of the outstanding Notes are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Notes to be redeemed;

(x) that, unless the Company defaults in making payment of such Redemption Price, interest, Contingent Interest, if any, and Additional Interest, if any, on the Notes or portions of Notes called for redemption shall cease to accrue from and after the Redemption Date; and

(xi) the “CUSIP”, “ISIN” or other similar number(s), as the case may be, of the Notes being redeemed.

At the Company’s request, the Trustee shall give the notice of redemption in the Company’s name and at the Company’s expense; *provided* that, the Company makes such request at least seven Business Days (or such shorter period as may be satisfactory to the Trustee) prior to the date by which such notice of redemption must be given to holders in accordance with this Section 3.03.

Section 3.04. Effect of Notice of Redemption. Once notice of redemption is given, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Notes that are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Notes shall be paid at the Redemption Price stated in the notice and from and after the Redemption Date (unless the Company shall default in the payment of the Redemption Price) such Notes shall cease to bear interest, Contingent Interest, if any, and Additional Interest, if any, and the rights of the holders therein shall terminate (other than the right to receive the Redemption Price).

If any Note shall not be fully and duly paid in accordance herewith upon redemption, the principal of, and accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on such Note shall, until paid, bear Interest at the rate borne by such Note on the principal amount of such Note, and such Note shall continue to be convertible pursuant to Article 15.

Section 3.05. Deposit of Redemption Price. Prior to 11:00 a.m. (New York City time), on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Notes to be redeemed on that date other than Notes or portions of Notes called 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 Notes pursuant

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to Article 15. 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 3.06. Notes Redeemed in Part. Upon surrender of a Note that is redeemed in part, the Company shall execute and the Trustee shall, without charge, authenticate and deliver to the holder a new Note in an authorized denomination equal in principal amount to the unredeemed portion of the Note surrendered.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.01. Satisfaction and Discharge. This Indenture shall upon request of the Company contained in an Officers’ Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 5.04(d)) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Noteholders, as applicable, after the Notes have become due and payable, whether at the Maturity Date, any Redemption Date, any Repurchase Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and shares of Common Stock, if any (solely to satisfy the Company’s Conversion Obligation, if applicable), sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 8.06 shall survive such satisfaction and discharge.

ARTICLE V

PARTICULAR COVENANTS OF THE COMPANY

Section 5.01. Payment of Principal, Premium, Interest, Contingent Interest and Additional Interest. The Company covenants and agrees that it will cause to be paid the principal of and premium, if any (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), and accrued and unpaid interest, Contingent Interest, if any and Additional Interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 5.02. Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment, redemption or repurchase (“**Paying Agent**”) or for conversion (“**Conversion Agent**”) and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The

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Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at an office or agency of the Trustee in the Borough of Manhattan, The City of New York, which shall initially be the Trustee's office at 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration.

The Company may also from time to time designate co-registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* 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 will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "Paying Agent" and "Conversion Agent" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office and the office or agency of the Trustee in the Borough of Manhattan each shall be considered as one such office or agency of the Company for each of the aforesaid purposes.

Section 5.03. Appointments to Fill Vacancies in Trustee's Office. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.04. Provisions as to Paying Agent.

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, and accrued and unpaid interest, Contingent Interest, if any and Additional Interest, if any, on the Notes in trust for the benefit of the holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal of and premium, if any, and accrued and unpaid interest, Contingent Interest, if any and Additional Interest, if any, on the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, or premium (including the Redemption Price, the Repurchase Price or the Fundamental Change Repurchase Price), if any, or accrued and unpaid interest or Contingent Interest, if any, or Additional Interest, if any,

on the Notes, deposit with the Paying Agent a sum sufficient to pay such principal, premium (including the Redemption Price, the Repurchase Price or the Fundamental Change Repurchase Price), if any, or accrued and unpaid interest or Contingent Interest, if any, or Additional Interest, if any, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that, if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, premium (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), if any, accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, on the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such principal, premium (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), if any, accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal of, premium (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), if any, accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, on the Notes when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or premium (including the Redemption Price, the Purchase Price and the Fundamental Change Repurchase Price), if any, accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, on any Note and remaining unclaimed for two years after such principal, premium (including the Redemption Price, the Repurchase Price or the Fundamental Change Repurchase Price), interest, Contingent Interest or Additional Interest has become due and payable shall be paid to the Company on request of the Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from such trust; and the holder of such Note 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, shall, upon the request and at the expense of the Company, cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 5.05. Existence. Subject to Article 12, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 5.06. Rule 144A Information Requirement and Annual Reports.

(a) At any time prior to the Resale Restriction Termination Date that the Company is not subject to Sections 13 or 15(d) of the Exchange Act, the Company shall promptly provide to the Trustee and shall, upon written request, provide to any holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issued upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A under the Securities Act. The Company shall take such further action as any holder or beneficial owner of such Notes or such Common Stock may reasonably request to the extent required from time to time to enable such holder or beneficial owner to sell such Notes or shares of Common Stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

(b) The Company shall deliver to the Trustee within fifteen days after the same is required to be filed with the Commission, copies of the quarterly and annual reports and of the information, documents and other reports, if any, that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, and, to the extent required by Section 18.08, the Company shall otherwise comply with the requirements of Section 314(a) of the Trust Indenture Act. Any such report, information or document that the Company files with the Commission through the Commission's EDGAR database shall be deemed delivered to the Trustee for purposes of this Section 5.06(b) at the time of such filing through the EDGAR database.

(c) Delivery of the reports, information and documents described in clause (b) above 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 conclusively rely exclusively on an Officers' Certificate). The Trustee shall have no obligation whatsoever to monitor the Company's compliance with this Section 5.06.

Section 5.07. Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, 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.

Section 5.08. Compliance Certificate; Statements as to Defaults. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company

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(beginning with the fiscal year ending on December 31, 2008) an Officers' Certificate stating whether or not the signer thereof has knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within thirty days after the Company becomes aware of the occurrence of any Event of Default or Default, an Officers' Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company proposes to take with respect thereto.

Section 5.09. Additional Interest Notice. If Additional Interest is payable by the Company pursuant to Section 5.10 or Section 7.01, the Company shall deliver to the Trustee an Officers' Certificate to that effect stating (a) the amount of such Additional Interest that is payable and (b) the date on which such interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

Section 5.10. Additional Interest Payable Upon Failure to Report or Delegend.

(a) If, at any time during the six-month period beginning on, and including, the date which is six months after the original issue date of the Notes, the Company fails to timely file any document or report that the Company is required to file with the Commission (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act) pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (other than current reports on Form 8-K), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Noteholders other than Affiliates of the Company, the Company shall pay a one time Additional Interest payment in respect of the Notes in the amount of 0.25% of the principal amount of Notes outstanding; *provided* that the Company shall have 14 days, in the aggregate, to cure any such late filings before any Additional Interest shall be payable. Additional Interest payable pursuant to this Section 5.10(a) will be payable on the Interest Payment Date following the date on which the late filing was due (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act).

(b) Unless:

(i) the restrictive legend required by Section 2.06(d) and Section 2.06(e) on the Notes and any shares of Common Stock issued upon conversion of the Notes has been removed, and

(ii) the Notes and any shares of Common Stock issued upon conversion of the Notes are freely tradable pursuant to Rule 144 under the Securities Act without volume restrictions by holders other than Affiliates of the Company,

as of the 365th day after the last date of original issuance of the Notes, the Company shall pay Additional Interest on the Notes at an annual rate equal to 0.25% of the aggregate principal amount of the Notes outstanding. The Company shall pay such Additional Interest so long as a

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condition described in either (i) or (ii) of this Section 5.10(b) continues. When neither of such conditions described in either (i) or (ii) of this Section 5.10(b) continues, Additional Interest shall cease to accrue and accrued and unpaid Additional Interest through the date of cessation shall be paid in Cash on the subsequent Interest Payment Date. In no event shall Additional Interest accrue at an annual rate in excess of 0.50%, in the aggregate, pursuant to this Section 5.10 and Section 7.01.

Section 5.11. Resale of Certain Notes. During the period of one year after the last original issue date of the Notes, the Company shall not, and shall use reasonable efforts to cause its “affiliates” (as defined under Rule 144 under the Securities Act or any successor provision thereto) not to, resell any Notes which constitute “restricted securities” under Rule 144 that have been reacquired by any of them.

Section 5.12. Further Instruments and Acts. Upon request of the Trustee or as necessary, 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.

ARTICLE VI

LISTS OF NOTEHOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.01. Lists of Noteholders. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than fifteen days after each February 1 and August 1 in each year beginning with February 1, 2009, and at such other times as the Trustee may request in writing, within thirty days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Noteholders as of a date not more than fifteen days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 6.02. Preservation and Disclosure of Lists.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Noteholders contained in the most recent list furnished to it as provided in Section 6.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

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

(c) Every Noteholder, 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 Noteholders made pursuant to the Trust Indenture Act.

Section 6.03. 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. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each May 15 following the date of this Indenture, deliver to holders a brief report, dated as of such May 15, that complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Noteholders, be filed by the Trustee with each stock exchange and automated quotation system upon which the Notes are listed and with the Company. The Company will notify the Trustee in writing within a reasonable time when the Notes are listed on any stock exchange or automated quotation system and when any such listing is discontinued.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall be an “Event of Default” with respect to the Notes:

(a) default in any payment of interest, including any Additional Interest or any Contingent Interest, on any Note when due and payable, and the default continues for a period of thirty days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon redemption, upon required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, upon exercise of a holder’s conversion right;

(d) failure by the Company to comply with its obligations under Article 12;

(e) failure by the Company to issue a Fundamental Change Company Notice for a period of ten days after such notice becomes due in accordance with Section 16.04(b);

(f) failure by the Company for sixty days after written notice from the Trustee or the holders of at least 25% in principal amount of the Notes then outstanding (a copy of which notice, if given by holders, also to be given to the Trustee) has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture, which notice shall state that it is a “Notice of Default” hereunder;

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(g) default by the Company or any Subsidiary of the Company in the payment of the principal or interest on any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any debt for money borrowed in excess of \$30,000,000 in the aggregate of the Company and/or any such Subsidiary, whether such debt now exists or shall hereafter be created, or any other default thereunder resulting in such debt becoming or being declared due and payable, and such acceleration shall not have been rescinded or annulled within thirty days after written notice of such acceleration has been received by the Company or such Subsidiary;

(h) a final judgment for the payment of \$30,000,000 or more rendered against the Company or any Subsidiary of the Company, and such amount is not covered by insurance or indemnity or not discharged or stayed within thirty days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Subsidiary of the Company that is a “significant subsidiary” (as defined in Regulation S-X under the Exchange Act) or any group of Subsidiaries of the Company that in the aggregate would constitute a “significant subsidiary” shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Subsidiary or group of Subsidiaries or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Subsidiary or group of Subsidiaries or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Subsidiary of the Company that is a “significant subsidiary” (as defined in Regulation S-X under the Exchange Act) or any group of Subsidiaries of the Company that in the aggregate would constitute a “significant subsidiary” seeking liquidation, reorganization or other relief with respect to the Company or such Subsidiary or group of Subsidiaries or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Subsidiary or group of Subsidiaries or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of thirty consecutive days.

If an Event of Default occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in aggregate principal amount of the outstanding Notes (determined in accordance with Section 9.04) by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest on all the Notes to be due and payable. Upon such a declaration of acceleration, all principal and accrued and unpaid interest (including any accrued and unpaid Contingent Interest or Additional Interest) on the Notes will be due and payable immediately. However, upon an Event of Default arising out of Section 7.01(i) or Section 7.01(j) with respect to the Company (and not solely with respect to a “significant subsidiary” (as defined in Regulation S-X under the Exchange Act) of the Company, or a group of Subsidiaries of the Company that in

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aggregate would constitute a “significant subsidiary” of the Company), the aggregate principal amount and accrued and unpaid interest (including any accrued and unpaid Contingent Interest or Additional Interest) will be due and payable immediately.

Notwithstanding anything in this Indenture or in the Notes to the contrary, for the first 180 days immediately following any violation of any obligations the Company may be deemed to have pursuant to (1) Section 314(a)(1) of the Trust Indenture Act, or (2) Section 5.06(b), and the continuation thereof, the sole remedy for any such violation shall be the accrual of additional interest on the Notes at an annual rate equal to 0.25% of the outstanding principal amount of the Notes (“**Supplementary Interest**”), payable semi-annually at the same time and in the same manner as regular interest on the Notes pursuant to Section 2.03 and Section 5.01. In addition to the accrual of Supplementary Interest, on and after the 180th day, any violation of any obligations the Company may be deemed to have pursuant to (1) Section 314(a)(1) of the Trust Indenture Act or (2) Section 5.06(b), either the Trustee or the Noteholders of not less than 25% in aggregate principal amount of the outstanding Notes (determined in accordance with Section 9.04) may declare the principal amount of the Notes and any accrued and unpaid interest (including any accrued and unpaid Contingent Interest or Additional Interest) to be immediately due and payable.

Section 7.02. Payments of Notes on Default; Suit Therefor. If an Event of Default described in clause (a) or (b) of Section 7.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the holders of the Notes, the whole amount then due and payable on the Notes for principal, premium, if any, and interest, Contingent Interest, if any, and Additional Interest, if any, with interest on any overdue principal, premium, if any, interest, Contingent Interest, if any, and Additional Interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 8.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequester or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal of and premium, if any (including the Redemption Price, the Repurchase Price or the Fundamental Change Repurchase Price), and accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and

unpaid Additional Interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 8.06 hereof, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or composition affecting the Noteholder or the rights of any Noteholder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 7.03. Application of Monies Collected by Trustee. Any monies collected by the Trustee pursuant to this Article 7 with respect to the Notes shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon 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 8.06;

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Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on the Notes, including Contingent Interest, if any, and Additional Interest, if any, in default in the order of the date due of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount including the payment of the Redemption Price, the Repurchase Price or the Fundamental Change Repurchase Price and the cash component of the Conversion Obligation, if any, then owing and unpaid upon the Notes for principal and premium, if any, and interest, including Contingent Interest, if any, and Additional Interest, if any, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 7.04. Proceedings by Noteholders. No holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby, and the Trustee for sixty days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the Notes outstanding within such sixty-day period pursuant to Section 7.07; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee that no one or more Noteholders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Noteholders), or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Noteholders (except as otherwise provided herein). For the protection and enforcement of this Section 7.04, each and every

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Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Noteholder to receive payment of the principal of and premium, if any (including the Redemption Price upon redemption pursuant to Article 3, the Repurchase Price upon repurchase pursuant to Section 16.01 and the Fundamental Change Repurchase Price upon repurchase pursuant to Section 16.04), and accrued and unpaid interest and accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment on or after such respective dates against the Company shall not be impaired or affected without the consent of such Noteholder.

Anything in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion as provided herein.

Section 7.05. Proceedings by Trustee. In case of an Event of Default the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 7.06. Remedies Cumulative and Continuing. Except as provided in the last paragraph of Section 2.07, all powers and remedies given by this Article 7 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or any acquiescence therein; and, subject to the provisions of Section 7.04, every power and remedy given by this Article 7 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 7.07. Direction of Proceedings and Waiver of Defaults by Majority of Noteholders. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 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 with respect to Notes; *provided however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal

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liability. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 (including, without limitation, by consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) may on behalf of the holders of all of the Notes waive any past Default or Event of Default or rescind a declaration of acceleration hereunder and their consequences except (i) a default in the payment of premium (including any Redemption Price, any Repurchase Price or any Fundamental Change Repurchase Price), if any, accrued and unpaid interest or accrued and unpaid Contingent Interest, if any, or accrued and unpaid Additional Interest, if any, on, or the principal of, the Notes when due that has not been cured pursuant to the provisions of Section 7.01, (ii) a failure by the Company to deliver cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 11 cannot be modified or amended without the consent of each holder of an outstanding Note affected so long as, in each case, (x) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (y) all existing Defaults and Events of Default (other than as a result of (i) or (ii) above) that have become due solely by such declaration of acceleration, have been cured or waived. Upon any such waiver the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 7.07, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 7.08. Notice of Defaults. The Trustee shall, within ninety days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, mail to all Noteholders as the names and addresses of such holders appear upon the Note Register, notice of all Defaults known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; and provided that, except in the case of a Default in the payment of the principal of, or premium, if any, accrued and unpaid interest or accrued and unpaid Contingent Interest, if any, or accrued and unpaid Additional Interest, if any, on any of the Notes, including without limiting the generality of the foregoing any Default in the payment of any Redemption Price, any Repurchase Price or any Fundamental Change Repurchase Price, then in any such event the Trustee shall be protected in withholding such notice if and so long as a committee of Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Noteholders.

Section 7.09. Undertaking to Pay Costs. All parties to this Indenture agree, and each holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided that*, the provisions of this Section 7.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any

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suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 9.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or premium, if any, accrued and unpaid interest or accrued and unpaid Contingent Interest, if any, or accrued and unpaid Additional Interest, if any, on any Note (including, but not limited to, the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price with respect to the Notes being redeemed or

repurchased, as applicable, as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 15.

ARTICLE VIII

CONCERNING THE TRUSTEE

Section 8.01. Duties and Responsibilities of Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided that*, if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the holders unless such holders have offered to the Trustee indemnity or security satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that

- (a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:
 - (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and, after it has been qualified thereunder, the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and
 - (ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the

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Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

- (b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;
- (c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 9.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;
- (d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 8.01;
- (e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-registrar with respect to the Notes;
- (f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless such Responsible Officer of the Trustee had actual knowledge of such event;
- (g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses, fees, taxes or other charges incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and
- (h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 8 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

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Section 8.02. Reliance on Documents, Opinions, Etc. Except as otherwise provided in Section 8.01:

- (a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, Note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or

presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed), and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its selection and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(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, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby;

(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 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 at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

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

(g) the permissive rights of the Trustee enumerated herein shall not be construed as duties; and

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

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

damage caused by the Trustee's willful misconduct or gross negligence. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any holder of the Notes.

Section 8.03. No Responsibility for Recitals, Etc. The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 8.04. Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes. The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 8.05. Monies to Be Held in Trust. All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. 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 may be agreed in writing from time to time by the Company and the Trustee.

Section 8.06. Compensation and Expenses of Trustee. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed in writing for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 8.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 7.03,

funds held in trust herewith for the benefit of the holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 8.06 shall not be subordinate to any other liability or indebtedness of the Company (even though the Notes may be so subordinated). The obligations of the Company under this Section 8.06 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee. The

Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 8.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 7.01(i) or Section 7.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 8.07. Officers' Certificate as Evidence. Except as otherwise provided in Section 8.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 8.08. Conflicting Interests of Trustee. After qualification of this Indenture under the Trust Indenture Act, if the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either (a) eliminate such interest within ninety days, (b) apply to the Commission for permission to continue as Trustee or (c) resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 8.09. Eligibility of Trustee. 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 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 any supervising or examining authority, then for the purposes of this Section 8.09, 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 8.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 8.10. Resignation or Removal of Trustee.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof to the Noteholders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall

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promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within sixty days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, at the expense of the Company, upon ten Business Days' notice to the Company and the Noteholders, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 7.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 8.08 within a reasonable time after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months, or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 and shall fail to resign after written request therefor by the Company or by any such Noteholder, or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or 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, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 9.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Noteholder, upon the terms and conditions and otherwise as in Section 8.10(a) provided, may, at the expense of the Company, petition any court of competent jurisdiction for an appointment of a successor trustee.

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(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11.

Section 8.11. Acceptance by Successor Trustee. Any successor trustee appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.06.

No successor trustee shall accept appointment as provided in this Section 8.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 8.08 and be eligible under the provisions of Section 8.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.11, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Noteholders at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 8.12. Succession by Merger, Etc. Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that, in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be qualified under the provisions of Section 8.08 and eligible under the provisions of Section 8.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any

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successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided however*, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 8.13. Limitation on Rights of Trustee as Creditor. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), after qualification under the Trust Indenture Act, the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

Section 8.14. Trustee's Application for Instructions from the Company. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE IX

CONCERNING THE NOTEHOLDERS

Section 9.01. Action by Noteholders. Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the Noteholders voting in favor thereof at any meeting of Noteholders duly called and may, but shall not be required to, fix in advance of such solicitation, a date as the record date held in accordance with the provisions of Article 10, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Noteholders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

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Section 9.02. Proof of Execution by Noteholders. Subject to the provisions of Section 8.01, Section 8.02 and Section 10.05, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Noteholders' meeting shall be proved in the manner provided in Section 10.06.

Section 9.03. Who Are Deemed Absolute Owners. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of, premium (including the payment of the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), if any, and (subject to Section 2.03) accrued and unpaid interest and accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depository or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 9.04. Company-Owned Notes Disregarded. In determining whether the holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 9.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. The Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 8.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

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Section 9.05. Revocation of Consents; Future Holders Bound. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note that is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE X

NOTEHOLDERS' MEETINGS

Section 10.01. Purpose of Meetings. A meeting of Noteholders may be called at any time and from time to time pursuant to the provisions of this Article 10 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to any of the provisions of Article 7;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 8;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02; or
- (d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 10.02. Call of Meetings by Trustee. The Trustee may at any time call a meeting of Noteholders to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 9.01, shall be mailed to holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty nor more than ninety days prior to the date fixed for the meeting.

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by

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the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 10.03. Call of Meetings by Company or Noteholders. In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 25% in aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty

days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

Section 10.04. Qualifications for Voting. To be entitled to vote at any meeting of Noteholders a Person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 10.05. Regulations. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.03, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.04, at any meeting of Noteholders each Noteholder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him; *provided however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 10.02 or Section 10.03 may be adjourned from time to time by the holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 10.06. Voting. The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the Noteholders or of their representatives by proxy and the outstanding principal amount of the

Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 10.07. No Delay of Rights by Meeting. Nothing contained in this Article 10 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 11.01. Supplemental Indentures Without Consent of Noteholders. The Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture or conform the terms of the Indenture or the Notes to the description thereof in the Offering Memorandum;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 12;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants of the Company such further covenants, restrictions or conditions for the benefit of the Noteholders or surrender any right or power conferred upon the Company;

- (f) to make any change that does not materially and adversely affect the rights of any holder;
- (g) provide for a successor trustee; or

(h) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.02.

Section 11.02. Supplemental Indentures With Consent of Noteholders. With the consent (evidenced as provided in Article 9) of the holders of at least a majority in aggregate principal amount of the Notes at the time outstanding (determined in accordance with Article 9 and including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time 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 any supplemental indenture or of modifying in any manner the rights of the holders of the Notes or of waiving any past Default or Event of Default or compliance with the provisions of this Indenture; *provided however*, that no such supplemental indenture shall:

- (a) reduce the percentage in aggregate principal amount of Notes outstanding whose holders must consent to an amendment of this Indenture or to waive any past Default or Event of Default;
- (b) reduce the rate or extend the stated time for payment of interest, including Contingent Interest and Additional Interest, on any Note;
- (c) reduce the principal of, or extend the Maturity Date of, any Note;
- (d) make any change that impairs or adversely affects the conversion rights of any Notes;
- (e) reduce the Redemption Price, the Repurchase Price or the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the holders of the Notes the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency other than that stated in the Note;

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(g) impair the right of any holder to receive payment of principal of and interest, including Contingent Interest, if any, and Additional Interest, if any, on such holder's Notes 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 Notes; or

(h) make any change in this Article 11 that requires each holder's consent or in the waiver provisions in Section 7.01 or Section 7.07;

in each case without the consent of each holder of an outstanding Note affected.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid and subject to Section 11.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof. After an amendment under this Indenture becomes effective, the Company shall send to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

Section 11.03. Effect of Supplemental Indentures. Any supplemental indenture executed pursuant to the provisions of this Article 11 shall comply with the Trust Indenture Act, as then in effect; *provided that*, this Section 11.03 shall not require such supplemental indenture to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or this Indenture has been qualified under the Trust Indenture Act, nor shall any such qualification constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or this Indenture has been qualified under the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 11, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Noteholders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 11.04. Notation on Notes. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 11 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or

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an authenticating agent duly appointed by the Trustee pursuant to Section 18.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.05. Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee. In addition to the documents required by Section 18.05, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 11 and is permitted or authorized by the Indenture.

ARTICLE XII

CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 12.01. Company May Consolidate, Etc. on Certain Terms.

Subject to the provisions of Section 12.02, the Company shall not consolidate with, merge with or into, or convey, transfer or lease all or substantially all of its properties and assets to another Person, unless:

(a) the resulting, surviving or transferee Person (the "Successor Company"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Notes and this Indenture;

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture; and

(c) the Company and the Successor Company provide adequate assurance, to the extent that the Successor Company is not the issuer of any part of the Reference Property, that the immediate resale of the Reference Property received upon conversion by holders that are not affiliates of the Company will not require registration under the Securities Act.

Upon any such consolidation, merger, conveyance, transfer or lease the Successor Company (if not the Company) shall succeed to, and may exercise every right and power of, the Company under this Indenture.

For purposes of this Section 12.01, the conveyance, transfer or lease of the properties and assets of one or more Subsidiaries of the Company substantially as an entirety to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute the properties and assets of the Company substantially as an entirety on a consolidated basis, shall be deemed to be the transfer of the properties and assets of the Company substantially as an entirety to another Person.

Section 12.02. Successor Corporation to Be Substituted. In case of any such consolidation, merger, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in

form to the Trustee, of the due and punctual payment of the principal of and premium (including any Redemption Price, Repurchase Price or Fundamental Change Repurchase Price), if any, accrued and unpaid interest and accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, conveyance or transfer (but not in the case of a lease), the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 12 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 12.03. Opinion of Counsel to Be Given Trustee. No merger, consolidation, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 12.

ARTICLE XIII

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 13.01. Indenture and Notes Solely Corporate Obligations. No recourse for the payment of the principal of or premium (including any Redemption Price, Repurchase Price or Fundamental Change Repurchase Price), if any, or accrued and unpaid interest and accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any

supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation or entity, either directly or through the Company or any successor corporation or entity, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE XIV

CONTINGENT INTEREST

Section 14.01. Contingent Interest.

(a) The Company shall pay Contingent Interest with respect to the Notes for any Contingent Interest Period if the average Trading Price of Notes for the five consecutive Trading Days ending on the Trading Day immediately preceding the first day of the relevant Contingent Interest Period equals or exceeds 120% of the principal amount of such Notes.

(b) The amount of Contingent Interest payable per \$1,000 principal amount of Notes in respect of any Contingent Interest Period shall equal 0.25% per annum calculated on the average Trading Price of \$1,000 principal amount of Notes during the relevant five Trading Day period used to determine whether Contingent Interest must be paid.

(c) The Company shall be responsible for calculating the amounts of Contingent Interest, if any, accrued on the Notes. The Company shall make any such calculations using the Trading Price provided by the Trustee. The Trustee shall be entitled in its sole discretion to consult with the Company and to request the assistance of the Company in connection with the Trustee's duties pursuant to this Article 14, and the Company agrees, if requested by the Trustee, to cooperate with, and provide assistance to, the Trustee in carrying out its duties under this Article 14.

Section 14.02. Payment of Contingent Interest. Payments of Contingent Interest shall be made in the same manner, at the same time, and subject to the same restrictions, including those restrictions in respect of accrued and unpaid interest on any Notes that are submitted for conversion, as payments of interest.

Section 14.03. Contingent Interest Notification. Upon the determination that Contingent Interest is payable, the Company shall notify holders of Notes that holders of Notes shall be entitled to receive Contingent Interest in respect of a Contingent Interest Period, in no event later than the first Business Day of a Contingent Interest Period for which Contingent Interest shall be payable, by publishing a notice in a newspaper of general circulation in The City of New York or publish any such information on its website or through such other public medium as the Company may use at that time.

ARTICLE XV

CONVERSION OF NOTES

Section 15.01. Conversion Privilege.

(a) Upon compliance with the provisions of this Article 15, a Noteholder shall have the right, at such holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note (i) at any time prior to February 15, 2038 under the circumstances and during the periods set forth in Section 15.01(b) below, and (ii) irrespective of the conditions described in Section 15.01(b) below, on or after February 15, 2038 and prior to the close of business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate (the "**Conversion Rate**") of 7.9586 shares of Common Stock (subject to adjustment as provided in Section 15.04 of this Indenture) per \$1,000 principal amount of Notes (subject to the settlement provisions of Section 15.02, the "**Conversion Obligation**").

(b) (i) The Notes may be surrendered for conversion during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes for each day of such Measurement Period was less than 98% of the product of the then-applicable Conversion Rate on such Trading Day and the Last Reported Sale Price of the Common Stock on such Trading Day. The Company shall provide written notice to the Trustee of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Trustee shall have no obligation to determine the Trading Price of the Notes unless requested by the Company, and the Company shall have no obligation to make such request unless a Noteholder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Notes would be less than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock at such time, at which time the Company shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per Note is greater than or equal to 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on such Trading Day. If the Company does not, when obligated to, instruct the Trustee to determine the Trading Price of the Notes as provided in the preceding sentence, or if the Company gives such instruction to the Trustee, and the Trustee fails to make such determination, then the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the then-applicable Conversion Rate. If the Trading Price condition set forth above has been met, the Company shall so notify the Noteholders, the Trustee and the Conversion Agent. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on such Trading Day, the Company shall so notify the holders of the Notes, the Trustee and the Conversion Agent.

(ii) In the event that the Company elects to:

(A) distribute to all or substantially all holders of its Common Stock rights, options or warrants entitling them, for a period of not more than sixty calendar days from the declaration date of such distribution, to subscribe for or purchase its Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on and including the Trading Day immediately preceding the declaration date for such distribution; or

(B) distribute to all or substantially all holders of its Common Stock the Company's assets (including cash), debt securities, or rights to purchase securities of the Company, which distribution has a per share value (as determined by the Board of Directors) exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the date of declaration for such distribution,

then, in each case, the Company shall notify all holders of the Notes, the Trustee and the Conversion Agent not less than thirty Business Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, the Notes may be surrendered for conversion at any time until the earlier of (1) the close of business on the Business Day immediately prior to such Ex-Dividend Date and (2) the Company's announcement that such distribution will not take place, even if the Notes are not otherwise convertible at such time.

(iii) In the event of either a Fundamental Change or a Make-Whole Fundamental Change, regardless of whether a Noteholder has the right to require the Company to repurchase the Notes pursuant to Section 16.04, a Noteholder may surrender Notes for conversion at any time from and after the thirtieth Business Day prior to the anticipated effective date of such Fundamental Change or Make-Whole Fundamental Change, as the case may be, until the Business Day immediately preceding the Fundamental Change Repurchase Date corresponding to such Fundamental Change or, in the case of a Make-Whole Fundamental Change that does not also constitute a Fundamental Change, until, and including, the thirtieth Business Day after the effective date of such Make-Whole Fundamental Change. The Company shall give notice of the anticipated effective date of any Fundamental Change as promptly as practicable after the Company first determines the anticipated effective date of such Fundamental Change, and this notice must occur, to the extent practicable, at least thirty Business Days prior to such anticipated effective date and the Company shall give notice of the anticipated effective date of any Make-Whole Fundamental Change as set forth in Section 15.03(b).

(iv) The Notes may be surrendered for conversion in any Fiscal Quarter after the Fiscal Quarter ending September 30, 2008, and only during such Fiscal Quarter, if the Last Reported Sale Price of the Common Stock for at least twenty Trading Days in a period of thirty consecutive Trading Days ending on the last Trading Day of the immediately preceding Fiscal Quarter is equal to or more than 130% of the then-applicable Conversion Price on the last day of such preceding Fiscal Quarter (such price, the "**Conversion Trigger Price**"). The Conversion Agent, on behalf of the Company, shall determine at the beginning of each Fiscal Quarter commencing after September 30,

2008 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Company and the Trustee.

(v) In the event that the Company calls the Notes for redemption pursuant to Article 3, the Notes may be surrendered for conversion at any time prior to the close of business on the Business Day immediately preceding the Redemption Date, whether or not the Notes are otherwise convertible at such time.

Section 15.02. Conversion Procedure.

(a) Subject to this Section 15.02, upon any conversion of any Note, the Company shall deliver to converting Noteholders, in respect of each \$1,000 principal amount of Notes being converted, solely cash, solely shares of Common Stock or a combination of cash and Common Stock (the "**Settlement Amount**"), at its election, as set forth in this Section 15.02.

(i) All conversions on or after February 15, 2038 will be settled using the same Settlement Method.

(ii) Prior to February 15, 2038, the Company will elect (or be deemed to have elected) the same Settlement Method for all conversions occurring on any given Conversion Date. Except for any conversions that occur on or after February 15, 2038, the Company need not elect the same Settlement Method with respect to conversions that occur on different Trading Days.

(iii) If, in respect of any Conversion Date (or the period beginning on, but excluding, February 15, 2038 and ending on, and including, the Business Day immediately preceding the Maturity Date, as the case may be), the Company elects to deliver a notice (the "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company, through the Trustee, shall deliver such Settlement Notice to converting Noteholders no later than the second Trading Day immediately following the relevant Conversion Date. Such Settlement Notice shall specify whether the Company shall satisfy its Conversion Obligation by (A) delivering solely shares of Common Stock, (B) paying solely cash or (C) paying and delivering, as the case may be, a combination of cash and shares of Common Stock. In the case of an election to pay and deliver, as the case may be, a combination of cash and shares of Common Stock, the relevant Settlement Notice shall indicate the Specified Dollar Amount. If the Company does not deliver a Settlement Notice, the Company shall be deemed to have elected to deliver a combination of cash and shares of Common Stock in respect of its Conversion Obligation, and the Specified Dollar Amount shall be deemed to be equal to \$1,000. If the Company delivers a Settlement Notice electing to pay and deliver, as the case may be, a combination of cash and shares of Common Stock in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount in such Settlement Notice, the Specified Dollar Amount shall be deemed to be equal to \$1,000.

(iv) The Settlement Amount in respect of any conversion of Notes shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by delivering solely Common Stock, the Company shall deliver to the converting Noteholder a number of shares of Common Stock equal to (1) the aggregate principal amount of Notes to be converted, divided by \$1,000, multiplied by (2) the then-applicable Conversion Rate;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by paying solely cash, the Company shall pay to the converting Noteholder cash in an amount per \$1,000 principal amount of Notes being converted equal to the sum of the Daily Conversion Values for each of the twenty consecutive Trading Days during the related Cash Settlement Averaging Period; and

(C) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by paying and delivering, as the case may be, a combination of cash and shares of Common Stock, if any, the Company shall pay and deliver, as the case may be, in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the twenty consecutive Trading Days during the related Cash Settlement Averaging Period.

(v) The Company shall also deliver to each converting Noteholder cash in lieu of fractional shares of Common Stock as set forth pursuant to clause (l) below.

(vi) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Cash Settlement Averaging Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of fractional shares (if any), the Company shall notify the Trustee and the Conversion Agent of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of fractional shares of Common Stock. The Trustee and the Conversion Agents shall have no responsibility for any such determination.

(b) Before any holder of a Note shall be entitled to convert the same as set forth above, such holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to interest (including Contingent Interest, if any, and Additional Interest, if any) payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 15.02(h) and, if required, all transfer or similar taxes, if any, and (ii) in the case of a Note issued in certificated form, (1) complete and manually sign and deliver an irrevocable notice to the Conversion Agent in the

form on the reverse of such certificated Note (or a facsimile thereof) (Annex A hereto) (a “Notice of Conversion”) at the office of the Conversion Agent and shall state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, pay funds equal to interest (including Contingent Interest, if any, and Additional Interest, if any) payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 15.02(h), (4) if required, furnish appropriate endorsements and transfer documents, and (5) if required, pay all transfer or similar taxes, if any as set forth in Section 15.02(e). The Trustee (and if different, the relevant Conversion Agent) shall notify the Company of any conversion pursuant to this Article 15 on the date of such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a holder thereof if such holder has also delivered a Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Repurchase Notice in accordance with Section 16.02 or if such holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 16.05.

If more than one Note shall be surrendered for conversion at one time by the same holder, the Conversion Obligation with respect to such Notes, if any, that shall be payable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the holder has complied with the requirements set forth in clause (b). The Company shall pay and deliver, as the case may be, the cash and/or shares of Common Stock due in respect of its Conversion Obligation on the third Trading Day immediately following the relevant Conversion Date, if the Company elects to satisfy the related Conversion Obligation solely in shares of Common Stock, or by the third Trading Day immediately following the last Trading Day of the Cash Settlement Averaging Period, in the case of any other Settlement Method. If any shares of Common Stock are due to converting Noteholders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Noteholder, or such Noteholder’s nominee or nominees, certificates or a book-entry transfer through the Depositary for the number of full shares of Common Stock to which such Noteholder shall be entitled in satisfaction of such Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the holder of the Note so surrendered, without charge to such holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

(e) If a holder submits a Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the holder shall pay any such tax that is due because the holder requests any shares of Common Stock to be issued in a name other than the holder’s name

or the tax is imposed by any taxing authority outside the United States. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the holder’s name until the Trustee receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the holder’s name. Nothing herein shall preclude any tax withholding required by law or regulations.

(f) Except as provided in Section 15.04, no adjustment shall be made for dividends on any shares issued upon the conversion of any Note as provided in this Article.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Noteholder shall not receive any separate cash payment for accrued and unpaid interest, Contingent Interest, if any and Additional Interest, if any, except as set forth below. The Company's settlement of the Conversion Obligations as described above shall be deemed to satisfy its obligation to pay the principal amount of the Note and accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the preceding sentence, if Notes are converted after the close of business on an Interest Record Date, but prior to the opening of business on the corresponding Interest Payment Date, holders of such Notes as of the close of business on the Interest Record Date will receive the interest, Contingent Interest, if any, and Additional Interest, if any, payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Interest Record Date to the opening of business on the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest, Contingent Interest, if any, and Additional Interest, if any, payable on the Notes so converted; *provided however*, that no such payment shall be required (1) if the Company has called the Notes for redemption, (2) if the Company has specified a Fundamental Change Repurchase Date that is after an Interest Record Date but on or prior to the corresponding Interest Payment Date, (3) to the extent of any Defaulted Interest, if any, existing at the time of conversion with respect to such Note or (4) if the Notes are surrendered for conversion after the close of business on the Interest Record Date immediately preceding the Maturity Date. Except as described above, no payment or adjustment will be made for accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, on converted Notes.

(i) The Person in whose name the certificate for any shares of Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation solely in shares of Common Stock) or the last Trading Day of the related Cash Settlement Averaging Period (in the case of any other Settlement Method), as the case may be; *provided however*, if such Conversion Date or such last Trading Day of the Cash Settlement Averaging Period occurs on any date when the stock transfer books of the Company shall be closed, such occurrence shall not be effective to constitute the Person or Persons entitled to receive any such shares of Common Stock due upon conversion as the record holder or holders

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of such shares of Common Stock on such date, but such occurrence 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. Upon conversion of Notes, such Person shall no longer be a Noteholder.

(j) For each Note surrendered for conversion, if the Company has elected to deliver a combination of cash and shares of Common Stock in respect of its Conversion Obligation, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the applicable Cash Settlement Averaging Period and any fractional shares remaining after such computation shall be paid in cash. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. The Company shall not issue fractional shares of Common Stock upon conversion of Notes. Instead, the Company shall pay cash in lieu of fractional shares based on the Daily VWAP on the relevant Conversion Date (if the Company elects to satisfy its Conversion Obligation solely in shares of Common Stock) or based on the Daily VWAP on the last Trading Day of the relevant Cash Settlement Averaging Period (in the case of any other Settlement Method). The Company shall determine the number of fractional shares for which cash shall be delivered by aggregating (i) all Notes a holder surrenders for conversion and (ii) fractional shares included in the Daily Settlement Amounts over the entire related Cash Settlement Averaging Period rather than delivering cash in lieu of fractional shares for (x) each individual Note of such holder surrendered for conversion or (y) each day of the related Cash Settlement Averaging Period.

Section 15.03. Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.

(a) Notwithstanding anything herein to the contrary, if the Effective Date of a Make-Whole Fundamental Change occurs on or prior to August 15, 2013, the Conversion Rate applicable to each Note that is surrendered for conversion, in accordance with this Article 15, at any time from, and including, the Effective Date of the Make-Whole Fundamental Change until, and including, the close of business on (1) the Business Day immediately prior to the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change or (2), if the Make-Whole Fundamental Change does not also constitute a Fundamental Change, the thirtieth Business Day immediately after the Effective Date of the Make-Whole Fundamental Change, shall be increased to an amount equal to the Conversion Rate that would, but for this Section 15.03, otherwise apply to such Note pursuant to this Article 15, plus an amount equal to the Make-Whole Conversion Rate Adjustment.

As used herein, "**Make-Whole Conversion Rate Adjustment**" shall mean, with respect to a Make-Whole Fundamental Change, the amount set forth in the following table that corresponds to the date such Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the Stock Price for such Make-Whole Fundamental Change, all as determined by the Company:

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Make-Whole Conversion Rate Adjustment
(per \$1,000 principal amount of Notes)

Effective Date	Stock Price											
	\$89.75	\$95.00	\$100.00	\$110.00	\$125.65	\$145.00	\$165.00	\$190.00	\$220.00	\$260.00	\$300.00	\$500.00
30-Jul-08	3.1835	2.8635	2.5894	2.1573	1.6599	1.2721	1.0014	0.7735	0.6010	0.4567	0.3625	0.1522
15-Aug-09	3.1835	2.7398	2.4608	1.9924	1.5026	1.1117	0.8479	0.6387	0.4916	0.3695	0.2923	0.1240
15-Aug-10	3.1835	2.6045	2.3191	1.8255	1.3213	0.9260	0.6723	0.4968	0.3736	0.2789	0.2218	0.0990
15-Aug-11	3.1835	2.5930	2.1340	1.6121	1.0533	0.6508	0.4377	0.3032	0.2198	0.1648	0.1333	0.0604

15-Aug-12	3.1835	2.5803	2.0894	1.3630	0.7180	0.3270	0.1799	0.1006	0.0703	0.0571	0.0474	0.0223
15-Aug-13	3.1835	2.5677	2.0414	1.1323	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

provided, however, that:

(i) if the actual Stock Price of such Make-Whole Fundamental Change is between two Stock Prices listed in the table above under the column titled "Stock Price," or if the actual Effective Date of such Make-Whole Fundamental Change is between two Effective Dates listed in the table above in the row immediately below the title "Effective Date," then the Make-Whole Conversion Rate Adjustment for such Make-Whole Fundamental Change shall be determined by the Company by linear interpolation between the Make-Whole Conversion Rate Adjustment set forth for such higher and lower Stock Prices, or for such earlier and later Effective Dates based on a 365-day year, as applicable;

(ii) if the actual Stock Price of such Make-Whole Fundamental Change is greater than \$500.00 per share (subject to adjustment in the same manner as the Stock Price as provided in clause (iii) below), or if the actual Stock Price of such Make-Whole Fundamental Change is less than \$89.75 per share (subject to adjustment in the same manner as the Stock Price as provided in clause (iii) below), then the Make-Whole Conversion Rate Adjustment shall be equal to zero and this Section 15.03 shall not require the Company to increase the Conversion Rate with respect to such Make-Whole Fundamental Change;

(iii) if an event occurs that requires, pursuant to this Article 15 (other than solely pursuant to this Section 15.03), an adjustment to the Conversion Rate, then, on the date and at the time such adjustment is so required to be made, each price set forth in the table above under the column titled "Stock Price" shall be deemed to be adjusted so that such Stock Price, at and after such time, shall be equal to the product of (1) such Stock Price as in effect immediately before such adjustment to such Stock Price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to be in effect, in accordance with this Article 15, immediately after such adjustment to the Conversion Rate;

(iv) each Make-Whole Conversion Rate Adjustment set forth in the table above shall be adjusted in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to Section 15.04; and

(v) in no event will the total number of shares of Common Stock issuable upon conversion of the Notes exceed 11.1421 per \$1,000 principal amount of Notes,

subject to adjustment in the same manner as the Conversion Rate pursuant to Section 15.04.

(b) As soon as practicable after the Company determines the anticipated Effective Date of any proposed Make-Whole Fundamental Change, the Company shall mail to each Noteholder, the Trustee and the Conversion Agent written notice of, and shall issue a press release indicating, the anticipated effective date of such proposed Make-Whole Fundamental Change and such notice must occur, to the extent practicable, at least twenty Business Days prior to such anticipated Effective Date. Each such notice and press release shall also state that in connection with such Make-Whole Fundamental Change, the Company shall increase, in accordance herewith, the Conversion Rate applicable to Notes entitled as provided herein to such increase (along with a description of how such increase shall be calculated and the time periods during which Notes must be surrendered in order to be entitled to such increase). No later than the actual Effective Date of each Make-Whole Fundamental Change, the Company shall mail to each Noteholder, the Trustee and the Conversion Agent written notice of, and shall issue a press release indicating, such Effective Date and the amount by which the Conversion Rate has been so increased.

Nothing in this Section 15.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 15.04 in respect of a Make-Whole Fundamental Change. Any adjustment required pursuant to Section 15.04 shall be made before giving effect to an adjustment under this Section 15.03.

Section 15.04. Adjustment of Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination, the Conversion Rate will be adjusted based on the following formula:

$$CR^1 = CR_0 \times \frac{OS^1}{OS_0}$$

where

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;

CR¹ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share

split or share combination, as the case may be; and

OS¹ = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 15.04(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) In case the Company shall distribute to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than sixty calendar days from the declaration date of such distribution to subscribe for or purchase shares of its Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day Period ending on and including the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- CR¹ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
- OS₀ = the number of shares of the Common Stock that are outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- X = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date relating to such distribution of such rights, options or warrants.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the

Ex-Dividend Date for such distribution. The Company shall not issue any such rights, options or warrants in respect of shares of the Common Stock held in treasury by the Company. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors. In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(b) (other than upon a readjustment as set forth in the immediately preceding paragraph).

(c) In case the Company shall distribute shares of its Capital Stock, evidences of its indebtedness or other of its assets or property other than (i) dividends or distributions (including share splits) covered by Section 15.04(a) and Section 15.04(b), (ii) dividends or distributions paid exclusively in cash and covered by Section 15.04(d), and (iii) Spin-Offs to which the provisions set forth below in this Section 15.04(c) shall apply (any of such shares of Capital Stock, indebtedness, or other asset or property hereinafter in this Section 15.04(c) called the “**Distributed Property**”), to all or substantially all holders of its Common Stock, then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- CR¹ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
- SP₀ = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on and including the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately prior to the opening of business on the Ex-Dividend Date for such distribution; *provided that*, if “FMV” as set forth above is equal to or greater than “SP₀” as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each

Noteholder shall receive on conversion for each \$1,000 principal amount of Notes, in addition to the Settlement Amount which such holder is entitled to receive, the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines “FMV” for purposes of this Section 15.04(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 15.04(c) where there has been a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a “Spin-Off”), the Conversion Rate in effect immediately before the close of business on the tenth Trading Day immediately following, and including, the effective date of the Spin-Off will be increased based on the following formula:

$$CR^1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_n}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the effective date of the Spin-Off;
- CR¹ = the Conversion Rate in effect immediately after the close of business on the effective date of the Spin-Off;
- FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following the effective date of the Spin-Off; and
- MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period immediately following the effective date of the Spin-Off.

The adjustment to the Conversion Rate under the preceding paragraph shall become effective at the close of business on the effective date of the Spin-Off. If the Trading Day immediately following the effective date of the Spin-Off is less than ten Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of such conversion, references within this clause (3) to ten consecutive Trading Days shall be deemed replaced for purposes of the affected daily Conversion Rates in respect of such conversion with such lesser number of

Trading Days as have elapsed from and including the Trading Day next succeeding the effective date of the Spin-Off to and including the last Trading Day of such Cash Settlement Averaging Period. For purposes of determining the Conversion Rate, in respect of any conversion during the ten Trading Days immediately following, and including, the effective date of any Spin-Off, references in the portion of this Section 15.04(c) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the effective date of such Spin-Off and the Conversion Date for such conversion.

Subject in all respect to Section 15.10, rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.04 (and no adjustment to the Conversion Rate under this Section 15.04 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 15.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, 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 Ex-Dividend 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 Rate under this Section 15.04 was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate 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 or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 15.04(c), Section 15.04(a), and Section 15.04(b), any dividend or distribution to which this Section 15.04(c) is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 15.04(a) or Section 15.04(b) (or both) applies, shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights, options or warrants to which Section 15.04(c) applies (and any Conversion Rate adjustment required by this Section 15.04(c) with respect to

such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 15.04(a) and Section 15.04(b) with respect to such dividend or distribution shall then be made), except (A) the Ex-Dividend Date of such dividend or distribution shall be

substituted as “the Ex-Dividend Date,” “the Ex-Dividend Date relating to such distribution of such rights, options or warrants” and “the Ex-Dividend Date for such distribution” within the meaning of Section 15.04(a) and Section 15.04(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be” within the meaning of Section 15.04(a) or “outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution” within the meaning of Section 15.04(b).

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(c) (other than upon a readjustment if a distribution of Distributed Property is not made as set forth above in this Section 15.04(c)).

(d) If the Company pays any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR¹ = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP₀ = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to holders of its Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution; *provided that*, if “C” as set forth above is equal to or greater than “SP₀” as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, for each \$1,000 principal amount of Notes, the amount of cash such holder would have received had such holder owned a number of shares equal to the Conversion Rate on the Record Date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall

again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 15.04(d), in the event of any reclassification of the Common Stock, as a result of which the Notes become convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 15.04(d), references in this Section to one share of Common Stock or Last Reported Sale Price of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which the Notes are then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(d) (other than upon a readjustment if a cash dividend or distribution is not made as set forth above in this Section 15.04(d)).

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “**Expiration Date**”), the Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times \frac{AC + (SP^1 \times OS^1)}{OS_0 \times SP^1}$$

where

CR₀ = the Conversion Rate in effect immediately prior to the opening of business on the Trading Day next succeeding the Expiration Date;

CR¹ = the Conversion Rate in effect immediately after the opening of business on the Trading Day next succeeding Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer);

OS¹ = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and

SP¹ = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including,

the Trading Day next succeeding the Expiration Date.

Such adjustment shall become effective at the opening of business on the Trading Day next succeeding the Expiration Date. If the Trading Day next succeeding the Expiration Date is less than ten Trading Days prior to, and including, the end of the Cash Settlement Averaging Period in respect of such conversion, references within this clause (e) to ten consecutive Trading Days shall be deemed replaced for purposes of the affected daily Conversion Rates in respect of such conversion with such lesser number of Trading Days as have elapsed from and including the Trading Day next succeeding the Expiration Date to and including the last Trading Day of such Cash Settlement Averaging Period. For purposes of determining the Conversion Rate, in respect of any conversion during the ten Trading Days following the date that any such tender or exchange offer expires, references in this Section 15.04(e) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected.

If:

(1) the Company elects to satisfy its Conversion Obligation through delivery of a combination of cash and Common Stock and shares of Common Stock are deliverable to settle the Daily Share Amount for a given Trading Day within the Cash Settlement Averaging Period applicable to Notes that Noteholders have converted;

(2) any distribution or transaction described in Sections 15.04(a) through (e) has not yet resulted in an adjustment to the Conversion Rate on the Trading Day in question; and

(3) the shares Noteholders will receive in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related Record Date or otherwise);

then the Company shall adjust the number of shares that it will deliver to Noteholders in respect of the relevant Trading Day to reflect the relevant distribution or transaction.

If:

(1) the Company elects to satisfy its Conversion Obligation solely in shares of Common Stock;

(2) any distribution or transaction described in Sections 15.04(a) through (e) has not yet resulted in an adjustment to the Conversion Rate on the Conversion Date; and

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(3) the shares Noteholders will receive on settlement are not entitled to participate in the relevant distribution or transaction (because they were not held on a related Record Date or otherwise),

then the Company shall adjust the number of shares that it will deliver to Noteholders in respect of the relevant Trading Day to reflect the relevant distribution or transaction.

If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(e).

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(e) (other than upon a readjustment as set forth in the immediately preceding sentence).

(f) The term “**Record Date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) 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) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of its Common Stock or any securities convertible into or exchangeable for shares of its Common Stock or the right to purchase shares of its Common Stock or such convertible or exchangeable securities.

(h) Notwithstanding this Section 15.04 or any other provision of this Indenture or the Notes, if any Conversion Rate adjustment becomes effective, or any Ex-Dividend Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, (x) the close of business on the third Trading Day immediately following the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation solely in shares of Common Stock) or (y) the close of business on the last Trading Day of a related Cash Settlement Averaging Period (in the case of any other Settlement Method), the Board of Directors shall make adjustments to the Conversion Rate and the amount of cash or number of shares of Common Stock issuable upon conversion of the Notes, as the case may be, as is necessary or appropriate to effect the intent of this Section 15.04 and the other provisions of Article 15 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this Section 15.04(h) shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(i) In addition to those required by clauses (a), (b), (c), (d) and (e) of this Section 15.04, and to the extent permitted by applicable law and subject to the applicable rules of

the New York Stock Exchange, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, the Company may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the holder of each Note at its last address appearing on the Note Register provided for in Section 2.06 a notice of the increase at least fifteen days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect. The Company shall not take any action that would result in adjustment of the Conversion Rate in such a manner as to result in the reduction of the Conversion Price to less than the par value per share of Common Stock.

(j) The applicable Conversion Rate will not be adjusted:

(i) upon the issuance of any shares of the Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of the Common Stock under any plan;

(ii) upon the issuance of any shares of the Common Stock or options or rights to purchase or acquire those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock;

(v) for accrued and unpaid interest, including Contingent Interest, if any, and Additional Interest, if any; or

(vi) for any transactions described in this Section 15.04 if Noteholders participate (as a result of holding the Notes, and at the same time as holders of Common Stock participate) in such transactions as if such Noteholders held a number of shares of Common Stock equal to the Conversion Rate at the time such adjustment would be required, multiplied by the principal amount (expressed in thousands) of Notes held by such Noteholder, without having to convert their Notes.

(k) All calculations and other determinations under this Article 15 shall be made by the Company and shall be made to the nearest one-tenth thousandth (1/10,000) of a share. The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less

than 1%, (i) upon any conversion of Notes (with such adjustments to be made on each day and for each adjustment event occurring during the applicable Cash Settlement Averaging Period), (ii) on each of the twenty-two scheduled Trading Days immediately preceding the maturity date.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at its last address appearing on the Note Register provided for in Section 2.06 of this Indenture, within ten days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 15.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

Section 15.05. Shares to Be Fully Paid. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion.

Section 15.06. Effect of Reclassification, Consolidation, Merger or Sale. Upon the occurrence of (i) any reclassification or change of the outstanding shares of Common Stock (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 split, subdivision or combination covered by Section 15.04(a)), (ii) any consolidation, merger or combination involving the Company, or (iii) any sale or conveyance of all or substantially all of the property and assets of the Company to any other Person, in each case as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock (any such event a "**Merger Event**"), then:

(a) the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) permitted under Section 11.01(f) providing for the conversion and settlement of the Notes as set forth in this Indenture. Such supplemental indenture shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 15. If, in the case of any Merger Event, the Reference Property includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification,

change, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent required by the Board of Directors and practicable the provisions providing for the repurchase rights set forth in Article 16 herein.

In the event the Company shall execute a supplemental indenture pursuant to this Section 15.06, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise the Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Noteholders. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Noteholder, at its address appearing on the Note Register provided for in this Indenture, within twenty days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(b) Notwithstanding the provisions of Section 15.02(a), and subject to the provisions of Section 15.01 and Section 15.03, at and after the effective time of such Merger Event, (i) the right to convert each \$1,000 principal amount of Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock at the Company's election as set forth in Section 15.02 will be changed to a right to convert such Note into cash, the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the "**Reference Property**") or a combination of cash and Reference Property at the Company's election and (ii) the related Conversion Obligation shall be settled as set forth under clause (c) below, it being understood and agreed that for purposes of Section 15.01(b), references therein to "the Last Reported Sale Price of the Common Stock" shall be deemed at and after the effective time of such Merger Event to be references to "the Last Reported Sale Price of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration." The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 15.06. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 15.01 and Section 15.02 prior to the effective date of such Merger Event.

(c) With respect to each \$1,000 principal amount of Notes surrendered for conversion after the effective date of any such Merger Event, the Company's Conversion Obligation shall be settled in cash or units of Reference Property, at the Company's election, in accordance with Section 15.02(b) as follows:

(i) (A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by delivering solely Reference Property, the Company shall deliver to the converting Noteholder a number of units of Reference Property (each such unit comprised of the kind and amount of shares of stock, securities or other property or assets

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(including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration) equal to (1) the aggregate principal amount of Notes to be converted, divided by \$1,000, multiplied by (2) the then-applicable Conversion Rate; (B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by paying solely cash, the Company shall pay to the converting Noteholder cash in an amount per \$1,000 principal amount of Notes being converted equal to the sum of the Daily Conversion Values for each of the twenty consecutive Trading Days during the related Cash Settlement Averaging Period, such Daily Conversion Values determined as if the reference to "the Daily VWAP of the Common Stock" in the definition thereof were instead a reference to "the Daily VWAP of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration"; and (C) if the Company elects to satisfy its Conversion Obligation by paying or delivering, as the case may be, of a combination of cash and Reference Property, the Company shall pay and deliver, as the case may be, in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the twenty consecutive Trading Days during the Cash Settlement Averaging Period for such Note, such Daily Settlement Amounts determined as if the reference to "the Daily VWAP of the Common Stock" in the definition of Daily Conversion Value and Daily Share Amount were instead a reference to "the Daily VWAP of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration."

(ii) The Company will deliver the cash in lieu of fractional units of Reference Property as set forth pursuant to Section 15.02(j) (provided that the amount of such cash shall be determined as if references in such Section to "the Daily VWAP" were instead a reference to "the Daily VWAP of a unit of Reference Property composed of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration").

(iii) The Daily Settlement Amounts (if applicable) and Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Cash Settlement Averaging Period.

(iv) For purposes of this Section 15.06, the "**Weighted Average Consideration**" shall mean the weighted average of the types and amounts of consideration received by the holders of the Common Stock entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock in any Merger Event who affirmatively make such an election.

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(v) The Company shall notify the holders of the Weighted Average Consideration as soon as practicable after the Weighted Average Consideration is determined.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 15.07. Certain Covenants.

(a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system, the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes; *provided* that the Company shall have no such obligation to list and keep listed any Common Stock issuable upon conversion of the Notes prior to the date that is the tenth Business Day immediately after the date of this Indenture.

Section 15.08. Responsibility of Trustee. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Noteholder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 15.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 15.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any

such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 15.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 15.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 15.01(b).

Section 15.09. Notice to Holders Prior to Certain Actions. In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 15.04; or

(b) the Company shall authorize the granting to all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company; the Company shall cause to be filed with the Trustee and to be mailed to each Noteholder at its address appearing on the Note Register provided for in Section 2.06 of this Indenture, as promptly as possible but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (ii) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

Section 15.10. Stockholder Rights Plans. To the extent that the Company has a stockholder rights plan or other "poison pill" in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time

to time. If prior to the time of conversion, however, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the holders of the Notes would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of the Notes, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidences of indebtedness or other of its assets or property as provided in Section 15.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 15.11. Exchange in Lieu of Conversion. When a holder surrenders its Notes for conversion, the Company may, at its election (the “**Exchange Election**”), direct the Conversion Agent to surrender, on or prior to the second Business Day following the relevant Conversion Date, such Notes to a financial institution designated by the Company (the “**Designated Institution**”) for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion for exchange in lieu of conversion, the Designated Institution must agree to timely deliver, in exchange for such Notes, the shares of Common Stock and/or cash that would otherwise be due upon conversion as described in Section 15.02 above and in respect of which the Company has notified to converting Noteholders. If the Company makes an Exchange Election, the Company shall, by the close of business on the second Business Day following the relevant Conversion Date as part of its Settlement Notice, notify the holder surrendering its Notes for conversion that it has made such election. In addition, the Company shall concurrently notify the Designated Institution of the Settlement Method (and, if applicable, the Specified Dollar Amount) that Company has elected with respect to such conversion and the relevant deadline for delivery of the consideration due upon conversion. Any Notes exchanged by the Designated Institution will remain outstanding.

If the Designated Institution agrees to accept any Notes for exchange but does not timely deliver the related consideration due upon conversion to the Conversion Agent, or if the Designated Institution does not accept such Notes for exchange, the Company shall, within the time period specified in Section 15.02(c), convert such Notes into cash and/or shares of Common Stock, as applicable in accordance with the provisions of Section 15.02.

For the avoidance of doubt, in no event will the Company’s designation of a Designated Institution pursuant to this Section 15.11 require the Designated Institution to accept any Notes for exchange.

ARTICLE XVI

REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 16.01. Repurchase of Notes by the Company at Option of the Holder.

(a) On each of August 15, 2013, August 15, 2018, August 15, 2023, August 15, 2028 and August 15, 2033 (each, a “**Repurchase Date**”), each holder shall have the option to require the Company to repurchase Notes for which that holder has properly delivered and not withdrawn a written Repurchase Notice (as described below) at a repurchase price in cash equal to 100% of the principal amount of those Notes, plus accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on those

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Notes, to, but not including, such Repurchase Date (the “**Repurchase Price**”); *provided* that, if the Repurchase Date is on a date that is after an Interest Record Date and on or prior to the corresponding Interest Payment Date, the Repurchase Price shall be 100% of the principal amount of the Notes repurchased but shall not include accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any. Instead, the Company shall pay such accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, on the Interest Payment Date, to the holder of Record on the corresponding Interest Record Date. Not later than twenty Business Days prior to any Repurchase Date, the Company shall mail a notice (the “**Repurchase Company Notice**”) by electronic transmission or first-class mail, postage prepaid, to the Trustee, the Paying Agent and the Conversion Agent and to each holder (and to beneficial owners if required by applicable law). The Repurchase Company Notice shall include a form of Repurchase Notice to be completed by a holder and shall state:

- (i) the Repurchase Price;
- (ii) the Repurchase Date;
- (iii) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (iv) briefly, the conversion rights, if any, that exist at the date of the Repurchase Company Notice or as a result of the Repurchase Company Notice with respect to the Notes;
- (v) if applicable, the applicable Conversion Rate, any adjustments to the applicable Conversion Rate;
- (vi) if applicable, that the Notes with respect to which a Repurchase Notice has been delivered by a holder may be converted only if the holder withdraws the Repurchase Notice in accordance with the terms of the Indenture;
- (vii) that the holder must exercise the repurchase right on or prior to the close of business on the Business Day immediately preceding the Repurchase Date (the “**Repurchase Expiration Time**”);
- (viii) that the Repurchase Price for any Note as to which a Repurchase Notice has been given and not withdrawn shall be paid promptly following the later of the Business Day immediately following the Repurchase Date and the time of surrender of such Note as described in clause (xi) below;
- (ix) the procedures the holder must follow to exercise its right to require the Company to repurchase such holder’s Notes under this Section 16.01 and a brief description of that right;
- (x) the procedures for withdrawing a Repurchase Notice;
- (xi) that Notes must be surrendered to the Paying Agent (by effecting book-entry transfer of the Notes or delivering Notes in certificated form, together with necessary endorsements, as the case may be) to collect payment;

(xii) that, unless the Company defaults in making payment on Notes for which a Repurchase Notice has been submitted, interest, Contingent Interest, if any, or Additional Interest, if any, on such Notes shall cease to accrue from and after the Repurchase Date; and

(xiii) the CUSIP, "ISIN" or other similar number(s), as the case may be, of the Notes.

At the Company's request, the Trustee shall give such Repurchase Company Notice to each holder in the Company's name and at the Company's expense; *provided however*, that, in all cases, the text of such Repurchase Company Notice shall be prepared by the Company.

(b) A holder may exercise its rights specified in Section 16.01(a) upon delivery to the Paying Agent of a duly completed notice of repurchase (a "**Repurchase Notice**") in the form set forth on the reverse of the Notes as Annex B during the period beginning at any time from the opening of business on the date that is 20 Business Days prior to the Repurchase Date until the Repurchase Expiration Time, stating:

- (i) if Notes in certificated form have been issued, the certificate number(s) of the Notes which the holder shall deliver to be repurchased or, if Notes in certificated form have not been issued for such Note, the Repurchase Notice shall comply with the appropriate Depository procedures for book-entry transfer;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (iii) that Notes are to be repurchased by the Company pursuant to the applicable provision of the Notes and the Indenture.

The delivery of such Note (together with all necessary endorsements) to the Paying Agent at any time after delivery of the Repurchase Notice at the offices of the Paying Agent shall be a condition to receipt by the holder of the Repurchase Price therefor; *provided however*, that such Repurchase Price shall be so paid pursuant to this Section 16.01 only if the Note (together with all necessary endorsements) so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Repurchase Notice.

The Company shall repurchase from the holder thereof, pursuant to this Section 16.01, a portion of a Note, if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 16.01 shall be consummated by the delivery of the consideration to be received by the holder promptly following the later of the Business Day immediately following the Repurchase Date and the time of delivery of the Note (together with all necessary endorsements or notifications of book-entry transfer).

Notwithstanding anything herein to the contrary, any holder delivering to the Paying Agent the Repurchase Notice contemplated by this Section 16.01 shall have the right to withdraw such Repurchase Notice by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 16.02 below at any time prior to the Repurchase Expiration Time.

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

(c) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the holders on the Repurchase Date if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Repurchase Price with respect to such Notes).

(d) In connection with any repurchase, the Company shall:

- (i) comply with the provisions of Rule 13e-4, Rule 14e-1 and other tender offer rules under the Exchange Act, if required under the Exchange Act,
- (ii) file a Schedule TO or any successor or similar schedule, if required under the Exchange Act, and
- (iii) otherwise comply with all federal and state securities laws in connection with any offer by the Company to purchase the Notes.

Section 16.02. Withdrawal of Repurchase Notice. A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 16.02 at any time prior to the close of business on the Business Day immediately preceding the Repurchase Date, specifying:

- (i) the certificate number, if any, of the Note in respect of which such notice of withdrawal is being submitted, or the appropriate Depository information if the Note in respect of which such notice of withdrawal is being submitted is represented by a Global Note,
- (ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

provided, however, that if the Notes are not in certificated form, the notice must comply with appropriate procedures of the Depository.

Section 16.03. Deposit of Repurchase Price.

(a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) on or prior to 11:00 a.m., New York City time, on the Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the Repurchase Expiration Time) will be made promptly following the later of (i) the Repurchase Date with respect to such Note (provided the holder has satisfied the conditions in Section 16.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the holder thereof in the manner required by Section 16.01 by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear in the Note Register; *provided however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Repurchase Price.

(b) If by 11:00 a.m., New York City time, on the Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased pursuant to Section 16.01, then (i) such Notes will cease to be outstanding, (ii) interest, including Contingent Interest, if any, and Additional Interest, if any, will cease to accrue on such Notes, and (iii) all other rights of the holders of such Notes will terminate (other than the right to receive the Repurchase Price, and previously accrued but unpaid interest, including Contingent Interest, if any, and Additional Interest, if any, upon delivery of the Notes), whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent.

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 16.01, the Company shall execute and the Trustee shall authenticate and deliver to the holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

Section 16.04. Repurchase at Option of Holders upon a Fundamental Change.

(a) If there shall occur a Fundamental Change at any time prior to the Maturity Date, then each Noteholder shall have the right, at such holder's option, to require the Company to repurchase for cash all of such holder's Notes, or any portion thereof that is an integral multiple of \$1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than twenty Business Days and not more than forty-five Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, including accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date is after an Interest Record Date and on or prior to the related Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to holders of the Notes as of such Interest Record Date and the Fundamental Change Repurchase Price payable to the holder surrendering the Note for repurchase pursuant to this

Section 16.04 shall be equal to 100% of the principal amount of the Notes subject to repurchase. Repurchases of Notes under this Section 16.04 shall be made, at the option of the holder thereof, upon:

(i) delivery to the Paying Agent by a holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note as Annex C thereto on or prior to the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery or book-entry transfer of the Notes to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Paying Agent, such delivery being a condition to receipt by the holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 16.04 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

- (A) if certificated, the certificate numbers of Notes to be delivered for repurchase;
- (B) the portion of the principal amount of Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (C) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

provided, however, that if the Notes are not in certificated form, the Fundamental Change Repurchase Notice must comply with appropriate Depository procedures.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 16.04 shall be consummated by the payment of the Fundamental Change Repurchase Price promptly following the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Note as described in Section 16.06(a).

Notwithstanding anything herein to the contrary, any holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 16.04 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 16.05 below.

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.

(b) On or before the twentieth day after the occurrence of the effective date of a Fundamental Change, the Company shall send or caused to be sent by electronic transmission or

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by first-class mail, postage prepaid, to all holders of record of the Notes (and to beneficial owners if required by applicable law) a notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the holders arising as a result thereof. Simultaneously with the providing of such notice, the Company shall also publish such information on the Company’s website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change and whether the Fundamental Change is a Make-Whole Fundamental Change, in which case the effective date of the Make-Whole Fundamental Change;
- (iii) the last date on which a holder may exercise the repurchase right pursuant to this Section 16.04;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the applicable Conversion Rate, any adjustments to the applicable Conversion Rate;
- (viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a holder may be converted only if the holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of the Indenture;
- (ix) that the holder must exercise the repurchase right on or prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date (the “**Fundamental Change Expiration Time**”);
- (x) that the holder shall have the right to withdraw any Notes surrendered prior to the Fundamental Change Expiration Time; and
- (xi) the procedures that holders must follow to require the Company to repurchase their Notes.

At the Company’s request, the Trustee shall give any Fundamental Change Company Notice in the Company’s name and provided to the Trustee at the Company’s expense; *provided* that the Company must make such request at least seven Business Days (or such shorter period as may be satisfactory to the Trustee) prior to the date by which the Fundamental Change Repurchase Notice must be given to holders in accordance with this Section 16.04(b). No failure of the Company to give the a Fundamental Change Company Notice and no defect therein shall limit

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the Noteholders’ repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 16.04.

(c) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes).

- (d) In connection with any purchase offer, the Company shall:
- (i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, if required under the Exchange Act,
 - (ii) file a Schedule TO or any successor or similar schedule, if required under the Exchange Act, and
 - (iii) otherwise comply with all federal and state securities laws in connection with any offer by the Company to purchase the Notes.

Section 16.05. Withdrawal of Fundamental Change Repurchase Notice.

(a) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 16.05 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

- (i) the certificate number, if any, of the Note in respect of which such notice of withdrawal is being submitted, or the appropriate Depository information if the Note in respect of which such notice of withdrawal is being submitted is represented by a Global Note,
- (ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

provided, however, that if the Notes are not in certificated form, the notice must comply with appropriate procedures of the Depository.

Section 16.06. Deposit of Fundamental Change Repurchase Price.

(a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the

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Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) will be made promptly following the later of (i) the Fundamental Change Repurchase Date with respect to such Note (provided the holder has satisfied the conditions in Section 16.04) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the holder thereof in the manner required by Section 16.04 by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear in the Note Register; *provided however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased as a result of the corresponding Fundamental Change, then (i) such Notes will cease to be outstanding, (ii) interest, including Contingent Interest, if any, and Additional Interest, if any, will cease to accrue on such Notes, and (iii) all other rights of the holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price, and previously accrued but unpaid interest, including Contingent Interest, if any, and Additional Interest, if any, upon delivery of the Notes), whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent.

(c) Upon surrender of a Note that is to be repurchased in part pursuant to 16.04, the Company shall execute and the Trustee shall authenticate and deliver to the holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

ARTICLE XVII

TAX TREATMENT

Section 17.01. Contingent Debt Tax Treatment.

(a) The Company and each Noteholder, by acquiring a beneficial interest in a Note, agree (except to the extent otherwise required by final administrative or judicial determination to the contrary) (i) to treat the Note as indebtedness for U.S. federal income tax purposes that is subject to Treasury regulation Section 1.1275-4 or any successor thereto (the "Contingent Debt Regulations"), (ii) that each Noteholder shall be bound by the Company's application of the Contingent Debt Regulations to the Note, including the Company's determination of the "comparable yield" and "projected payment schedule" within the meaning of the Contingent Debt Regulations, (iii) to treat the cash and the fair market value of any Common Stock received upon the conversion of the Note as a contingent payment for purposes of the Contingent Debt Regulations, (iv) to accrue interest with respect to the outstanding Note as Tax Original Issue Discount according to the "noncontingent bond method" set forth in the Contingent Debt Regulations, using the comparable yield of 9.375% compounded semi-annually and (v) that the

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Company and each Noteholder will not take any position on any U.S. federal income tax return that is inconsistent with (i), (ii), (iii) or (iv) unless required by final administrative or judicial determination to the contrary. A Noteholder may obtain the issue price, the amount of Tax Original Issue Discount, issue date, yield to maturity, comparable yield and projected payment schedule for the Notes, as determined by the Company pursuant to the Contingent Debt Regulations, by submitting a written request to the Company at the following address: 600 Hale Street, Prides Crossing, Massachusetts 01965, Attention: Chief Financial Officer.

(b) Each Note shall bear a legend relating to U.S. federal income tax matters in the form set forth in Exhibit B.

Section 17.02. Calculation of Tax Original Issue Discount. The Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of Tax Original Issue Discount (including daily rates and accrual periods) accrued on outstanding Notes as of the end of such year and (ii) such other specific information relating to such Tax Original Issue Discount as may then be required under the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

Section 18.01. Provisions Binding on Company's Successors. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 18.02. Official Acts by Successor Corporation. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or

officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 18.03. Addresses for Notices, Etc. Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Noteholders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Affiliated Managers Group, Inc., 600 Hale Street, Prides Crossing, Massachusetts 01965, Attention: Chief Financial Officer. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by a facsimile transmission or being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office.

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

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Any notice or communication mailed to a Noteholder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

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 to holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 18.04. Governing Law. THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUCT THIS INDENTURE AND THE NOTES, INCLUDING WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B).

Section 18.05. Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Each certificate provided for by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officers' Certificates provided for in Section 5.08) shall include (a) a statement that the Person making such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such Person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 18.05, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall receive such Opinion of Counsel.

Section 18.06. Legal Holidays. In any case where any Interest Payment Date, Redemption Date, Repurchase Date, Fundamental Change Repurchase Date, Conversion Date or Maturity Date is not be a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue for the period from and after such date.

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Section 18.07. No Security Interest Created. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 18.08. Trust Indenture Act. This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act upon such qualification regardless of whether this Indenture shall ever be so qualified; *provided* that this Section 18.08 shall not require that this Indenture or the Trustee be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party hereto that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof that is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 18.09. Benefits of Indenture. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder or the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 18.10. Table of Contents, Headings, Etc. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 18.11. Authenticating Agent. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 3.06, Section 11.04, Section 15.02, Section 16.03 and Section 16.06 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement

hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 8.09.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section

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18.11, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall mail notice of such appointment to all Noteholders as the names and addresses of such holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 8.02, Section 8.03, Section 8.04, Section 9.03 and this Section 18.11 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 18.11, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

_____,
as Authenticating Agent, certifies that this is one of the Notes
described in the within-named Indenture.

By: _____
Authorized Signatory

Section 18.12. Execution in Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 18.13. Severability. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 18.14. Waiver of Jury Trial. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 18.15. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work

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

Section 18.16. Calculations in Respect of the Notes.

The Company and its agents shall make all calculations under this Indenture and the Notes (including, without limitation, the Last Reported Sale Price, accrued interest payable and the Conversion Rate) in good faith. In the absence of manifest error, such calculations shall be final and binding on all holders. The Company shall provide a copy of such calculations to the Trustee and the Conversion Agent as required hereunder, and both of the Trustee and Conversion Agent shall be entitled to rely conclusively on the accuracy of any such calculation without independent verification. The Trustee shall forward the Company's calculations to any Noteholder upon the written request of that Noteholder.

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

**AFFILIATED MANAGERS GROUP,
INC.**

By: /s/ John Kingston, III

Name: John Kingston, III
Title: Executive Vice President, General
Counsel and Secretary

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.**

By: /s/ Vaneta Bernard
Name: Vaneta Bernard
Title: Vice President

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EXHIBIT A

[FORM OF FACE OF NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), 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 INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) WHICH IS THE LATER OF ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS SECURITY IS FREELY TRADABLE PURSUANT TO RULE 144 UNDER THE SECURITIES ACT WITHOUT VOLUME RESTRICTIONS BY HOLDERS OTHER THAN AFFILIATES OF AFFILIATED MANAGERS GROUP, INC. (THE “COMPANY”) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED OR OTHERWISE BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 OR ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION

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SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

[INSERT TAX LEGEND (SEE EXHIBIT B)]

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AFFILIATED MANAGERS GROUP, INC.

3.95% Convertible Senior Note due 2038

No. []

\$()

CUSIP No. []

Affiliated Managers Group, Inc., a Delaware corporation (the “Company”), for value received, hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of [] dollars (\$[]) on August 15, 2038 and to pay interest thereon, as provided on the reverse hereof, until the principal and any unpaid and accrued interest are paid or duly provided for.

Interest Payment Dates: February 15 and August 15, with the first payment to be made on February 15, 2009.

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

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

**AFFILIATED MANAGERS GROUP,
INC.**

By: _____
Name:
Title:

Dated:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

as Trustee, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Signatory

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[FORM OF REVERSE OF NOTE]

**AFFILIATED MANAGERS GROUP, INC.
3.95% Convertible Senior Note due 2038**

1. **Interest.** This Note shall bear interest at the rate of 3.95% per year (subject to increase pursuant to the Indenture (as defined below)) from August 6, 2008, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until August 15, 2038. Interest is payable semi-annually in arrears on each February 15 and August 15, commencing February 15, 2009, to holders of record at the close of business on the preceding February 1 and August 1 (whether or not such day is a Business Day), respectively. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company also will pay Additional Interest as provided for, and under the circumstances specified in, Section 5.10 and Section 7.01 of the Indenture and will pay Contingent Interest as provided for, and under the circumstances specified in, Article 14 of the Indenture

2. **Maturity.** The Notes will mature on August 15, 2038.

3. **Method of Payment.** Payment of the principal of and premium (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), if any, and accrued and unpaid interest and Contingent Interest, if any, and Additional Interest, if any, on this Note shall be made 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. Subject to the terms and conditions of the Indenture, payment in respect of the Redemption Price, the Repurchase Price, the Fundamental Change Repurchase Price and the principal amount on the Maturity Date, as the case may be, will be made to the holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. If a payment date falls on a date that is not a Business Day, payment shall be postponed until the next succeeding Business Day, and no interest or other amount shall be paid as a result of any such postponement.

4. **Paying Agent, Registrar, Conversion Agent.** Initially, The Bank of New York Mellon Trust Company, N.A. (the "Trustee") will act as Paying Agent, Note Registrar and Conversion Agent. The Company may change any Paying Agent, Note Registrar or Conversion Agent without notice.

5. **Indenture.** The Company issued the Notes under an Indenture dated as of August 6, 2008 (the "Indenture") between the Company and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb) (the "Trust Indenture Act") as amended and in effect from time to time. The Notes are subject to all such terms, and holders are referred to the Indenture and the TIA for a statement of such terms. In the case of any conflict between the provisions of this Note and the Indenture, the provisions of the Indenture shall control. The Notes are general unsecured senior obligations of the Company limited to \$400,000,000 aggregate principal amount (\$460,000,000 if the Initial Purchaser has elected to exercise its option in full as set forth in the Purchase Agreement), except as otherwise provided in the Indenture (except for Notes issued in substitution for destroyed, mutilated, lost or

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stolen Notes). Terms used herein without definition and which are defined in the Indenture have the meanings assigned to them in the Indenture.

6. **Optional Redemption.** Prior to August 15, 2013, the Notes shall not be redeemable at the Company's option. On or after August 15, 2013, the Company, at its option, may redeem the Notes for cash at any time, in whole or in part, at a redemption price (the "Redemption Price") equal to 100% of

the principal amount of the Notes redeemed, plus any accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on the Notes redeemed up to, but not including, the Redemption Date; *provided however*, that, in no event shall a Redemption Date be a Legal Holiday; *provided further*, that, if the Redemption Date is on a date that is after an Interest Record Date and on or prior to the corresponding Interest Payment Date, the Redemption Price shall be 100% of the principal amount of the Notes redeemed but shall not include accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and Additional Interest, if any. Instead, the Company shall pay such interest, Contingent Interest, if any, and Additional Interest, if any, on the Interest Payment Date to the holder of record on the corresponding Interest Record Date. Notwithstanding the foregoing, no Notes may be redeemed by the Company if the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or prior to the Redemption Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Redemption Price with respect to such Notes).

7. **Notice of Redemption.** Notice of Redemption will be sent by electronic transmission or by first-class mail, postage prepaid, at least thirty (30) days but not more than sixty (60) days before the Redemption Date to each holder of Notes to be redeemed at its address appearing in the Note Register. Notes in denominations larger than \$1,000 principal amount may be redeemed in part but only in integral multiples of \$1,000 principal amount.

8. **Purchase by the Company at the Option of the Holder.** Subject to the terms and conditions of the Indenture, on each of August 15, 2013, August 15, 2018, August 15, 2023, August 15, 2028 and August 15, 2033 (each, a “**Repurchase Date**”), each holder shall have the option to require the Company to repurchase Notes for which that holder has properly delivered and not withdrawn a written Repurchase Notice (in the form set forth below as Annex B) at a repurchase price in cash equal to 100% of the principal amount of those Notes, plus accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on those Notes, to, but not including, such Repurchase Date (the “**Repurchase Price**”); *provided that*, if the Repurchase Date is on a date that is after an Interest Record Date and on or prior to the corresponding Interest Payment Date, the Repurchase Price shall be 100% of the principal amount of the Notes repurchased but shall not include accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any. Instead, the Company shall pay such accrued and unpaid interest, Contingent Interest, if any, and Additional Interest, if any, on the Interest Payment Date, to the holder of Record on the corresponding Interest Record Date.

9. **Repurchase at Option of Holder Upon a Fundamental Change.** Subject to the terms and conditions of the Indenture, if there shall occur a Fundamental Change at any time prior to the Maturity Date, then each Noteholder shall have the right, at such holder’s option, to require the Company to repurchase for cash all of such holder’s Notes, or any portion thereof

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that is an integral multiple of \$1,000 principal amount, on the date (the “**Fundamental Change Repurchase Date**”) specified by the Company that is not less than twenty Business Days and not more than forty-five Business Days after the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, including accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, thereon to, but excluding, the Fundamental Change Repurchase Date (the “**Fundamental Change Repurchase Price**”), unless the Fundamental Change Repurchase Date is after an Interest Record Date and on or prior to the related Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to holders of the Notes as of such Interest Record Date and the Fundamental Change Repurchase Price payable to the holder surrendering the Note for repurchase pursuant to this paragraph 9 shall be equal to 100% the principal amount of the Notes subject to repurchase.

10. **Conversion.** Subject to the provisions of the Indenture, the holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is \$1,000 or an integral multiple thereof at the applicable Conversion Rate specified in the Indenture. Upon conversion of a Note, the Company will satisfy its conversion obligation by paying or delivering, as the case may be, cash, shares of Common Stock or a combination of cash and shares of Common Stock, in accordance with the terms of the Indenture.

The initial Conversion Rate is 7.9586 shares of Common Stock per \$1,000 principal amount of Notes (which results in an effective initial Conversion Price of approximately \$125.65 per share) subject to adjustment in the event of certain circumstances as specified in the Indenture, including upon the occurrence of a Make-Whole Fundamental Change. The Company will deliver cash in lieu of any fractional share.

A Note in respect of which a holder had delivered a Fundamental Change Purchase Notice or a Repurchase Notice exercising the option of such holder to require the Company to purchase such Note may be converted only if the Fundamental Change Purchase Notice or Repurchase Notice, as the case may be, is withdrawn in accordance with the terms of the Indenture.

11. **Denominations, Transfer, Exchange.** The Notes are in registered form, without coupons, in denominations of \$1,000 principal amount and integral multiples of \$1,000 principal amount. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. All Notes presented or surrendered for registration of transfer or for exchange, redemption, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-registrar) be duly endorsed or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Noteholder thereof or its attorney-in-fact duly authorized in writing. No service charge shall be made for any such registration of transfer or exchange, but the Company and the Trustee may require payment of a sum sufficient to cover any tax or similar governmental charge that may be imposed in connection with certain transfers or exchanges. None of the Company, the Trustee, the Note Registrar or any co-registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion,

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such portion thereof surrendered for conversion, (ii) any Note selected for redemption or, if a portion of any Note is selected for redemption, such portion thereof selected for redemption or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 16 of the Indenture.

12. **Persons Deemed Owners.** The registered holder of a Note may be treated as the owner of such Note for all purposes.

13. **Merger or Consolidation.** Except as provided in the Indenture, the Company shall not consolidate with, or merge with or into, or sell, convey, transfer, lease its properties and assets substantially as an entirety to another Person, unless (i) the resulting, surviving or transferee Person (the

“**Successor Company**”), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture; and (ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under the Indenture.

14. **Amendments, Supplements and Waivers.** Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the holders of at least a majority in aggregate principal amount of the outstanding Notes, and certain existing Defaults or Events of Default may be waived with the consent of the holders of a majority in aggregate principal amount of the Notes then outstanding. In accordance with the terms of the Indenture, the Company, with the consent of the Trustee, may amend or supplement this Indenture or the Notes without notice to or the consent of any Noteholder, including, but not limited to, to cure any ambiguity, defect, omission or inconsistency in the Indenture or conform the terms of the Indenture to the description thereof in the Offering Memorandum and to make any other change that does not materially and adversely affect the rights of any holder.

15. **Defaults and Remedies.** In case one or more Events of Default shall have occurred and be continuing (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), then, and in each and every such case (other than as a result of certain events of bankruptcy, insolvency or reorganization specified in the Indenture), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of at least 25% in aggregate principal amount of the Notes then outstanding may declare 100% of the principal of and premium, if any, and accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, on all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, all as and to the extent, and subject to the exceptions, provided in the Indenture. If an Event of Default as a result of certain events of bankruptcy, insolvency or reorganization specified in the Indenture occurs and is continuing, the principal of all the Notes and accrued and unpaid interest, accrued and unpaid Contingent Interest, if any, and accrued and unpaid Additional Interest, if any, shall be immediately due and

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payable without any declaration or other act on the part of the Trustee or any holder, all as and to the extent provided in the Indenture.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The holders of a majority in aggregate principal amount of the Notes then outstanding may 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 it. However, the Trustee may refuse to follow any direction that conflicts with any rule of law or the Indenture, is unduly prejudicial to the rights of other holders or would involve the Trustee in personal liability and the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. The Trustee may withhold notice of any continuing default (except a default in payment of any amounts due with respect to any Note), if it in good faith determines that, withholding the notice is in the best interests of holders. The Company must deliver to the Trustee an annual compliance certificate.

16. **No Recourse Against Others.** No past, present or future director, officer, employee or shareholder, as such, of the Company shall have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder, by accepting a Note, waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

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

18. **Governing Law.** THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS NOTE, INCLUDING WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B).

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

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

AFFILIATED MANAGERS GROUP, INC.
600 HALE STREET
PRIDES CROSSING, MASSACHUSETTS 01965
ATTENTION: CHIEF FINANCIAL OFFICER

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SCHEDULE A

AFFILIATED MANAGERS GROUP, INC.
3.95% Convertible Senior Notes due 2038

The initial principal amount of this Global Note is \$[]. The following increases or decreases in this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian
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NOTICE OF CONVERSION

To: AFFILIATED MANAGERS GROUP, INC.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any shares of Common Stock issuable and deliverable upon such conversion, together with any cash comprising the Daily Conversion Values or a portion of the Daily Settlement Amounts for each of the twenty Trading Days during the Cash Settlement Averaging Period and for any fractional shares, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated: _____

Signature(s)

Signature Guarantee
Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address.

Principal amount to be converted (if less than all):
\$ _____,000

NOTICE: The above signature(s) of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer Identification Number

REPURCHASE NOTICE

To: AFFILIATED MANAGERS GROUP, INC.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from AFFILIATED MANAGERS GROUP, INC. (the "Company") as to the occurrence of a Repurchase Date and specifying the Repurchase Date and requests and instructs the Company to repay to the registered

holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Repurchase Date does not fall during the period after an Interest Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, including Contingent Interest, if any, and Additional Interest, if any, thereon to, but excluding, such Repurchase Date.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all):
\$ _____,000

NOTICE: The above signature(s) of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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ANNEX C

FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: AFFILIATED MANAGERS GROUP, INC.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from AFFILIATED MANAGERS GROUP, INC. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after an Interest Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, including Contingent Interest, if any, and Additional Interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all):
\$ _____,000

NOTICE: The above signature(s) of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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ANNEX D

ASSIGNMENT AND TRANSFER

For value received, hereby sell(s), assign(s) and transfer(s) unto (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- o To Affiliated Managers Group, Inc. or a subsidiary thereof; or

- o Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- o Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- o Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended; or
- o Pursuant to another available exemption from registration under the Securities Act of 1933, as amended.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15. Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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EXHIBIT B

FORM OF TAX LEGEND

THIS SECURITY HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT, FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE COMPANY AGREES, AND, BY ACCEPTING A BENEFICIAL OWNERSHIP INTEREST IN THIS SECURITY, EACH HOLDER OF THIS SECURITY WILL BE DEEMED TO HAVE AGREED, FOR UNITED STATES FEDERAL INCOME TAX PURPOSES (1) TO TREAT THIS SECURITY AS A DEBT INSTRUMENT THAT IS SUBJECT TO TREAS. REG. SEC. 1.1275-4 (THE "CPDI REGULATIONS"), (2) TO TREAT THE FAIR MARKET VALUE OF ANY STOCK RECEIVED UPON ANY CONVERSION OF THIS SECURITY OR UPON A PURCHASE OF THIS SECURITY AT THE HOLDER'S OPTION AS A CONTINGENT PAYMENT FOR PURPOSES OF THE CPDI REGULATIONS, AND (3) TO ACCRUE INTEREST WITH RESPECT TO THE SECURITY AS ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES ACCORDING TO THE "NONCONTINGENT BOND METHOD," SET FORTH IN THE CPDI REGULATIONS, AND TO BE BOUND BY THE COMPANY'S DETERMINATION OF THE "COMPARABLE YIELD" AND "PROJECTED PAYMENT SCHEDULE," WITHIN THE MEANING OF THE CPDI REGULATIONS, WITH RESPECT TO THIS SECURITY. THE COMPANY AGREES TO PROVIDE PROMPTLY TO THE HOLDER OF THIS SECURITY, UPON WRITTEN REQUEST, THE ISSUE PRICE OF THIS SECURITY, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, YIELD TO MATURITY, COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT THE FOLLOWING ADDRESS: AFFILIATED MANAGERS GROUP, INC., 600 HALE STREET, PRIDES CROSSING, MASSACHUSETTS 01965, ATTENTION: CHIEF FINANCIAL OFFICER.

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AFFILIATED MANAGERS GROUP, INC.

Contact: Brett S. Perryman
 Laura O'Brien
 Affiliated Managers Group, Inc.
 (617) 747-3300
 ir@amg.com

AMG Sells \$460 Million of Convertible Senior Notes

BOSTON, August 12, 2008 — Affiliated Managers Group, Inc. (NYSE: AMG), a diversified asset management company, announced that it has sold \$460 million of convertible senior notes due 2038. As part of the transaction, the initial purchasers exercised an option to purchase up to an additional \$60 million principal amount of notes to cover over-allotments.

“The capital raised through this transaction supplements our strong cash flow from operations and substantial credit facility to ensure that we have ample financial capacity to continue to execute the new investments component of our growth strategy,” said Darrell W. Crate, Executive Vice President and Chief Financial Officer.

The securities carry a coupon of 3.95% per annum and a conversion price of \$125.65, which is a premium of 40% over AMG’s closing stock price of \$89.75 on July 29, 2008. Upon conversion, at AMG’s election, the notes may be settled in cash, shares of AMG common stock or a combination thereof. AMG may redeem the notes at its option beginning August 2013, and holders will have the right to require AMG to repurchase their notes on specified dates or upon the occurrence of a fundamental change.

The offering was made only to qualified institutional buyers pursuant to Rule 144A of the Securities Act of 1933, as amended (the “Securities Act”). The notes and the shares of AMG common stock issuable upon conversion will not be registered under the Securities Act, and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. This press release does not constitute an offer to sell or the solicitation of an offer to buy the notes.

About Affiliated Managers Group

Affiliated Managers Group is a diversified asset management company with approximately \$254 billion in assets at June 30, 2008 (pro forma for pending investments). AMG’s strategy is to generate growth through the internal growth of its existing Affiliates, as well as through investments in new Affiliates. Through AMG’s innovative partnership approach, individual members of each

(more)

Affiliate’s management team retain or receive significant direct equity ownership in their firm while maintaining operating autonomy. AMG provides centralized assistance to its Affiliates in strategic matters, marketing, distribution, product development and operations. For more information, please visit the Company’s website at www.amg.com.

Certain matters discussed in this press release may constitute forward-looking statements within the meaning of the federal securities laws. Actual results and the timing of certain events could differ materially from those projected in or contemplated by the forward-looking statements due to a number of factors, including changes in the securities or financial markets or in general economic conditions, the availability of equity and debt financing, competition for acquisitions of interests in investment management firms, the ability to complete pending acquisitions, the investment performance of our Affiliates and their ability to effectively market their investment strategies, and other risks detailed from time to time in AMG’s filings with the Securities and Exchange Commission. Reference is hereby made to the “Cautionary Statements” set forth in the Company’s Form 10-K for the year ended December 31, 2007.

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