

---

---

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

**FORM 8-K**

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 20, 2012

**VECTOR GROUP LTD.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**1-5759**

(Commission File Number)

**65-0949535**

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

**100 S.E. Second Street, Miami, Florida**

(Address of Principal Executive Offices)

**33131**

(Zip Code)

**(305) 579-8000**

(Registrant's Telephone Number, Including Area Code)

**(Not Applicable)**

(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:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 240.425)
  - 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.**

On November 20, 2012, Vector Group Ltd. (the “Company”) completed the sale of \$230.0 million of its Variable Interest Senior Convertible Notes due 2019 (the “Notes”), which includes the underwriter’s full exercise of its over-allotment option, to Jefferies & Company, Inc. in a public offering registered under the Securities Act of 1933, as amended (the “Securities Act”). The Notes were issued under an indenture, dated November 20, 2012, between the Company and Wells Fargo Bank, National Association, as trustee (the “Base Indenture”), as supplemented by a first supplemental indenture, dated November 20, 2012 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”). The Notes were offered pursuant to an automatic shelf registration statement on Form S-3ASR (File No. 333-184878) filed on November 9, 2012 (the “Registration Statement”) with the United States Securities and Exchange Commission (the “Commission”) and amended by Post-Effective Amendment No. 1 filed by the Company with the Commission on November 13, 2012.

The aggregate net proceeds from the sale of the Notes were approximately \$219.0 million after deducting underwriting discounts and commissions, fees and estimated offering expenses. The net proceeds from the sale of the Notes will be used for general corporate purposes, including in the Company’s existing tobacco business and in additional investments in real estate through its wholly owned subsidiary, New Valley LLC.

The Notes will be convertible, at the option of the holders, at any time on or prior to maturity, into shares of the Company’s common stock, par value \$0.10 per share (the “Common Stock”). The Notes will initially be convertible at a conversion price of approximately \$18.50 per share, which is equal to a conversion rate of approximately 54.0541 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment.

Interest on the Notes will be payable quarterly on January 15, April 15, July 15 and October 15 of each year, beginning on January 15, 2013. The Notes will accrue cash interest at 2.50% per annum, with an additional amount of interest payable on each interest payment date equal to the product of (i) the total amount of cash dividends and cash distributions paid by the Company on shares of Common Stock during the prior three-month period ending on the record date for such interest payment and (ii) the total number of shares of Common Stock into which the Notes will be convertible on such record date (together, the “Total Interest”), provided that the interest payable on each interest payment date shall be the higher of (i) the Total Interest and (ii) 7.50% per annum. The Notes will mature on January 15, 2019.

The Notes will be the Company’s senior unsecured obligations and will rank equal in right of payment with all of the Company’s existing and future senior unsecured indebtedness. The Notes will be subordinated to the Company’s existing and any future secured indebtedness to the extent of the assets securing such indebtedness and will be structurally subordinated to all liabilities and commitments of the Company’s subsidiaries.

In the event of a fundamental change (as defined in the Indenture), each holder of the Notes may require the Company to repurchase some or all of its Notes at a repurchase price equal to 100% of the aggregate principal amount of the Notes plus accrued and unpaid interest, if any (subject to limited exceptions). In addition, the Company will, under certain circumstances, increase the conversion rate for the Notes surrendered upon the occurrence of a fundamental change by a number of additional shares of Common Stock as set forth in the Indenture.

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

---

The foregoing summary of the Notes and the Indenture does not purport to be complete and is qualified in its entirety by reference to the Base Indenture and the First Supplemental Indenture, attached hereto as Exhibits 4.1 and 4.2, respectively, and incorporated herein by reference.

In connection with the sale of the Notes, in order to facilitate transactions by which investors in the Notes may hedge their investments through short sales of Common Stock, the Company offered up to 6,114,000 shares (the "Borrowed Shares") of its common stock, par value \$0.10 per share (the "Common Stock"), which Borrowed Shares were lent to Jefferies & Company, Inc. (in such capacity, the "Share Borrower") pursuant to the terms of a Share Lending Agreement, dated November 15, 2012 (the "Share Lending Agreement"), between the Company and the Share Borrower. The Borrowed Shares are registered under the Securities Act. The Company did not receive any proceeds from the sale of the Borrowed Shares, other than a nominal loan fee from the Share Borrower equal to \$0.10 per share loaned to the Share Borrower. The Company expects to use those proceeds for general corporate purposes.

The foregoing summary is qualified in its entirety by reference to the text of the Share Lending Agreement, filed with the Commission as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 16, 2012 and incorporated herein by reference.

#### **Item 7.01 Regulation FD Disclosure.**

On November 20, 2012, the Company issued a press release announcing that it had closed the offering of the Notes. A copy of such press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

The information furnished under Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed to be "filed" for the purposes of Section 18 of the Securities and Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section.

#### **Item 9.01 Financial Statements and Exhibits.**

*(d) Exhibits.*

- 4.1 Indenture, dated as of November 20, 2012, by and between Vector Group Ltd. and Wells Fargo Bank, National Association, as trustee (the "Base Indenture").
  - 4.2 First Supplemental Indenture, dated as of November 20, 2012, to the Base Indenture, by and between Vector Group Ltd. and Wells Fargo Bank, National Association, as trustee.
  - 4.3 Form of Global Note (included in Exhibit 4.2 hereto).
  - 5.1 Opinion of O'Melveny & Myers LLP, relating to the Notes.
  - 5.2 Opinion of O'Melveny & Myers LLP, relating to the Borrowed Shares.
  - 23.1 Consent of O'Melveny & Myers LLP (included in Exhibit 5.1 hereto).
  - 23.2 Consent of O'Melveny & Myers LLP (included in Exhibit 5.2 hereto).
  - 99.1 Press Release dated November 20, 2012.
-

**SIGNATURE**

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

VECTOR GROUP LTD.

Date: November 20, 2012

By: /s/ J. Bryant Kirkland III  
J. Bryant Kirkland III  
Vice President, Treasurer and Chief Financial Officer

---

**VECTOR GROUP LTD.**

---

**INDENTURE**

Dated as of November 20, 2012

---

**Wells Fargo Bank, National Association**

Trustee

---

## TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I.	DEFINITIONS AND INCORPORATION BY REFERENCE	1
Section 1.1.	Definitions	1
Section 1.2.	Other Definitions	4
Section 1.3.	Incorporation by Reference of Trust Indenture Act	5
Section 1.4.	Rules of Construction	5
ARTICLE II.	THE SECURITIES	5
Section 2.1.	Issuable in Series	5
Section 2.2.	Establishment of Terms of Series of Securities	6
Section 2.3.	Execution and Authentication	8
Section 2.4.	Registrar and Paying Agent	9
Section 2.5.	Paying Agent to Hold Money in Trust	10
Section 2.6.	Securityholder Lists	10
Section 2.7.	Transfer and Exchange	10
Section 2.8.	Mutilated, Destroyed, Lost and Stolen Securities	11
Section 2.9.	Outstanding Securities	11
Section 2.10.	Treasury Securities	12
Section 2.11.	Temporary Securities	12
Section 2.12.	Cancellation	13
Section 2.13.	Defaulted Interest	13
Section 2.14.	Global Securities	13
Section 2.15.	CUSIP Numbers	14
ARTICLE III.	REDEMPTION	15
Section 3.1.	Notice to Trustee	15
Section 3.2.	Selection of Securities to be Redeemed	15
Section 3.3.	Notice of Redemption	15
Section 3.4.	Effect of Notice of Redemption	16
Section 3.5.	Deposit of Redemption Price	17
Section 3.6.	Securities Redeemed in Part	17
ARTICLE IV.	COVENANTS	17
Section 4.1.	Payment of Principal and Interest	17

Section 4.2.	SEC Reports	17
Section 4.3.	Compliance Certificate	18
Section 4.4.	Stay, Extension and Usury Laws	18
Section 4.5.	Corporate Existence	18
ARTICLE V.	SUCCESSORS	19
Section 5.1.	When Company May Merge, Etc	19
Section 5.2.	Successor Corporation Substituted	19
ARTICLE VI.	DEFAULTS AND REMEDIES	19
Section 6.1.	Events of Default	19
Section 6.2.	Acceleration of Maturity; Rescission and Annulment	21
Section 6.3.	Collection of Indebtedness and Suits for Enforcement by Trustee	21
Section 6.4.	Trustee May File Proofs of Claim	22
Section 6.5.	Trustee May Enforce Claims Without Possession of Securities	23
Section 6.6.	Application of Money Collected	23
Section 6.7.	Limitation on Suits	23
Section 6.8.	Unconditional Right of Holders to Receive Principal and Interest	24
Section 6.9.	Restoration of Rights and Remedies	24
Section 6.10.	Rights and Remedies Cumulative	24
Section 6.11.	Delay or Omission Not Waiver	25
Section 6.12.	Control by Holders	25
Section 6.13.	Waiver of Past Defaults	25
Section 6.14.	Undertaking for Costs	26
ARTICLE VII.	TRUSTEE	26
Section 7.1.	Duties of Trustee	26
Section 7.2.	Rights of Trustee	27
Section 7.3.	Individual Rights of Trustee	29
Section 7.4.	Trustee's Disclaimer	29
Section 7.5.	Notice of Defaults	29
Section 7.6.	Reports by Trustee to Holders	29
Section 7.7.	Compensation and Indemnity	29
Section 7.8.	Replacement of Trustee	30

Section 7.9.	Successor Trustee by Merger, Etc	31
Section 7.10.	Eligibility; Disqualification	31
Section 7.11.	Preferential Collection of Claims Against Company	32
ARTICLE VIII.	SATISFACTION AND DISCHARGE; DEFEASANCE	32
Section 8.1.	Satisfaction and Discharge of Indenture	32
Section 8.2.	Application of Trust Funds; Indemnification	33
Section 8.3.	Legal Defeasance of Securities of any Series	33
Section 8.4.	Covenant Defeasance	35
Section 8.5.	Repayment to Company	36
Section 8.6.	Reinstatement	36
ARTICLE IX.	AMENDMENTS AND WAIVERS	37
Section 9.1.	Without Consent of Holders	37
Section 9.2.	With Consent of Holders	37
Section 9.3.	Limitations	38
Section 9.4.	Compliance with Trust Indenture Act	39
Section 9.5.	Revocation and Effect of Consents	39
Section 9.6.	Notation on or Exchange of Securities	39
Section 9.7.	Trustee Protected	39
ARTICLE X.	MISCELLANEOUS	40
Section 10.1.	Trust Indenture Act Controls	40
Section 10.2.	Notices	40
Section 10.3.	Communication by Holders with Other Holders	41
Section 10.4.	Certificate and Opinion as to Conditions Precedent	41
Section 10.5.	Statements Required in Certificate or Opinion	41
Section 10.6.	Rules by Trustee and Agents	42
Section 10.7.	Legal Holidays	42
Section 10.8.	No Recourse Against Others	42
Section 10.9.	Counterparts	42
Section 10.10.	Governing Law; Jury Trial Waiver	42
Section 10.11.	No Adverse Interpretation of Other Agreements	43
Section 10.12.	Successors	43
Section 10.13.	Severability	43
Section 10.14.	Table of Contents, Headings, Etc	43



Section 10.15.	Securities in a Foreign Currency	43
Section 10.16.	Judgment Currency	44
Section 10.17.	Force Majeure	44
Section 10.18.	U.S.A. Patriot Act	45
ARTICLE XI.	SINKING FUNDS	45
Section 11.1.	Applicability of Article	45
Section 11.2.	Satisfaction of Sinking Fund Payments with Securities	45
Section 11.3.	Redemption of Securities for Sinking Fund	46

VECTOR GROUP LTD.

Reconciliation and tie between Trust Indenture Act of 1939 and  
Indenture, dated as of November 20, 2012

§ 310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	7.10
(b)	7.10
§ 311(a)	7.11
(b)	7.11
(c)	Not Applicable
§ 312(a)	2.6
(b)	10.3
c)	10.3
§ 313(a)	7.6
(b)(1)	7.6
(b)(2)	7.6
(c)(1)	7.6
(d)	7.6
§ 314(a)	4.2, 10.5
(b)	Not Applicable
(c)(1)	10.4
(c)(2)	10.4
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	10.5
(f)	Not Applicable
§ 315(a)	7.1
(b)	7.5
(c)	7.1
(d)	7.1
(e)	6.14
§ 316(a)	2.10
(a)(1)(A)	6.12
(a)(1)(B)	6.13
(b)	6.8
§ 317(a)(1)	6.3
(a)(2)	6.4
(b)	2.5
§ 318(a)	10.1

---

Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

Indenture dated as of November 20, 2012 between VECTOR GROUP LTD., a company incorporated under the laws of the State of Delaware (“*Company*”), and Wells Fargo Bank, National Association, a national banking association (“*Trustee*”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Securities issued under this Indenture.

ARTICLE I.  
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1. Definitions.

“*Additional Amounts*” means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes imposed on Holders specified herein or therein and which are owing to such Holders.

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

“*Agent*” means any Registrar, Paying Agent or Notice Agent.

“*Board of Directors*” means the board of directors of the Company or any duly authorized committee thereof.

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

“*Business Day*” means, unless otherwise provided by Board Resolution, Officer’s Certificate or supplemental indenture hereto for a particular Series, any day except a Saturday, Sunday or a legal holiday in The City of New York (or in connection with any payment, the place of payment) on which banking institutions are authorized or required by law, regulation or executive order to close.

“*Capital Stock*” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock.

“*Company*” means the party named as such above until a successor, which duly assumes the obligations under the Indenture, replaces it and thereafter means the successor.

“*Company Order*” means a written order signed in the name of the Company by an Officer.

“*Corporate Trust Office*” means the office of the Trustee at which at any particular time its corporate trust business related to this Indenture shall be principally administered.

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

“*Depository*” means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act; and if at any time there is more than one such person, “*Depository*” as used with respect to the Securities of any Series shall mean the Depository with respect to the Securities of such Series.

“*Discount Security*” means any Security that provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2.

“*Dollars*” and “*\$*” means the currency of The United States of America.

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

“*Foreign Currency*” means any currency or currency unit issued by a government other than the government of The United States of America.

“*Foreign Government Obligations*” means, with respect to Securities of any Series that are denominated in a Foreign Currency, direct obligations of, or obligations guaranteed by, the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged and which are not callable or redeemable at the option of the issuer thereof.

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

“*Global Security*” or “*Global Securities*” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“*Holder*” or “*Securityholder*” means a person in whose name a Security is registered.

“*Indenture*” means this Indenture as amended or supplemented from time to time and shall include the form and terms of particular Series of Securities established as contemplated hereunder.

“*interest*” means, with respect to any Security, any interest on such Security, and with respect to any Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

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

“*Officer*” means the Chief Executive Officer, President, the Chief Financial Officer, the Treasurer or any Assistant Treasurer, the Secretary or any Assistant Secretary, and any Vice President of the Company.

“*Officer’s Certificate*” means a certificate signed by any Officer and delivered to the Trustee.

“*Opinion of Counsel*” means a written opinion of legal counsel. The counsel may be an employee of or counsel to the Company.

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

“*principal*” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on, and any Additional Amounts in respect of, the Security.

“*Responsible Officer*” means any officer of the Trustee in its Corporate Trust Office having responsibility for administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with a particular subject and who shall have direct responsibility for the administration of this Indenture.

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

“*Securities*” means the debentures, notes or other debt instruments of the Company of any Series authenticated and delivered under this Indenture.

“*Series*” or “*Series of Securities*” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 and 2.2 hereof.

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

“*Subsidiary*” of any specified person means any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of that person or a combination thereof.

“*TIA*” means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb) as in effect on the date of this Indenture; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “*TIA*” means, to the extent required by any such amendment, the Trust Indenture Act as so amended.

“*Trustee*” means the person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each person who is then a Trustee hereunder, and if at any time there is more than one such person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“*U.S. Government Obligations*” means securities which are direct obligations of, or guaranteed by, The United States of America for the payment of which its full faith and credit is pledged and which are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation evidenced by such depository receipt.

Section 1.2. Other Definitions.

<u>TERM</u>	<u>DEFINED IN SECTION</u>
“ <i>Bankruptcy Law</i> ”	6.1
“ <i>Custodian</i> ”	6.1
“ <i>Event of Default</i> ”	6.1
“ <i>Judgment Currency</i> ”	10.16
“ <i>Legal Holiday</i> ”	10.7
“ <i>mandatory sinking fund payment</i> ”	11.1
“ <i>Market Exchange Rate</i> ”	10.15
“ <i>New York Banking Day</i> ”	10.16
“ <i>Notice Agent</i> ”	2.4
“ <i>optional sinking fund payment</i> ”	11.1
“ <i>Paying Agent</i> ”	2.4
“ <i>Registrar</i> ”	2.4
“ <i>Required Currency</i> ”	10.16
“ <i>successor person</i> ”	5.1

Section 1.3. Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“*Commission*” means the SEC.

“*indenture securities*” means the Securities.

“*indenture security holder*” means a Securityholder.

“*indenture to be qualified*” means this Indenture.

“*indenture trustee*” or “*institutional trustee*” means the Trustee.

“*obligor*” on the indenture securities means the Company and any successor obligor upon the Securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein are used herein as so defined.

Section 1.4. Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “*or*” is not exclusive;
- (d) words in the singular include the plural, and in the plural include the singular; and
- (e) provisions apply to successive events and transactions.

ARTICLE II.  
THE SECURITIES

Section 2.1. Issuable in Series.

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth or determined in the manner provided in a Board Resolution, supplemental indenture hereto or Officer’s Certificate detailing the adoption of the terms thereof pursuant to authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officer’s Certificate or supplemental indenture detailing the adoption of the terms thereof pursuant to authority granted under a Board Resolution may provide for the method by which specified terms (such as interest rate, maturity date, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, provided that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture.

Section 2.2. Establishment of Terms of Series of Securities.

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2.1 and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2.2 through 2.2.23) by or pursuant to a Board Resolution, and set forth or determined in the manner provided in a Board Resolution, supplemental indenture hereto or Officer's Certificate:

2.2.1. the title (which shall distinguish the Securities of that particular Series from the Securities of any other Series) and ranking (including the terms of any subordination provisions) of the Series;

2.2.2. the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;

2.2.3. any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.7, 2.8, 2.11, 3.6 or 9.6);

2.2.4. the date or dates on which the principal of the Securities of the Series is payable;

2.2.5. the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any interest payment date;

2.2.6. the place or places where the principal of and interest, if any, on the Securities of the Series shall be payable, where the Securities of such Series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of such Series and this Indenture may be delivered, and the method of such payment, if by wire transfer, mail or other means;



2.2.7. if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;

2.2.8. the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

2.2.9. the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof and other detailed terms and provisions of such repurchase obligations;

2.2.10. if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;

2.2.11. the forms of the Securities of the Series and whether the Securities will be issuable as Global Securities;

2.2.12. if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2;

2.2.13. the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, and if such currency of denomination is a composite currency, the agency or organization, if any, responsible for overseeing such composite currency;

2.2.14. the designation of the currency, currencies or currency units in which payment of the principal of and interest, if any, on the Securities of the Series will be made;

2.2.15. if payments of principal of or interest, if any, on the Securities of the Series are to be made in one or more currencies or currency units other than that or those in which such Securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;

2.2.16. the manner in which the amounts of payment of principal of or interest, if any, on the Securities of the Series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;

2.2.17. the provisions, if any, relating to any security provided for the Securities of the Series;

2.2.18. any addition to, deletion of or change in the Events of Default which applies to any Securities of the Series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;

2.2.19. any addition to, deletion of or change in the covenants set forth in Articles IV or V which applies to Securities of the Series;

2.2.20. any Depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein;

2.2.21. the provisions, if any, relating to conversion or exchange of any Securities of such Series, including if applicable, the conversion or exchange price, the conversion or exchange period, the securities or other property into which the Securities will be convertible, provisions as to whether conversion or exchange will be mandatory, at the option of the Holders thereof or at the option of the Company, the events requiring an adjustment of the conversion price or exchange price and provisions affecting conversion or exchange if such Series of Securities are redeemed;

2.2.22. any other terms of the Series (which may supplement, modify or delete any provision of this Indenture insofar as it applies to such Series), including any terms that may be required under applicable law or regulations or advisable in connection with the marketing of Securities of that Series; and

2.2.23. whether any of the Company's direct or indirect Subsidiaries will guarantee the Securities of that Series, including the terms of subordination, if any, of such guarantees.

All Securities of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture hereto or Officer's Certificate referred to above.

Section 2.3. Execution and Authentication.

Two Officers shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officer's Certificate, upon receipt by the Trustee of a Company Order. Each Security shall be dated the date of its authentication.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officer's Certificate delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.2) shall be fully protected in conclusively relying on: (a) the Board Resolution, supplemental indenture hereto or Officer's Certificate delivered pursuant to Section 2.2 establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officer's Certificate complying with Section 10.4, and (c) an Opinion of Counsel complying with Section 10.4.

The Trustee shall have the right, but not the obligation, to decline to authenticate and deliver any Securities of such Series: (a) if the Trustee, being advised by counsel, determines that such action may not be taken lawfully; or (b) if the Trustee in good faith determines that such action would expose the Trustee to personal liability to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Section 2.4. Registrar and Paying Agent.

The Company shall maintain, with respect to each Series of Securities, at the place or places specified with respect to such Series pursuant to Section 2.2, an office or agency where Securities of such Series may be presented or surrendered for payment ("*Paying Agent*"), where Securities of such Series may be surrendered for registration of transfer or exchange ("*Registrar*") and where notices and demands to or upon the Company in respect of the Securities of such Series and this Indenture may be delivered ("*Notice Agent*"). The Registrar shall keep a register with respect to each Series of Securities and to their transfer and exchange. The Company will give prompt written notice to the Trustee of the name and address, and any change in the name or address, of each Registrar, Paying Agent or Notice Agent. If at any time the Company shall fail to maintain any such required Registrar, Paying Agent or Notice Agent or shall fail to furnish the Trustee with the name and address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more co-registrars, additional paying agents or additional notice agents and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain a Registrar, Paying Agent and Notice Agent in each place so specified pursuant to Section 2.2 for Securities of any Series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the name or address of any such co-registrar, additional paying agent or additional notice agent. The term "*Registrar*" includes any co-registrar; the term "*Paying Agent*" includes any additional paying agent; and the term "*Notice Agent*" includes any additional notice agent. The Company or any of its Affiliates may serve as Registrar or Paying Agent.

The Company hereby appoints the Trustee as the initial Registrar, Paying Agent and Notice Agent for each Series unless another Registrar, Paying Agent or Notice Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued.

Section 2.5. Paying Agent to Hold Money in Trust.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust, for the benefit of Securityholders of any Series of Securities, or the Trustee, all money held by the Paying Agent for the payment of principal of or interest on the Series of Securities, and will notify the Trustee in writing of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of Securityholders of any Series of Securities all money held by it as Paying Agent. Upon any bankruptcy, reorganization or similar proceeding with respect to the Company, the Trustee shall serve as Paying Agent for the Securities.

Section 2.6. Securityholder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least ten days before each interest payment date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders of each Series of Securities.

Section 2.7. Transfer and Exchange.

Where Securities of a Series are presented to the Registrar or a co-registrar with a request to register a transfer or to exchange them for an equal principal amount of Securities of the same Series, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trustee shall authenticate Securities at the Registrar's request. No service charge shall be made for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.11, 3.6 or 9.6).

Neither the Company nor the Registrar shall be required (a) to issue, register the transfer of, or exchange Securities of any Series for the period beginning at the opening of business fifteen days immediately preceding the mailing of a notice of redemption of Securities of that Series selected for redemption and ending at the close of business on the day of such mailing, or (b) to register the transfer of or exchange Securities of any Series selected, called or being called for redemption as a whole or the portion being redeemed of any such Securities selected, called or being called for redemption in part.

Section 2.8. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity bond as may be required by each of them to hold itself and any of its agents harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon receipt of a Company Order the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

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

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

Section 2.9. Outstanding Securities.

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by the Registrar, those delivered to it for cancellation, those reductions in the interest on a Global Security effected by the Trustee in accordance with the provisions hereof and those described in this Section as not outstanding.

If a Security is replaced pursuant to Section 2.8, it ceases to be outstanding until the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of the Company) holds on the Maturity of Securities of a Series money sufficient to pay such Securities payable on that date, then on and after that date such Securities of the Series cease to be outstanding and interest on them ceases to accrue.

The Company may purchase or otherwise acquire the Securities, whether by open market purchases, negotiated transactions or otherwise. A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

In determining whether the Holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of a Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.2.

Section 2.10. Treasury Securities.

In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any request, demand, authorization, direction, notice, consent or waiver, Securities of a Series owned by the Company or any Affiliate of the Company shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in conclusively relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities of a Series that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such request, demand, authorization, direction, notice, consent or waiver with respect to the Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

Section 2.11. Temporary Securities.

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities upon a Company Order. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee upon receipt of a Company Order shall authenticate definitive Securities of the same Series and date of maturity in exchange for temporary Securities. Until so exchanged, temporary securities shall have the same rights under this Indenture as the definitive Securities.

Section 2.12. Cancellation.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent, if not the Trustee, shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Securities surrendered for transfer, exchange, payment, replacement, conversion or cancellation and shall dispose of such canceled Securities (subject to the record retention requirement of the Exchange Act and the Trustee) in accordance with its customary procedures and deliver a certificate of such cancellation to the Company upon written request of the Company. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation.

Section 2.13. Defaulted Interest.

If the Company defaults in a payment of interest on a Series of Securities, it may pay the defaulted interest, plus, to the extent permitted by law, any interest payable on the defaulted interest, to the persons who are Securityholders of the Series on a subsequent special record date. The Company shall fix the record date and payment date. At least 10 days before the special record date, the Company shall mail to the Trustee and to each Securityholder of the Series a notice that states the special record date, the payment date and the amount of interest to be paid. The Company may pay defaulted interest in any other lawful manner.

Section 2.14. Global Securities.

2.14.1. Terms of Securities. A Board Resolution, a supplemental indenture hereto or an Officer's Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities and the Depositary for such Global Security or Securities.

2.14.2. Transfer and Exchange. Notwithstanding any provisions to the contrary contained in Section 2.7 of the Indenture and in addition thereto, any Global Security shall be exchangeable pursuant to Section 2.7 of the Indenture for Securities registered in the names of Holders other than the Depositary for such Security or its nominee only if (i) such Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time such Depositary ceases to be a clearing agency registered under the Exchange Act, and, in either case, the Company fails to appoint a successor Depositary registered as a clearing agency under the Exchange Act within 90 days of such event or (ii) the Company executes and delivers to the Trustee an Officer's Certificate to the effect that such Global Security shall be so exchangeable. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Securities registered in such names as the Depositary shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

Except as provided in this Section 2.14.2, a Global Security may not be transferred except as a whole by the Depositary with respect to such Global Security to a nominee of such Depositary, by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.

2.14.3. Legend. Any Global Security issued hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of the Depository or a nominee of the Depository. This Security is exchangeable for Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository, 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 a successor Depository.”

2.14.4. Acts of Holders. The Depository, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

2.14.5. Payments. Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of and interest, if any, on any Global Security shall be made to the Holder thereof.

2.14.6. Consents, Declaration and Directions. The Company, the Trustee and any Agent shall treat a person as the Holder of such principal amount of outstanding Securities of such Series represented by a Global Security as shall be specified in a written statement of the Depository or by the applicable procedures of such Depository with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture.

Section 2.15. CUSIP Numbers.

The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Trustee shall have no liability for any defect in the “CUSIP” numbers as they appear on any Security, notice or elsewhere. The Company will promptly notify the Trustee in writing of any change in the “CUSIP” numbers.



ARTICLE III.  
REDEMPTION

Section 3.1. Notice to Trustee.

The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities or may covenant to redeem and pay the Series of Securities or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities. If a Series of Securities is redeemable and the Company wants or is obligated to redeem prior to the Stated Maturity thereof all or part of the Series of Securities pursuant to the terms of such Securities, it shall notify the Trustee in writing of the redemption date and the principal amount of Series of Securities to be redeemed. The Company shall give the notice to the Trustee at least 15 days before the redemption date, unless a shorter period is satisfactory to the Trustee.

Section 3.2. Selection of Securities to be Redeemed.

Unless otherwise indicated for a particular Series by a Board Resolution, a supplemental indenture hereto or an Officer's Certificate, if less than all the Securities of a Series are to be redeemed, the Trustee shall select the Securities of the Series to be redeemed in any manner that the Trustee deems fair and appropriate, including selecting *pro rata*, by lot or other method, unless otherwise required by law or applicable stock exchange requirements, subject, in the case of Global Securities, to the applicable rules and procedures of the Depositary. The Trustee shall make the selection from Securities of the Series outstanding not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities of the Series that have denominations larger than \$1,000. Securities of the Series and portions of them it selects shall be in amounts of \$1,000 or whole multiples of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2.10, the minimum principal denomination for each Series and the authorized integral multiples thereof. Provisions of this Indenture that apply to Securities of a Series called for redemption also apply to portions of Securities of that Series called for redemption.

Section 3.3. Notice of Redemption.

Unless otherwise indicated for a particular Series by Board Resolution, a supplemental indenture hereto or an Officer's Certificate, at least 15 days but not more than 60 days before a redemption date, the Company shall mail a notice of redemption by first-class mail to each Holder whose Securities are to be redeemed.

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

- (a) the redemption date;
- (b) the redemption price;
- (c) the name and address of the Paying Agent and, if applicable, the conversion Agent;

(d) for convertible Securities, the conversion price;

(e) if any Securities are being redeemed in part, the portion of the principal amount of such Securities to be redeemed and that, after the redemption date and upon surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion of the original Security shall be issued in the name of the Holder thereof upon cancellation of the original Security;

(f) that Securities of the Series (or portion thereof) called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(g) that interest on Securities of the Series called for redemption ceases to accrue on and after the redemption date unless the Company defaults in the deposit of the redemption price;

(h) the CUSIP number, if any, and state that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in the SEC's notice or printed on the Securities; and

(i) any other information as may be required by the terms of the particular Series or the Securities of a Series being redeemed.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense, provided, however, that the Company has delivered to the Trustee, at least 10 days (unless a shorter time shall be acceptable to the Trustee) prior to the notice date, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice.

#### Section 3.4. Effect of Notice of Redemption.

Once notice of redemption is mailed as provided in Section 3.3, Securities of a Series called for redemption become due and payable on the redemption date and at the redemption price. Except as otherwise provided in the supplemental indenture, Board Resolution or Officer's Certificate for a Series, a notice of redemption may not be conditional. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price plus accrued interest to the redemption date other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Registrar for cancellation. The Paying Agent shall return to the Company any money not required for that purpose because of conversion of Securities. The Paying Agent shall return to the Company any money not required for that purpose because of conversion of Securities.

Unless the Company shall default in the payment of Securities (and accrued interest) called for redemption, interest on such Securities shall cease to accrue after the redemption date. Convertible Securities called for redemption shall cease to be convertible after the close of business on the Business Day immediately preceding the redemption date (unless the redemption date is also a record date for an interest payment, in which event they may be converted through the redemption date), unless the Company shall default in the payment of such Securities on the redemption date, in which event the Securities shall remain convertible until paid (together with accrued interest).

Failure to give notice of any defect in the notice to any Holder shall not affect the validity of notice to any Holder other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Registrar for cancellation.

Section 3.5. Deposit of Redemption Price.

On or before 10:00 a.m., New York City time, on the redemption date, the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date.

Section 3.6. Securities Redeemed in Part.

Upon surrender of a Security that is redeemed in part, the Trustee shall authenticate for the Holder a new Security of the same Series and the same maturity equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE IV.  
COVENANTS

Section 4.1. Payment of Principal and Interest.

The Company covenants and agrees for the benefit of the Holders of each Series of Securities that it will duly and punctually pay the principal of and interest, if any, on the Securities of that Series in accordance with the terms of such Securities and this Indenture. On or before 10:00 a.m., New York City time, on the applicable payment date, the Company shall deposit with the Paying Agent money sufficient to pay the principal of and interest, if any, on the Securities of each Series in accordance with the terms of such Securities and this Indenture. Principal and interest shall be considered paid on the date due if the Paying Agent holds in accordance with this Indenture on that date money sufficient to pay all principal and interest then due and the Paying Agent is not prohibited from paying such money to the Holders on such date pursuant to the terms of this Indenture.

Section 4.2. SEC Reports.

To the extent any Securities of a Series are outstanding, the Company shall deliver to the Trustee within 15 days after it files them with the SEC copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company also shall comply with the other provisions of TIA § 314(a). Reports, information and documents filed with the SEC via the EDGAR system will be deemed to be delivered to the Trustee as of the time of such filing via EDGAR for purposes of this Section 4.2; provided, however, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed via EDGAR.

Delivery of reports, information and documents to the Trustee under this Section 4.2 are for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive or actual notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 4.3. Compliance Certificate.

To the extent any Securities of a Series are outstanding, the Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officer's Certificate from its principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his/her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which the Officer may have knowledge).

Section 4.4. Stay, Extension and Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture or the Securities; 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 has been enacted.

Section 4.5. Corporate Existence.

Subject to Article V, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and rights (charter and statutory); provided, however, that the Company shall not be required to preserve any such right if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Holders.

ARTICLE V.  
SUCCESSORS

Section 5.1. When Company May Merge, Etc.

The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its assets to, any person (a “*successor person*”) unless:

(a) the Company is the surviving corporation or the successor person (if other than the Company) is a corporation organized and validly existing under the laws of any U.S. domestic jurisdiction and expressly assumes the Company’s obligations on the Securities and under this Indenture; and

(b) immediately after giving effect to the transaction, no Default or Event of Default, shall have occurred and be continuing.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officer’s Certificate to the foregoing effect and an Opinion of Counsel stating that the proposed transaction and any supplemental indenture comply with Section 5.1 of this Indenture.

Notwithstanding the above, any Subsidiary of the Company may consolidate with, merge into or transfer all or part of its properties to the Company. Neither an Officer’s Certificate nor an Opinion of Counsel shall be required to be delivered in connection therewith.

Section 5.2. Successor Corporation Substituted.

Upon any consolidation or merger, or any conveyance, transfer, or lease of all or substantially all of the assets of the Company in accordance with Section 5.1, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such conveyance, transfer, or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Securities with the same effect as if such successor person has been named as the Company herein; provided, however, that the predecessor Company in the case of a conveyance or transfer (other than a lease) shall be released from all obligations and covenants under this Indenture and the Securities.

ARTICLE VI.  
DEFAULTS AND REMEDIES

Section 6.1. Events of Default.

“*Event of Default*,” wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officer’s Certificate, it is provided that such Series shall not have the benefit of said Event of Default:

(a) default in the payment of any interest on any Security of that Series when it becomes due and payable, and continuance of such default for a period of 30 days (unless the entire amount of such payment is deposited by the Company with the Trustee or with a Paying Agent prior to 10:00 a.m., New York City time, on the 30<sup>th</sup> day of such period); or

(b) default in the payment of principal of any Security of that Series at its Maturity; or

(c) default in the performance or breach of any covenant of the Company in this Indenture (other than defaults pursuant to paragraphs (a) or (b) above or pursuant to a covenant that has been included in this Indenture solely for the benefit of Series of Securities other than that Series), which default continues uncured for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the outstanding Securities of that Series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(d) the Company pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(iv) makes a general assignment for the benefit of its creditors.

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

(i) is for relief against the Company in an involuntary case,

(ii) appoints a Custodian of the Company or for all or substantially all of its property, or

(iii) orders the liquidation of the Company,

and the order or decree remains unstayed and in effect for 60 days; or

(f) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officer's Certificate, in accordance with Section 2.2.18.

The term “*Bankruptcy Law*” means title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term “*Custodian*” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Company will, so long as any of the Securities are outstanding, deliver to the Trustee, within 30 days of becoming aware of any Default or Event of Default, an Officer’s Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 6.2. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing (other than an Event of Default referred to in Section 6.1(d) or (e)) then in every such case the Trustee or the Holders of not less than 25% in principal amount of the outstanding Securities of that Series may declare the principal amount (or, if any Securities of that Series are Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities) of and accrued and unpaid interest, if any, on all of the Securities of that Series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) and accrued and unpaid interest, if any, shall become immediately due and payable. If an Event of Default specified in Section 6.1(d) or (e) shall occur, the principal amount (or specified amount) of and accrued and unpaid interest, if any, on all outstanding Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

At any time after such a declaration of acceleration with respect to any Series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the outstanding Securities of that Series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if all Events of Default with respect to Securities of that Series, other than the non-payment of the principal and interest, if any, of Securities of that Series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.13.

No such rescission shall affect any subsequent Default.

Section 6.3. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

- (a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or
- (b) default is made in the payment of principal of any Security at the Maturity thereof, or
- (c) default is made in the deposit of any sinking fund payment, if any, when and as due by the terms of a Security,

*then*, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and any overdue interest at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails 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 such Securities and collect the moneys adjudged or deemed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If an Event of Default with respect to any Securities of any Series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such Series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 6.4. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relating to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities 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 on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be 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 Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same,

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7.



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

Section 6.5. Trustee May Enforce Claims Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such 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 Securities in respect of which such judgment has been recovered.

Section 6.6. Application of Money Collected.

Any money or property collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due to the Trustee under Section 7.7; and

Second: To the payment of the amounts then due and unpaid for principal of and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and interest, respectively; and

Third: To the Company.

Section 6.7. Limitation on Suits.

No Holder of any Security of any Series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that Series;

(b) the Holders of not less than 25% in principal amount of the outstanding Securities of that Series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by the Trustee in compliance with such request;

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

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the outstanding Securities of that Series;

it being understood, intended and expressly covenanted by the Holder of every Security with every other Holder and the Trustee that no one or more of such Holders 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 of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders of the applicable Series; provided, however, that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

Section 6.8. Unconditional Right of Holders to Receive Principal and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Security on the Maturity of such Security, including the Stated Maturity expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 6.9. Restoration of Rights and Remedies.

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

Section 6.10. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.8, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12. Control by Holders.

The Holders of a majority in principal amount of the outstanding Securities of any Series 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 the Securities of such Series, provided that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction,
- (c) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability, and
- (d) prior to taking any action as directed under this Section 6.12, the Trustee shall be entitled to indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

Section 6.13. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the outstanding Securities of any Series may on behalf of the Holders of all the Securities of such Series waive any past Default hereunder with respect to such Series and its consequences, except a Default in the payment of the principal of or interest on any Security of such Series (provided, however, that the Holders of a majority in principal amount of the outstanding Securities of any Series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default.

Section 6.14. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by his 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, suffered 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, 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; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the outstanding Securities of any Series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the Maturity of such Security, including the Stated Maturity expressed in such Security (or, in the case of redemption, on the redemption date).

ARTICLE VII.  
TRUSTEE

Section 7.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise 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.

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

(i) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others.

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of Counsel furnished to the Trustee and conforming to the requirements of this Indenture; however, in the case of any such Officer's Certificates or Opinions of Counsel which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such Officer's Certificates and Opinions of Counsel to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

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

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

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

(iii) The Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it with respect to Securities of any Series in good faith in accordance with the direction of the Holders of a majority in principal amount of the outstanding Securities of such Series 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 with respect to the Securities of such Series in accordance with Section 6.12.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraph (a), (b) and (c) of this Section.

(e) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in performing such duty or exercising such right or power.

(f) The Trustee shall not be liable for interest on any money received by it. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to risk its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers, if adequate indemnity against such risk is not assured to the Trustee in its satisfaction.

(h) The Paying Agent, the Registrar and any authenticating agent shall be entitled to the protections and immunities as are set forth in paragraphs (e), (f) and (g) of this Section and in Section 7.2, each with respect to the Trustee.

Section 7.2. Rights of Trustee.

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

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care. No Depository shall be deemed an agent of the Trustee and the Trustee shall not be responsible for any act or omission by any Depository.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, provided that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder without willful misconduct or negligence, and in reliance thereon.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

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

(i) In no event shall the Trustee be liable to any person for special, punitive, indirect, consequential or incidental 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.

(j) The permissive right of the Trustee to take the actions permitted by this Indenture shall not be construed as an obligation or duty to do so.

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

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

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

Section 7.3. Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an Affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee is also subject to Sections 7.10 and 7.11.

Section 7.4. Trustee's Disclaimer.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities other than its authentication.

Section 7.5. Notice of Defaults.

If a Default or Event of Default occurs and is continuing with respect to the Securities of any Series and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall mail to each Securityholder of the Securities of that Series notice of a Default or Event of Default within 60 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default. Except in the case of a Default or Event of Default in payment of principal of or interest on any Security of any Series, the Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of Securityholders of that Series.

Section 7.6. Reports by Trustee to Holders.

Within 60 days after May 15 in each year, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear on the register kept by the Registrar, a brief report dated as of such reporting date, in accordance with, and to the extent required under, TIA § 313.

A copy of each report at the time of its mailing to Securityholders of any Series shall be filed with the SEC and each national securities exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee in writing when Securities of any Series are listed on any national securities exchange or of any delisting thereof.

Section 7.7. Compensation and Indemnity.

The Company shall pay to the Trustee from time to time compensation for its services as the Company and the Trustee shall from time to time agree upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out of pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel.

The Company shall indemnify each of the Trustee and any predecessor Trustee (including the cost of defending itself) against any cost, expense or liability, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred by it except as set forth in the next paragraph in the performance of its duties under this Indenture as Trustee or Agent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder, unless and to the extent that the Company is materially prejudiced thereby. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have one separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee.

The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee or by any officer, director, employee, shareholder or agent of the Trustee through willful misconduct or negligence.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee, except that held in trust to pay principal of and interest on particular Securities of that Series.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(d) or (e) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

The provisions of this Section shall survive the termination of this Indenture or the resignation or removal of the Trustee.

Section 7.8. Replacement of Trustee.

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

The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company at least 30 days prior to the date of the proposed resignation. The Holders of a majority in principal amount of the Securities of any Series may remove the Trustee with respect to that Series by so notifying the Trustee and the Company. The Company may remove the Trustee with respect to Securities of one or more Series if:

- (a) the Trustee fails to comply with Section 7.10;



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

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

If a successor Trustee with respect to the Securities of any one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least a majority in principal amount of the Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee subject to the lien provided for in Section 7.7, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee with respect to each Series of Securities for which it is acting as Trustee under this Indenture. A successor Trustee shall mail a notice of its succession to each Securityholder of each such Series. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Company's obligations under Section 7.7 hereof shall continue for the benefit of the retiring Trustee with respect to expenses and liabilities incurred by it for actions taken or omitted to be taken in accordance with its rights, powers and duties under this Indenture prior to such replacement.

Section 7.9. Successor Trustee by Merger, Etc.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee, if such successor corporation is eligible and qualified under Section 7.10.

Section 7.10. Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee shall always have a combined capital and surplus of at least \$25,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b).

Section 7.11. Preferential Collection of Claims Against Company.

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE VIII.  
SATISFACTION AND DISCHARGE; DEFEASANCE

Section 8.1. Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Order cease to be of further effect (except as hereinafter provided in this Section 8.1), and the Trustee, at the expense of the Company, shall execute instruments acknowledging satisfaction and discharge of this Indenture, when

- (a) either
  - (i) all Securities theretofore authenticated and delivered (other than Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.8) have been delivered to the Trustee for cancellation; or
  - (ii) all such Securities not theretofore delivered to the Trustee for cancellation
    - (1) have become due and payable, or
    - (2) will become due and payable at their Stated Maturity within one year, or
    - (3) have been called for redemption or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, or
    - (4) are deemed paid and discharged pursuant to Section 8.3, as applicable;

and the Company, in the case of (1), (2) or (3) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust an amount of money or U.S. Government Obligations sufficient for the purpose of paying and discharging the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Securities which have become due and payable on or prior to the date of such deposit) or to the Stated Maturity or redemption date, as the case may be;

- (b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officer's 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 7.7, and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the provisions of Sections 2.4, 2.7, 2.8, 8.2 and 8.5 shall survive.

Section 8.2. Application of Trust Funds; Indemnification.

(a) Subject to the provisions of Section 8.5, all money or U.S. Government Obligations deposited with the Trustee pursuant to Section 8.1, all money and U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Section 8.3 or 8.4 and all money received by the Trustee in respect of U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Section 8.3 or 8.4, shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the persons entitled thereto, of the principal and interest for whose payment such money has been deposited with or received by the Trustee or to make mandatory sinking fund payments or analogous payments as contemplated by Sections 8.3 or 8.4.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations or Foreign Government Obligations deposited pursuant to Sections 8.3 or 8.4 or the interest and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Order any U.S. Government Obligations or Foreign Government Obligations or money held by it as provided in Sections 8.3 or 8.4 which, in the opinion of a nationally recognized firm of independent certified public accountants or investment bank expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such U.S. Government Obligations or Foreign Government Obligations or money were deposited or received. This provision shall not authorize the sale by the Trustee of any U.S. Government Obligations or Foreign Government Obligations held under this Indenture.

Section 8.3. Legal Defeasance of Securities of any Series.

Unless this Section 8.3 is otherwise specified, pursuant to Section 2.2, to be inapplicable to Securities of any Series, the Company shall be deemed to have paid and discharged the entire indebtedness on all the outstanding Securities of any Series on the 91st day after the date of the deposit referred to in subparagraph (d) hereof, and the provisions of this Indenture, as it relates to such outstanding Securities of such Series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, upon receipt of a Company Order, execute instruments acknowledging the same), except as to:

(a) the rights of Holders of Securities of such Series to receive, from the trust funds described in subparagraph (d) hereof, (i) payment of the principal of and each installment of principal of and interest on the outstanding Securities of such Series on the Maturity of such principal or installment of principal or interest and (ii) the benefit of any mandatory sinking fund payments applicable to the Securities of such Series on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Securities of such Series;

(b) the provisions of Sections 2.4, 2.7, 2.8, 8.2, 8.3 and 8.5; and

(c) the rights, powers, trust and immunities of the Trustee hereunder and the Company's obligations in connection therewith;

provided that, the following conditions shall have been satisfied:

(d) the Company shall have deposited or caused to be irrevocably deposited (except as provided in Section 8.2(c)) with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of such Securities (i) in the case of Securities of such Series denominated in Dollars, cash in Dollars and/or U.S. Government Obligations, or (ii) in the case of Securities of such Series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants or investment bank expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of all the Securities of such Series on the dates such installments of interest or principal and such sinking fund payments are due;

(e) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(f) no Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;

(g) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

(h) the Company shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company; and

(i) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this Section have been complied with.

Section 8.4. Covenant Defeasance.

Unless this Section 8.4 is otherwise specified pursuant to Section 2.2 to be inapplicable to Securities of any Series, the Company may omit to comply with respect to the Securities of any Series with any term, provision or condition set forth under Sections 4.2, 4.3, 4.4, 4.5, and 5.1 as well as any additional covenants specified in a supplemental indenture for such Series of Securities or a Board Resolution or an Officer's Certificate delivered pursuant to Section 2.2 (and the failure to comply with any such covenants shall not constitute a Default or Event of Default with respect to such Series under Section 6.1) and the occurrence of any event specified in a supplemental indenture for such Series of Securities or a Board Resolution or an Officer's Certificate delivered pursuant to Section 2.2.18 and designated as an Event of Default shall not constitute a Default or Event of Default hereunder, with respect to the Securities of such Series, provided that the following conditions shall have been satisfied:

(a) With reference to this Section 8.4, the Company has deposited or caused to be irrevocably deposited (except as provided in Section 8.2(c)) with the Trustee as trust funds in trust for the purpose of making the following payments specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities (i) in the case of Securities of such Series denominated in Dollars, cash in Dollars and/or U.S. Government Obligations, or (ii) in the case of Securities of such Series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent certified public accountants or investment bank expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of the Securities of such Series on the dates such installments of interest or principal and such sinking fund payments are due;

(b) Such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(c) No Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit;

(d) The Company shall have delivered to the Trustee an Opinion of Counsel to the effect that Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred;

(e) The Company shall have delivered to the Trustee an Officer's Certificate stating the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company; and

(f) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the covenant defeasance contemplated by this Section have been complied with.

Section 8.5. Repayment to Company.

Subject to applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal and interest that remains unclaimed for two years. After that, Securityholders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

Section 8.6. Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money deposited with respect to Securities of any Series in accordance with Section 8.1 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such Series and under the Securities of such Series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.1 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Section 8.1; provided, however, that if the Company has made any payment of principal or interest on or any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent after payment in full to the Holders.

ARTICLE IX.  
AMENDMENTS AND WAIVERS

Section 9.1. Without Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Securities of one or more Series without the consent of any Securityholder:

- (a) to add guarantees with respect to any Series of Securities or secure any Series of Securities;
- (b) to surrender any of the Company's rights or powers under this Indenture;
- (c) to add covenants or Events of Default for the benefit of the Securityholders of any Series of Securities;
- (d) to comply with the applicable procedures of the Depositary;
- (e) to cure any ambiguity, defect or inconsistency;
- (f) to comply with Article V;
- (g) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (h) to make any change that does not materially adversely affect the rights of any Securityholder;
- (i) to provide for the issuance of and establish the form and terms and conditions of Securities of any Series as permitted by this Indenture;
- (j) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or
- (k) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA.

Section 9.2. With Consent of Holders.

The Company and the Trustee may enter into a supplemental indenture with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series), for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Securityholders of each such Series. Except as provided in Section 6.13, the Holders of at least a majority in principal amount of the outstanding Securities of any Series by written notice to the Trustee (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series) may waive compliance by the Company with any provision of this Indenture or the Securities with respect to such Series.

It shall not be necessary for the consent of the Holders of Securities under this Section 9.2 to approve the particular form of any proposed supplemental indenture or waiver, but it shall be sufficient if such consent approves the substance thereof. After a supplemental indenture or waiver under this section becomes effective, the Company shall mail to the Holders of Securities affected thereby, a notice briefly describing the supplemental indenture or waiver. Any failure by the Company to mail or publish such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 9.3. Limitations.

Without the consent of each Securityholder affected, an amendment or waiver may not:

- (a) reduce the principal amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the rate of or extend the time for payment of interest (including default interest) on any Security;
- (c) reduce the principal or change the Stated Maturity of any Security or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;
- (d) reduce the principal amount of Discount Securities payable upon acceleration of the maturity thereof;
- (e) waive a Default or Event of Default in the payment of the principal of or interest, if any, on any Security (except a rescission of acceleration of the Securities of any Series by the Holders of at least a majority in principal amount of the outstanding Securities of such Series and a waiver of the payment default that resulted from such acceleration);
- (f) make the principal of or interest, if any, on any Security payable in any currency other than that stated in the Security;
- (g) make any change in Sections 6.8, 6.13 or 9.3 (this sentence); or
- (h) waive a redemption payment with respect to any Security, provided that such redemption is made at the Company's option.



Section 9.4. Compliance with Trust Indenture Act.

Every amendment to this Indenture or the Securities of one or more Series shall be set forth in a supplemental indenture hereto that complies with the TIA as then in effect.

Section 9.5. Revocation and Effect of Consents.

Until an amendment is set forth in a supplemental indenture or a waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the written notice of revocation before the date of the supplemental indenture or the date the waiver becomes effective.

Any amendment or waiver once effective shall bind every Securityholder of each Series affected by such amendment or waiver unless it is of the type described in any of clauses (a) through (h) of Section 9.3. In that case, the amendment or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those persons, shall be entitled to give such consent or to revoke any consent previously given or take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

Section 9.6. Notation on or Exchange of Securities.

The Company or the Trustee may place an appropriate notation about an amendment or waiver on any Security of any Series thereafter authenticated. The Company in exchange for Securities of that Series may issue and the Trustee shall authenticate upon request new Securities of that Series that reflect the amendment or waiver.

Section 9.7. Trustee Protected.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall receive, and (subject to Section 7.1) shall be fully protected in conclusively relying upon, an Officer's Certificate or an Opinion of Counsel or both complying with Section 10.4 and stating that the supplemental indenture is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to customary exceptions. The Trustee shall sign all supplemental indentures upon delivery of such an Officer's Certificate or Opinion of Counsel or both, except that the Trustee need not sign any supplemental indenture that adversely affects its rights.

ARTICLE X.  
MISCELLANEOUS

Section 10.1. Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required or deemed to be included in this Indenture by the TIA, such required or deemed provision shall control.

Section 10.2. Notices.

Any notice or communication by the Company or the Trustee to the other, or by a Holder to the Company or the Trustee, is duly given if in writing and delivered in person or mailed by first-class mail:

if to the Company:

Vector Group Ltd.  
100 S.E. Second Street  
Miami, Florida 33131  
Attention: Marc N. Bell, Esq.  
Telephone: (305) 579-8000

with a copy to:

O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, California 90071  
Attention: Eric R. Reimer, Esq.  
John-Paul Motley, Esq.  
Telephone: (213) 430-6000

if to the Trustee:

Wells Fargo Bank, National Association  
7000 Central Parkway NE  
Suite 550  
Atlanta, GA 30328  
Attention: Corporate Trust Services  
Telephone: 770-551-5117

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

Any notice or communication to a Securityholder shall be mailed by first-class mail to his address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Securityholder of any Series or any defect in it shall not affect its sufficiency with respect to other Securityholders of that or any other Series.

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

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

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given to the Depository for such Security (or its designee) pursuant to the customary procedures of such Depository.

Section 10.3. Communication by Holders with Other Holders.

Securityholders of any Series may communicate pursuant to TIA § 312(b) with other Securityholders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or all Series. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 10.4. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officer's Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 10.5. Statements Required in Certificate or Opinion.

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

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

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

(d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 10.6. Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or a meeting of Securityholders of one or more Series. Any Agent may make reasonable rules and set reasonable requirements for its functions.

Section 10.7. Legal Holidays.

Unless otherwise provided by Board Resolution, Officer's Certificate or supplemental indenture hereto for a particular Series, a "*Legal Holiday*" is any day that is not a Business Day. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

Section 10.8. No Recourse Against Others.

A director, officer, employee or stockholder (past or present), as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

Section 10.9. Counterparts.

This Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 10.10. Governing Law; Jury Trial Waiver.

**THIS INDENTURE AND THE SECURITIES, INCLUDING ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THE INDENTURE OR THE SECURITIES, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).**

**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 SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.**

Section 10.11. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 10.12. Successors.

All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 10.13. Severability.

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

Section 10.14. Table of Contents, Headings, Etc.

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

Section 10.15. Securities in a Foreign Currency.

Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officer's Certificate delivered pursuant to Section 2.2 of this Indenture with respect to a particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated more than one currency, then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be determined by converting any such other currency into a currency that is designated upon issuance of any particular Series of Securities. Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officer's Certificate delivered pursuant to Section 2.2 of this Indenture with respect to a particular Series of Securities, such conversion shall be at the spot rate for the purchase of the designated currency as published in The Financial Times in the "Currency Rates" section (of, if The Financial Times is no longer published, or if such information is no longer available in The Financial Times, such source as may be selected in good faith by the Company) on any date of determination. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture.

All decisions and determinations provided for in the preceding paragraph shall, in the absence of manifest error, to the extent permitted by law, be conclusive for all purposes and irrevocably binding upon the Trustee and all Holders.

Section 10.16. Judgment Currency.

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of or interest or other amount on the Securities of any Series (the “*Required Currency*”) into a currency in which a judgment will be rendered (the “*Judgment Currency*”), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable, and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, “*New York Banking Day*” means any day except a Saturday, Sunday or a legal holiday in The City of New York on which banking institutions are authorized or required by law, regulation or executive order to close.

Section 10.17. 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 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 best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 10.18. U.S.A. Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

ARTICLE XI.  
SINKING FUNDS

Section 11.1. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of the Securities of a Series if so provided by the terms of such Securities pursuant to Section 2.2 and except as otherwise permitted or required by any form of Security of such Series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of the Securities of any Series is herein referred to as a “*mandatory sinking fund payment*” and any other amount provided for by the terms of Securities of such Series is herein referred to as an “*optional sinking fund payment*.” If provided for by the terms of Securities of any Series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 11.2. Each sinking fund payment shall be applied to the redemption of Securities of any Series as provided for by the terms of the Securities of such Series.

Section 11.2. Satisfaction of Sinking Fund Payments with Securities.

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any Series to be made pursuant to the terms of such Securities (1) deliver outstanding Securities of such Series to which such sinking fund payment is applicable (other than any of such Securities previously called for mandatory sinking fund redemption) and (2) apply as credit Securities of such Series to which such sinking fund payment is applicable and which have been repurchased by the Company or redeemed either at the election of the Company pursuant to the terms of such Series of Securities (except pursuant to any mandatory sinking fund) or through the application of permitted optional sinking fund payments or other optional redemptions pursuant to the terms of such Securities, provided that such Securities have not been previously so credited. Such Securities shall be received by the Trustee, together with an Officer’s Certificate with respect thereto, not later than 15 days prior to the date on which the Trustee begins the process of selecting Securities for redemption, and shall be credited for such purpose by the Trustee at the price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities in lieu of cash payments pursuant to this Section 11.2, the principal amount of Securities of such Series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such Series for redemption, except upon receipt of a Company Order that such action be taken, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall from time to time upon receipt of a Company Order pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that Series purchased by the Company having an unpaid principal amount equal to the cash payment required to be released to the Company.

Section 11.3. Redemption of Securities for Sinking Fund.

Not less than 45 days (unless otherwise indicated in the Board Resolution, supplemental indenture hereto or Officer's Certificate in respect of a particular Series of Securities) prior to each sinking fund payment date for any Series of Securities, the Company will deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that Series pursuant to the terms of that Series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that Series pursuant to Section 11.2, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days (unless otherwise indicated in the Board Resolution, Officer's Certificate or supplemental indenture in respect of a particular Series of Securities) before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.2 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.3. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.4, 3.5 and 3.6.

*[Signature page follows]*



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

VECTOR GROUP LTD.

By: /s/ Howard M. Lorber

Name: Howard M. Lorber

Its: President and Chief Executive Officer

Wells Fargo Bank, National Association, as Trustee

By: /s/ Stefan Victory

Name: Stefan Victory

Its: Vice President

---

**VECTOR GROUP LTD.**

AS ISSUER

---

**FIRST SUPPLEMENTAL INDENTURE**

DATED AS OF NOVEMBER 20, 2012

TO

**INDENTURE**

DATED AS OF NOVEMBER 20, 2012

---

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

AS TRUSTEE

---

**VARIABLE INTEREST CONVERTIBLE SENIOR NOTES DUE 2019**

---

---

## TABLE OF CONTENTS

		<u>Page</u>
Article 1	DEFINITIONS AND INCORPORATION BY REFERENCE	2
	Section 1.01	2
	Section 1.02	2
	Section 1.03	6
	Section 1.04	7
	Section 1.05	7
Article 2	THE NOTES	8
	Section 2.01	8
	Section 2.02	9
	Section 2.03	10
	Section 2.04	10
	Section 2.05	12
	Section 2.06	12
	Section 2.07	14
	Section 2.08	15
	Section 2.09	15
	Section 2.10	18
	Section 2.11	19
	Section 2.12	19
	Section 2.13	20
	Section 2.14	20
	Section 2.15	20
	Section 2.16	20
Article 3	REPURCHASE AT THE OPTION OF THE HOLDER	21
	Section 3.01	21
	Section 3.02	21
	Section 3.03	23
	Section 3.04	24
	Section 3.05	24

Section 3.06	Notes Repurchased in Part	25
Section 3.07	Covenant to Comply with Securities Laws upon Repurchase of Notes	25
Section 3.08	Deposit of Fundamental Change Repurchase Price	26
Section 3.09	Covenant Not to Repurchase Notes upon Certain Events of Default	26
Article 4	COVENANTS	26
Section 4.01	Payment of Notes	26
Section 4.02	Reports	27
Section 4.03	Par Value Limitation	27
Article 5	CONSOLIDATION, MERGER AND SALE OF ASSETS	27
Section 5.01	Company May Consolidate, Merge or Sell Its Assets Only on Certain Terms	27
Section 5.02	Successor Substituted	28
Section 5.03	Opinion of Counsel to Be Given to Trustee	28
Article 6	DEFAULTS AND REMEDIES	28
Section 6.01	Events of Default	29
Section 6.02	Acceleration	30
Section 6.03	Other Remedies	31
Section 6.04	Sole Remedy for Failure to Report	31
Section 6.05	Waiver of Past Defaults	32
Section 6.06	Control by Majority	33
Section 6.07	Limitation on Suits	33
Section 6.08	Rights of Holders to Receive Payment	33
Section 6.09	Collection Suit by Trustee	33
Section 6.10	Trustee May File Proofs of Claim	34
Section 6.11	Priorities	34
Section 6.12	Undertaking for Costs	34
Article 7	SATISFACTION AND DISCHARGE	35
Section 7.01	Discharge of Liability on Notes	35
Section 7.02	Repayment to the Company	35
Article 8	AMENDMENTS, SUPPLEMENTS AND WAIVERS	36
Section 8.01	Without Consent of Holders	36

Section 8.02	With Consent of Holders	36
Section 8.03	Execution of Supplemental Indentures	37
Section 8.04	Notices of Supplemental Indentures	38
Section 8.05	Effect of Supplemental Indentures	38
Section 8.06	Revocation and Effect of Consents, Waivers and Actions	38
Section 8.07	Notation on, or Exchange of, Notes	38
Article 9	CONVERSIONS	39
Section 9.01	Right to Convert	39
Section 9.02	Conversion Procedures	39
Section 9.03	Conversion Obligation	41
Section 9.04	Common Stock Issued upon Conversion	42
Section 9.05	Adjustment of Conversion Rate	42
Section 9.06	Voluntary Adjustments	49
Section 9.07	Adjustments upon Certain Fundamental Changes	50
Section 9.08	Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale	52
Section 9.09	Notice to Holders Prior to Certain Actions	53
Section 9.10	No Responsibility of Trustee	54
Article 10	MISCELLANEOUS	54
Section 10.01	No Personal Liability of Shareholders, Employees, Officers or Directors	54
Section 10.02	Calculations	54
Section 10.03	Legal Holidays	55
Form of Note		

FIRST SUPPLEMENTAL INDENTURE, dated as of November 20, 2012 (this “**Supplemental Indenture**”), between Vector Group Ltd., a Delaware corporation (“**Company**”), and Wells Fargo Bank, National Association, a national banking association, as trustee (“**Trustee**”), supplementing the Indenture, dated as of November 20, 2012, between the Company and the Trustee (the “**Base Indenture**” and, as amended and supplemented by this First Supplemental Indenture, and as it may be further amended or supplemented from time to time with respect to the Notes (as defined below), the “**Indenture**”).

WITNESSETH:

WHEREAS, the Company executed and delivered the Base Indenture to the Trustee to provide, among other things, for the issuance, from time to time, of the Company’s Securities, in an unlimited aggregate principal amount, in one or more series to be established by the Company under, and authenticated and delivered as provided in, the Base Indenture;

WHEREAS, Section 2.2 of the Base Indenture provides for the Company to issue Securities thereunder in the form and on the terms set forth in one or more Board Resolutions, supplemental indentures or Officer’s Certificates;

WHEREAS, the Company has duly authorized the issuance of a single Series of Securities designated as its Variable Interest Convertible Senior Notes due 2019 (the “**Notes**”), initially in an aggregate principal amount not to exceed \$230,000,000, 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 Supplemental Indenture; and

WHEREAS, the form of Note and the certificate of authentication to be borne by each Note, are to be substantially in the form hereinafter provided;

WHEREAS, the conditions set forth in the Base Indenture for the execution and delivery of this Supplemental Indenture have been complied with; 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 provided in this Supplemental Indenture, the valid, binding and legal obligations of the Company, and this Supplemental Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Supplemental Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS SUPPLEMENTAL 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 1**  
**DEFINITIONS AND INCORPORATION BY REFERENCE**

Section 1.01 *Scope of Supplemental Indenture.*

(a) This Supplemental Indenture supplements the provisions of the Base Indenture, to which provisions reference is hereby made. The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, which may be issued from time to time, and shall not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. For all purposes under the Base Indenture, the Notes shall constitute a single series of Securities, and with regard to any matter requiring the consent under the Base Indenture of Holders of multiple Series of Securities voting together as a single class, the consent of Holders of the Notes voting as a separate class shall also be required and the same threshold shall apply. The provisions of this Supplemental Indenture shall supersede any conflicting provisions in the Base Indenture.

Section 1.02 *Definitions.* The terms defined in this Section 1.02 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of the Indenture shall have the respective meanings specified in this Section 1.02, and to the extent applicable, supersede the definition thereof in the Base Indenture. All words, terms and phrases defined in the Base Indenture (but not otherwise defined herein) shall have the same meanings as in the Base Indenture. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to the Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Applicable Procedures**” means, with respect to any transfer or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depository for such Note, in each case to the extent applicable to such transfer or transaction and as in effect from time to time.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York or the place of payment is authorized or required by law or executive order to close or be closed.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Common Stock**” means the shares of the common stock of the Company, par value \$0.10 per share, or any other shares of Capital Stock of the Company into which such shares of common stock will be reclassified or changed after the Issue Date.

“**Company**” means the party named as such in the first paragraph of this Supplemental Indenture until a successor or assignee replaces it pursuant to the applicable provisions hereof and, thereafter, means the successor or assignee.

“**Conversion Price**” means (i) \$1,000 *divided by* (ii) the Conversion Rate.

“**Conversion Rate**” means, initially, 54.0541 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as provided herein.

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which any time its corporate trust business shall be administered, which office, as of the Issue Date, is located at Wells Fargo Bank, National Association, 7000 Central Parkway NE, Suite 550, Atlanta, GA 30328, Attention: Vector Group Ltd. Account Manager, or such other address as the Trustee may designate from time to time by notice to the Holders 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 Holders and the Company).

“**Definitive Notes**” means Notes that are in registered definitive form.

“**Depository**” means DTC; *provided* that the Company may at any time, upon delivering notice to the Holders, the Company, the Trustee, the Registrar, the Paying Agent and the Conversion Agent, appoint a successor to DTC.

“**DTC**” means The Depository Trust Company.

“**Fundamental Change**” means any transaction or event after the Issue Date resulting in any of the following:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act other than the Company, the Subsidiaries, and the Company and the Subsidiaries’ employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing, or the Company otherwise become aware that, such person or group becomes the direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of shares of the Company’s common equity representing more than 50% of the voting power of the Company’s common equity;

(ii) the consummation of:

(A) any sale, lease or other transfer in one transaction or a series of related transactions of all or substantially all of the consolidated assets of the Company and the Subsidiaries, taken as a whole, to any person or persons (other than one of the Subsidiaries); or

(B) any transaction or series of related transactions in connection with which (whether by means of exchange, liquidation, consolidation, merger, combination, reclassification, recapitalization, acquisition or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, other property, assets or cash, but excluding any transaction with or by another person pursuant to which the persons that beneficially owned (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, the shares of the Company’s Voting Stock immediately prior to such transaction beneficially own, directly or indirectly, immediately after such transaction, shares of the surviving, continuing or acquiring corporation’s Voting Stock representing more than 50% of the total outstanding voting power of all outstanding classes of Voting Stock of the surviving, continuing or acquiring corporation in substantially the same proportions (relative to each other) as immediately prior to such transaction;



(iii) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(iv) the Common Stock (or other common stock or depositary shares or receipts in respect thereof into which the Notes are then convertible) ceases to be listed or quoted on any of The New York Stock Exchange, NYSE MKT LLC, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market (or any of their respective successors).

An event or transaction described in clause (ii) above will not constitute a Fundamental Change, however, if at least 90% of the consideration received or to be received by the holders of the Common Stock, excluding cash payments for fractional shares or dissenters rights in connection with the transaction or transactions, consists of shares of common stock traded on any of The New York Stock Exchange, NYSE MKT LLC, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market (or any of their respective successors) or which will be so traded or quoted when issued or exchanged in connection with such event or transaction and as a result of such event, transaction or series of related transactions, the Notes become convertible or exchangeable into such consideration (excluding cash payments for fractional shares or dissenters rights) as described in Section 9.08 hereof. For the purposes of this definition of "Fundamental Change," any event or transaction that constitutes a Fundamental Change under both clause (i) and clause (ii) above will be deemed to constitute a Fundamental Change solely under clause (ii) of this definition of "Fundamental Change."

"**Global Note**" means a permanent global note that is in the form of the Note attached hereto as Exhibit A and that is registered in the name of the Depositary or the nominee of the Depositary and deposited with the Depositary, the nominee of the Depositary or a custodian appointed by the Depositary or the nominee of the Depositary.

"**Global Notes Legend**" means the legend set forth as such in Exhibit A hereto.

"**Issue Date**" means November 20, 2012.

"**Last Reported Sale Price**" of the Common Stock (or any other security for which a Last Reported Sale Price must be determined) on any Trading Day means the closing sale price per share of the Common Stock (or such other security) (or, if no closing sale price is reported, the average of the last bid price and the last ask price or, if more than one in either case, the average of the average last bid price and the average last ask price) on that Trading Day as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a United States national or regional securities exchange on the relevant Trading Day, the "Last Reported Sale Price" of the Common Stock (or such other security) will be the last quoted bid price per share of the Common Stock (or such other security) in the over-the-counter market on the relevant Trading Day as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid price and the last ask price per share of the Common Stock (or such other security) on the relevant Trading Day from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The "Last Reported Sale Price" will be determined without regard to after-hours trading or any other trading outside of regular trading session hours. Notwithstanding the foregoing, if the Last Reported Sale Price must be determined on any Trading Day for a Unit of Reference Property, the Last Reported Sale Price on such Trading Day for such Unit of Reference Property will be determined in good faith by the Board of Directors.

“**Notes**” means any of the Company’s Variable Interest Convertible Senior Notes due 2019 issued under the Indenture.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Preliminary Prospectus Supplement**” means the Preliminary Prospectus Supplement relating to the offering of the Notes dated November 14, 2012.

“**Pricing Term Sheet**” means the Pricing Term Sheet attached to the Underwriting Agreement as Schedule B thereto.

“**Significant Subsidiary**” means any Subsidiary that is a “significant subsidiary” of the Company within the meaning of Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

“**Stock Price**” means, for any Make-Whole Fundamental Change, (i) if the holders of the Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is of the type described in clause (ii) of the definition of Fundamental Change, the amount of cash paid per share of the Common Stock in such Make-Whole Fundamental Change, and (ii) otherwise, the average of the Last Reported Sales Price of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date for such Make-Whole Fundamental Change.

“**Trading Day**” means a day on which (i) trading in the Common Stock generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange (or the Last Reported Sale Price must be determined for another security), on the principal other United States national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded, and (ii) a Last Reported Sale Price of the Common Stock (or such other security) is available on such securities exchange or market. If the Common Stock (or such other security) is not so listed or traded, “Trading Day” means a Business Day.

“**Transfer Agent**” means, initially American Stock Transfer & Trust Company, LLC, in its capacity as the transfer agent for the Common Stock, and any successor entity acting in such capacity.

“**Trustee**” means the party named as the “Trustee” in the first paragraph of this Supplemental Indenture until a successor replaces it pursuant to the applicable provisions of the Indenture and, thereafter, means such successor. The foregoing sentence will likewise apply to any such subsequent successor or successors.

“**Underwriting Agreement**” means the underwriting agreement, dated November 15, 2012, between the Company and Jefferies & Company, Inc. relating to the Notes.

“**Unit of Reference Property**” means the amount and kind of Reference Property that a holder of one share of the Common Stock would receive in a Merger Event; *provided, however*, that if, in any Merger Event, the holders of the Common Stock may exchange each of their shares of Common Stock for more than one amount and kind of Reference Property and may elect which amounts and kinds of Reference Property they receive, a Unit of Reference Property will consist of the weighted average of the amounts and kinds of Reference Property received by holders of the Common Stock that affirmatively make such an election.

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

Section 1.03 *Other Definitions*. In addition to the definitions listed in Section 1.02 hereof and Sections 1.1 and 1.2 of the Base Indenture (to the extent not superseded by definitions contained herein), the following defined terms are also used herein:

<b>Term Section:</b>	<b>Defined in:</b>
“Act”	1.04
“Additional Shares”	9.07(a)
“Agent Members”	2.02(c)
“Base Indenture”	Preamble
“Conversion Agent”	2.06(a)
“Conversion Date”	9.02(a)
“Conversion Notice”	9.02(a)
“Dividend Interest”	2.04(a)
“Effective Date”	9.05(l)
“Event of Default”	6.01
“Ex-Dividend Date”	9.05(l)
“Expiration Date”	9.05(d)
“Fixed Interest”	2.04(a)
“Fundamental Change Notice”	3.02(a)
“Fundamental Change Notice Date”	3.02(a)
“Fundamental Change Repurchase Date”	3.01(c)
“Fundamental Change Repurchase Notice”	3.03(a)
“Fundamental Change Repurchase Price”	3.01(b)
“Indenture”	Preamble
“Interest Payment Date”	2.04(a)

<b>Term Section:</b>	<b>Defined in:</b>
“Make-Whole Fundamental Change”	9.07(a)
“Make-Whole Fundamental Change Effective Date”	9.07(b)
“Maturity Date”	2.04(a)
“Merger Event”	9.08(a)
“Paying Agent”	2.06(a)
“Payment Default”	6.01(vii)
“Reference Property”	9.08(a)
“Record Date”	9.05(l)
“Register”	2.06(a)
“Registrar”	2.06(a)
“Regular Record Date”	2.04(a)
“Reorganization Event”	5.01
“Reorganization Successor Corporation”	5.01(a)
“Reporting Event of Default”	6.04(a)
“Special Interest”	6.04(a)
“Spin-Off”	9.05(c)
“Supplemental Indenture”	Preamble
“Temporary Notes”	2.11
“Total Interest”	2.04(a)
“Valuation Period”	9.05(c)

Section 1.04 *Rules of Construction*. In addition to the rules of construction provided in Section 1.4 of the Base Indenture, the following rules of construction also apply to the provisions contained herein:

- (1) “**including**” means including, without limitation;
- (2) “may” is not mandatory and shall not create any limitation;
- (3) all references to \$, dollars, cash payments or money refer to United States currency; and
- (4) unless the context requires otherwise, all references to payments of interest on the Notes will include any Special Interest payable pursuant to Section 6.04 hereof and additional interest payable pursuant to Section 2.04 hereof.

Section 1.05 *Acts of Holders*. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action will become effective when such instrument or instruments are delivered to the Trustee and to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Supplemental Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.05.

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

The ownership of the Notes shall be proved by the Register.

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

If the Company will solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company will have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the Close of Business on such record date will be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes will be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date will be deemed effective unless it will become effective pursuant to the provisions of this Supplemental Indenture not later than six months after the record date.

## **ARTICLE 2 THE NOTES**

Article 2 (The Securities) of the Base Indenture is hereby amended and restated in full, with respect to the Notes, to read as follows:

Section 2.01 *Notes Designation, Amount and Issuance of Notes.* The Notes will be designated as "Variable Interest Convertible Senior Notes due 2019." The aggregate principal amount of Notes that initially may be authenticated and delivered under this Supplemental Indenture is limited to \$230,000,000. From time to time, the Company may, without the consent of the Holders, issue additional Notes under the Indenture with the same terms (except for original issuance date and, possibly, the initial interest accrual date and initial Interest Payment Date) and with the same CUSIP numbers as the Notes issued on the Issue Date in an unlimited aggregate principal amount; *provided*, however, that if such additional Notes are not fungible with the Notes issued on the Issue Date for federal income tax purposes, they will have a separate CUSIP number. From time to time, the Company may issue and execute, and the Trustee may authenticate, Notes delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.09, 2.10, 2.11, 3.06 and 9.02(c) hereof. The registered Holder of a Note will be deemed as the owner of the Note for all purposes under the Indenture.

Section 2.02 *Form of Notes.*

(a) *General.* The Notes will be substantially in the form of Exhibit A hereto, but may include any notations, legends or endorsements required by any applicable law (or regulation promulgated thereunder), stock exchange rule or usage, or any insertions, omissions or other variations otherwise permitted or required by the Indenture. Whenever any such notation, legend or endorsement, or any such insertion, omission or other variation is applicable to a Note, the Company will provide such notation, legend or endorsement, or such insertion, omission or other variation to the Trustee in writing.

Each Note will bear a Trustee's certificate of authentication substantially in the form set forth in Exhibit A hereto.

Notes that are Global Notes will bear the Global Notes Legend and the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of the Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent that any provision of any Note conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and control.

(b) *Initial and Subsequent Notes.* The Notes initially will be issued in global form, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee, at its Corporate Trust Office, as custodian for the Depository. Except to the extent provided in Section 2.09(c) hereof, all Notes will be represented by one or more Global Notes.

(c) *Global Notes.* Each Global Note will represent the aggregate principal amount of then outstanding Notes endorsed thereon and provide that it represents such aggregate principal amount of then outstanding Notes, which aggregate principal amount may, from time to time, be reduced or increased to reflect transfers, exchanges, conversions, redemptions or repurchases by the Company.

Only the Trustee, or the custodian holding such Global Note for the Depository, at the direction of the Trustee, may endorse a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of then outstanding Notes represented thereby, and whenever the Holder of a Global Note delivers instructions to the Trustee to increase or decrease the aggregate principal amount of then outstanding Notes represented by a Global Note in accordance with Section 2.09 hereof, the Trustee, or the custodian holding such Global Note for the Depository, at the direction of the Trustee, will endorse such Global Note to reflect such increase or decrease in the aggregate principal amount of then outstanding Notes represented thereby. None of the Trustee, the Company or any agent of the Trustee or the Company will have any responsibility or bear any liability for any aspect of the records relating to, or payments made on account of, the ownership of any beneficial interest in a Global Note or with respect to maintaining, supervising or reviewing any records relating to such beneficial interest.

Neither any member of, or participant in, the Depository (collectively, the “**Agent Members**”) nor any other person on whose behalf an Agent Member may act will have any rights under the Indenture with respect to any Global Note or under such Global Note, and the Company, the Trustee and any agent of the Company or the Trustee, may, for all purposes, treat the Depository, or its nominee, if any, as the absolute owner and Holder of such Global Note.

The Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action that Holders are entitled to take under the Indenture or the Notes, and, notwithstanding the foregoing, nothing herein will prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or such nominee, as the case may be, or impair, as between the Depository, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such persons governing the exercise of the rights of a Holder of any interest in any Note.

Neither the Trustee nor any of its agents shall have any responsibility or liability for any actions taken or not taken by the Depository.

Section 2.03 *Denomination of Notes.* The Notes will be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples of \$1,000 in excess thereof.

Section 2.04 *Payments.*

(a) *General.*

(i) *Payment at Maturity.* Unless earlier paid or deemed paid pursuant to any of Sections 3.05 or 9.03 hereof, the Notes will mature on January 15, 2019 (the “**Maturity Date**”) and, on the Maturity Date, the Company will pay each Holder of Notes \$1,000 in cash for each \$1,000 principal amount of Notes held, together with accrued and unpaid interest on such Notes to, but not including, the Maturity Date.

(ii) *Payment of Interest.* The Notes will accrue cash interest at an annual rate of 2.50% (the “**Fixed Interest**”), with an additional amount of cash interest payable on the Notes on each Interest Payment Date equal to the product of (i) the total amount of cash dividends and cash distributions per share actually paid by the Company on the Common Stock during the prior three-month period ending on the Regular Record Date for such interest payment and (ii) the total number of shares of the Common Stock into which the Notes are convertible on such Regular Record Date (the “**Dividend Interest**,” together with the Fixed Interest, the “**Total Interest**”). Notwithstanding the foregoing, however, the interest payable on each Interest Payment Date will be the higher of (i) the Total Interest and (ii) 7.50% per annum. Interest on the Notes will accrue from the Issue Date or from the most recent date to which interest has been paid or duly provided for, to the date the principal amount of such Note is paid or deemed paid, as the case may be, pursuant to clause (i) of this Section 2.04(a) or any of Sections 3.05 or 9.03 hereof.

In addition, if the Notes would otherwise constitute “applicable high yield discount obligations” within the meaning of Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, on each Interest Payment Date on or after January 15, 2018, the Company will pay additional interest on a Note in an amount equal to the amount required to be paid to prevent such Note from being treated as an applicable high yield discount obligation.

Interest will be payable quarterly in arrears in cash on January 15, April 15, July 15 and October 15 of each year (each, an “**Interest Payment Date**”), beginning January 15, 2013, to the Holder of each such Note as of the Close of Business on the January 1, April 1, July 1 or October 1, as the case may be, immediately preceding the applicable Interest Payment Date (each such date, a “**Regular Record Date**”), regardless of whether such Note is converted or repurchased after such Regular Record Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Payments of the Fundamental Change Repurchase Price, principal and interest that are not made when due will accrue interest at an annual rate equal to the then-applicable interest rate plus one percent from the applicable payment date.

(iii) *Method of Payment.* The Company will pay the principal of, the Fundamental Change Repurchase Price for, and the interest on, any Global Note to the Depositary by wire transfer of immediately available funds on the relevant payment date.

The Company will pay the principal of, the Fundamental Change Repurchase Price for, and any interest due on the Maturity Date on, any Definitive Note in cash to the applicable Holder of such Note at the office of the Paying Agent on the relevant payment date.

The Company will pay interest on any Definitive Note (except interest due on the Maturity Date) to the applicable Holder of such Note (i) if such Holder holds \$5,000,000 or less aggregate principal amount of Notes, by check mailed to such Holder’s registered address, and (ii) if such Holder holds more than \$5,000,000 aggregate principal amount of Notes, (A) by check mailed to such Holder’s registered address or, (B) if such Holder delivers to the Registrar a written request that the Company make such payments by wire transfer to an account of such Holder within the United States, for each interest payment corresponding to each Regular Record Date occurring during the period beginning on the date on which such Holder delivered such request and ending on the date, if any, on which such Holder delivers to the Registrar a written instruction to the contrary, by wire transfer of immediately available funds to the account specified by such Holder.



(b) *Interest Rights Preserved.* Subject to the provisions of Sections 2.09 and 2.10 hereof, to the extent applicable, each Note delivered under the Indenture upon registration of transfer of, or in exchange for, or in lieu of, any other Note will carry any rights to the payment and accrual of interest that were carried by the relevant surrendered Note, Notes, or portion(s) thereof.

Section 2.05 *Execution and Authentication.*

(a) *In General.* A Note will be valid only if executed by the Company and authenticated by the Trustee.

(b) *Execution.* A Note will be deemed to have been executed by the Company when an Officer signs such Note on behalf of the Company. The Officer's signature may be manual or facsimile, and the validity of such Officer's signature will not turn on whether such signatory remains an Officer at the time the Trustee authenticates such Note.

(c) *Authentication.* A Note will be deemed authenticated when an authorized signatory of the Trustee manually signs the certificate of authentication on such Note. An authorized signatory of the Trustee will manually sign the certificate of authentication on a Note only if (i) the Company delivers such Note to the Trustee, (ii) such Note is validly executed by the Company in accordance with Section 2.05(b) hereof, and (iii) the Company delivers, before or with such Note, a Company Order setting forth (A) a request that the Trustee authenticate such Note; (B) the principal amount of such Note; (C) the name of the Holder of such Note, (D) the date on which such Note is to be authenticated; and (E) any insertions, omissions or other variations, notations, legends or endorsements permitted under Section 2.02 hereof and applicable to such Note. If the Company Order also specifies that the Trustee must deliver such Note to the Holder or the Depository, the Trustee will promptly deliver such Note in accordance with such Company Order.

The Trustee may appoint an authenticating agent. If the Trustee appoints an authenticating agent and such authenticating agent is acceptable to the Company, such authenticating agent may authenticate a Note whenever the Trustee may authenticate such Note. For purposes of this provision, each reference in this Supplemental Indenture to authentication by the Trustee will be deemed to include authentication by an authenticating agent, and an authenticating agent will have the same rights to deal with the Company as the Trustee would have if it were performing the duties that the authentication agent was validly appointed to undertake.

Section 2.06 *Registrar, Paying Agent and Conversion Agent.*

(a) *General.* The Company will maintain an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the "**Registrar**"), an office or agency where the Notes may be presented for payment or repurchase (the "**Paying Agent**"), an office or agency where the Notes may be presented for conversion (the "**Conversion Agent**") and an office or agency where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served.

The Registrar will keep a register for the recordation of, and will record, the names and addresses of Holders, the Notes held by each Holder and the transfer, exchange, repurchase, and conversion of Notes (the “**Register**”). The entries in the Register will be conclusive, and the parties may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Holder hereunder for all purposes of the Indenture. The Register will be in written form or in any form capable of being converted into written form within a reasonably prompt period of time.

The Company may have one or more registrars, one or more paying agents, one or more conversion agents and one or more places where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served. Before appointing any Registrar, Paying Agent or Conversion Agent that is not otherwise a party to this agreement, the Company will enter into an appropriate agency agreement with such Registrar, Paying Agent or Conversion Agent, as the case may be, which agency agreement will implement the provisions of the Indenture that relate to such replacement or additional registrar, paying agent or conversion agent, as the case may be. The term Registrar includes any additional registrars named pursuant to this Supplemental Indenture. The term Paying Agent includes any additional paying agent named pursuant to this Supplemental Indenture. The term Conversion Agent includes any additional conversion agent named pursuant to this Supplemental Indenture.

(b) *Initial Designations.* The Company initially appoints the Trustee as each of the Registrar, the Paying Agent and the Conversion Agent, and the Notes initially may be presented for registration of transfer or for exchange, payment, repurchase, and conversion to the Trustee, in its capacity as the Registrar, Paying Agent or Conversion Agent, as the case may be, at the Corporate Trust Office. Notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served at the Corporate Trust Office.

(c) *Removal, Resignation and Replacement.* The Company may remove any Registrar, Paying Agent or Conversion Agent by delivering written notice to the Trustee and to such Registrar, Paying Agent or Conversion Agent; *provided, however*, that no such removal will become effective unless (i) after such removal, at least one Registrar, Paying Agent and Conversion Agent will remain; (ii) a successor has accepted appointment as Registrar, Paying Agent or Conversion Agent, as the case may be, the Company and such successor have entered into an agency agreement in accordance with Section 2.06(a) hereof, and the Company has delivered written notice of such appointment and a copy of such agency agreement to the Trustee, or (iii) the Company has delivered written notice to the Trustee that the Trustee will serve as the successor Registrar, Paying Agent or Conversion Agent, as the case may be, in accordance with Section 2.06(e) hereof; and *provided, further*, that the right to effect any such change or removal in no way relieves the Company of its obligation to maintain a Registrar, Paying Agent and Conversion Agent in the continental United States. The Company may also change the place where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served, or reduce the number of such places; *provided, however*, that the right to effect any such change or reduction in no way relieves the Company of its obligation to maintain a place in the continental United States where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served.

In addition, the Registrar, Paying Agent or Conversion Agent may resign at any time by delivering written notice of such resignation to each of the Company and the Trustee; *provided, however*, that if the Trustee is serving as Registrar, Paying Agent or Conversion Agent, the Trustee may resign from such capacity only if it also resigns as Trustee in accordance with Section 7.8 of the Base Indenture. If, after any such resignation, at least one Registrar, Paying Agent and Conversion Agent does not remain, the Trustee will immediately be deemed to serve such empty office or agency in accordance with Section 2.06(d) hereof.

(d) *Failure to Maintain an Office or Agency.* If the Company fails to maintain in the continental United States, a Registrar, Paying Agent, Conversion Agent or place where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served, the Trustee will act as the Registrar, Paying Agent, Conversion Agent, or place, as the case may be, and the office where the Notes may be presented for registration of transfer or for exchange, presented for payment, repurchased or surrendered for conversion, or place where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served, as the case may be, will be the Corporate Trust Office. In each such case, the Trustee will be entitled to compensation for such action pursuant to Section 7.7 of the Base Indenture.

(e) *Notices.* Promptly upon the effectiveness of any removal or subsequent appointment of a Registrar, Paying Agent or Conversion Agent, or upon any change in the location of the office of any Registrar, Paying Agent or Conversion Agent, or of the place where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served, the Company will deliver to the Trustee notice of such removal, appointment or change in location, as the case may be, which notice will include a brief description of the removal, appointment or change in location, as the case may be, and list the name and address of each continuing (and newly appointed, if applicable) Registrar, Paying Agent and Conversion Agent and place where notices and demands to, or upon, the Company with respect to the Notes and the Indenture may be served.

Section 2.07 *Money and Securities Held in Trust.* Except as otherwise provided herein, by no later than 10:00 a.m., New York City time, on each due date for a payment on any Note, the Company will deposit with the Paying Agent an amount of money in immediately available funds, if deposited on the due date, sufficient to make such payment when due.

The Company will require that each Paying Agent (other than the Trustee, if the Trustee is a Paying Agent) agree in writing that it will (i) segregate all money and securities it holds for making payments with respect to the Notes; (ii) hold such money and securities in trust for the benefit of Holders; and (iii) notify the Trustee, in writing, as promptly as practicable, if the Company defaults in making any payment on the Notes.

If any such payment default has occurred and is continuing, the Paying Agent will, upon receiving a written request from the Trustee, forthwith pay to the Trustee all of the money and securities it holds in trust. In addition, at any time, the Company may require a Paying Agent to pay all money and securities that it holds for making payments with respect to the Notes to the Trustee and to account for any money and securities it has disbursed. After delivering all of such money and securities to the Trustee pursuant to this Section 2.07, the Paying Agent will have no further liability for such money and securities.

Section 2.08 *Holder Lists.* The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee, promptly after each Regular Record Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.09 *Transfer and Exchange.*

(a) *Provisions Applicable to All Transfers and Exchanges.*

(i) Subject to the restrictions set forth in this Section 2.09, Definitive Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Register.

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

(iii) No service charge will be imposed on any Holder of a Definitive Note or any owner of a beneficial interest in a Global Note for any exchange or registration of transfer, but each of the Company, the Trustee or the Registrar may require such Holder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

(iv) Unless the Company specifies otherwise, none of the Company, the Trustee or the Registrar will be required to exchange or register a transfer of any Note (i) surrendered for conversion, except to the extent that any portion of such Note has not been surrendered for conversion, or (ii) subject to a Fundamental Change Repurchase Notice validly delivered pursuant to Section 3.03 hereof, except to the extent any portion of such Note is not subject to a Fundamental Change Repurchase Notice.

(v) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Supplemental 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 Supplemental Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) *In General; Transfer and Exchange of Beneficial Interests in Global Notes.* So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, except to the extent required by Section 2.09(c) hereof:

(i) all Notes will be represented by one or more Global Notes;

(ii) every transfer and exchange of a beneficial interest in a Global Note will be effected through the Depositary in accordance with the Applicable Procedures and the provisions of this Supplemental Indenture; and

(iii) each Global Note may be transferred only as a whole and only (A) by the Depositary to a nominee of the Depositary, (B) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary or (C) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) *Transfer and Exchange of Global Notes.*

(i) Notwithstanding any other provision of this Supplemental Indenture, each Global Note will be exchanged for Definitive Notes if the Depositary delivers notice to the Company that:

(A) the Depositary is unwilling or unable to continue to act as Depositary; or

(B) the Depositary is no longer registered as a clearing agency under the Exchange Act; and,

in each case, the Company promptly delivers a copy of such notice to the Trustee and the Company fails to appoint a successor Depositary within 90 days after receiving notice from the Depositary.

In each such case, (1) each Global Note will be deemed surrendered to the Trustee for cancellation, (2) the Trustee will promptly cancel each such Global Note in accordance with the Applicable Procedures, (3) the Company, (x) in accordance with Section 2.05 hereof, will promptly execute, for each beneficial interest in each Global Note so cancelled, an aggregate principal amount of Definitive Notes equal to the aggregate principal amount of such beneficial interest, registered in such name and authorized denominations as the Depositary specifies, and bearing such legends as such Definitive Notes are required to bear under Sections 2.02 hereof, and, (y) as provided in Section 2.05(c) hereof, will promptly deliver to the Trustee such Definitive Notes and a Company Order including the information specified in Section 2.05(c) hereof with respect to such Definitive Notes, and (4) the Trustee, upon receipt of such Definitive Notes and such Company Order, in accordance with Section 2.05 hereof, will promptly authenticate, and deliver to the Holder specified in such Company Order, such Definitive Notes.

(ii) In addition:

(A) if an Event of Default has occurred and is continuing, any owner of a beneficial interest in a Global Note may exchange such beneficial interest for Definitive Notes by delivering a written request to the Company, the Registrar and the Trustee; or

(B) at any time, the Company may, in its sole discretion, at the request of the owner of a beneficial interest in a Global Note, permit the exchange of such owner's beneficial interest, by delivering a written request to the Registrar, the Trustee and the owner of such beneficial interest.

In each case, (1) upon receipt of such request, the Registrar will promptly deliver written notice of such request to the Company and the Trustee, which notice must identify the owner of the beneficial interest to be exchanged, the aggregate principal amount of such beneficial interest and the CUSIP number of the relevant Global Note; (2) the Trustee, upon receipt of such notice, will promptly cause the aggregate principal amount of such Global Note to be reduced by the aggregate principal amount of the beneficial interest to be so exchanged in accordance with the Applicable Procedures, (3) the Company (x) in accordance with Section 2.05 hereof, will promptly execute, for such beneficial interest, a Definitive Note having aggregate principal amount equal to the aggregate principal amount of such beneficial interest, registered in the name of the owner specified in the notice delivered by the Registrar, and bearing such legends as such Definitive Note is required to bear under Sections 2.02 hereof, and, (y) as provided in Section 2.05(c) hereof, will promptly deliver to the Trustee such Definitive Note and a Company Order including the information specified in Section 2.05(c) hereof with respect to such Definitive Note, and (4) the Trustee, upon receipt of such Definitive Note and such Company Order, will promptly, in accordance with Section 2.05 hereof, authenticate, and deliver to the Holder specified in such Company Order, such Definitive Note. If, after such exchange, all of the beneficial interests in a Global Note have been exchanged for Definitive Notes, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Applicable Procedures.

(d) *Transfer and Exchange of Definitive Notes.* If Definitive Notes are issued, a Holder may:

(i) transfer a Definitive Note by: (A) surrendering such Definitive Note for registration of transfer to the Registrar, together with any endorsements or instruments of transfer reasonably required by any of the Company, the Trustee and the Registrar; and (B) satisfying any other requirements for such transfer set forth in this Section 2.09 hereof. Upon the satisfaction of conditions (A) and (B), (1) the Company, (x) in accordance with Section 2.05 hereof, will promptly execute a new Definitive Note, in the name of the designated transferee, having an aggregate principal amount equal to that of the transferred Definitive Note and bearing such legends as such Definitive Note is required to bear under Sections 2.02 hereof, and (y) as provided in Section 2.05(c) hereof, will promptly deliver to the Trustee such Definitive Note and a Company Order including the information specified in Section 2.05(c) with respect to such Definitive Note, and (2) the Trustee, upon receipt of such Definitive Note and such Company Order, will promptly, in accordance with Section 2.05 hereof, authenticate, and deliver to the Holder specified in such Company Order, such Definitive Note.

(ii) exchange one or more Definitive Notes for one or more other Definitive Notes of any authorized denominations, and aggregate principal amount equal to the aggregate principal amount of the one or more Definitive Notes to be exchanged, by surrendering such one or more Definitive Notes, together with any endorsements or instruments of transfer reasonably required by any of the Company, the Trustee and the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 2.06 hereof. Whenever a Holder so surrenders one or more Definitive Notes for exchange, (1) the Company, (x) in accordance with Section 2.05 hereof, will promptly execute one or more new Definitive Notes, each in the name of such Holder, in the authorized denomination or denominations that such Holder requested (which authorized denomination or authorized denominations, as the case may be, must in aggregate, equal the aggregate principal amount of the one or more Definitive Notes to be exchanged), and bearing a unique registration number not contemporaneously outstanding and such legends as such Definitive Note is required to bear under Section 2.02 hereof, and (y) as provided in Section 2.05(c) hereof, will promptly deliver to the Trustee each such Definitive Note and a Company Order including the information specified in Section 2.05(c) with respect to each such Definitive Note, and (2) the Trustee, upon receipt of each such Definitive Note and such Company Order, will promptly, in accordance with Section 2.05 hereof, authenticate, and deliver to the Holder specified in such Company Order, each such Definitive Note.

(iii) transfer or exchange a Definitive Note for a beneficial interest in a Global Note by (A) surrendering such Definitive Note for registration of transfer or exchange, together with any endorsements or instruments of transfer reasonably required by any of the Company, the Trustee and the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 2.06 hereof; (B) satisfying any other requirements for such transfer set forth in this Section 2.09 hereof; and (C) providing written instructions to the Trustee to make an adjustment in its books and records with respect to the applicable Global Note to reflect an increase in the aggregate principal amount of the Notes represented by such Global Note, which instructions will contain information regarding the Depository account to be credited with such increase. Upon the satisfaction of conditions (A), (B), and (C), the Trustee (1) will promptly cancel such Definitive Note and, (2) will promptly cause the aggregate principal amount of Notes represented by such Global Note to be increased by the aggregate principal amount of such Definitive Note, and credit, or cause to be credited, the account of the person specified in the instructions provided by the exchanging Holder in an amount equal to the aggregate principal amount of such Definitive Note, in each case, in accordance with the Applicable Procedures. If at the time of such exchange, no Global Notes are then outstanding, the Company, (x) in accordance with Section 2.05 hereof, will promptly execute and deliver to the Trustee, a new Global Note registered in the name of the Depository or a nominee of the Depository, as the case may be, having the appropriate aggregate principal amount, and bearing such legends as such Global Note is required to bear under Section 2.02 hereof, and (y) as provided in Section 2.05(c) hereof, will promptly deliver to the Trustee such Global Note and a Company Order including the information specified in Section 2.05(c) with respect to such Global Note, and (2) the Trustee, upon receipt of such Global Note and such Company Order, will promptly, in accordance with Section 2.05 hereof, authenticate, and deliver to the Depository, its nominee, or a custodian of the Depository or its nominee, as the case may be, such Global Note.

Section 2.10 *Replacement Notes.* If (i) a mutilated Note is surrendered to the Registrar or (ii) the Holder of a Note claims that such Note has been lost, destroyed or stolen and provides the Company and the Trustee with (A) evidence of such loss, theft or destruction that is satisfactory to the Company and the Trustee and (B) such amount or kind of security or indemnity that either of the Company or the Trustee reasonably require to protect itself from any loss that it may suffer upon replacement of such Note, then, in either case, unless the Company or the Trustee receives written notice that such Note has been acquired by a bona fide purchaser, the Company will, in accordance with Section 2.05 hereof, promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, in accordance with Section 2.05 hereof, will promptly authenticate and deliver, in the name of such Holder, a replacement Note having the same aggregate principal amount as the Note that was mutilated or claimed to be lost, destroyed or stolen, with a certificate number not contemporaneously outstanding. Upon the issuance of any new Note under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.10 in exchange for any mutilated Note, or in lieu of any destroyed, lost or stolen Note, will constitute an original contractual obligation of the Company and any other obligor upon the Notes, regardless of whether the mutilated, destroyed, lost or stolen Note will be at any time enforceable by anyone, and will be entitled to all benefits of (and will be subject to all the limitations set forth in) the Indenture equally and proportionately with any and all other Notes duly issued hereunder.

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

Section 2.11 *Temporary Notes.* Until Definitive Notes are ready for delivery, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee will, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed) (“**Temporary Notes**”). Temporary Notes will be issuable in any authorized denomination, and substantially in the form of Definitive Notes, 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 will 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 Definitive Notes. Without unreasonable delay the Company will prepare, execute and deliver to the Trustee or such authenticating agent Definitive Notes (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 2.06 hereof and the Trustee or such authenticating agent will authenticate and deliver, in exchange for such Temporary Notes, Definitive Notes having an aggregate principal amount equal to such Temporary Notes. Until so exchanged, the Temporary Notes will, in all respects, be entitled to the same benefits and subject to the same limitations under the Indenture as Definitive Notes authenticated and delivered hereunder.

Section 2.12 *Cancellation.* At any time, the Company may deliver Notes to the Trustee for cancellation. Whenever any Note is surrendered to the Registrar, Conversion Agent or Paying Agent for registration of transfer, exchange, conversion, repurchase, or payment, the Registrar, Conversion Agent or Paying Agent, as the case may be, will promptly forward such Note to the Trustee. Upon receipt of any such Note, the Trustee, in its customary manner, will promptly cancel and dispose of such Note and deliver a certificate of such cancellation to the Company upon written request of the Company. The Company may not issue new Notes to replace Notes that it has repurchased, paid or delivered to the Trustee for cancellation or that a Holder has converted pursuant to Article 9 hereof.



Section 2.13 *Outstanding Notes.* At any time, Notes outstanding are limited to all Notes authenticated by the Trustee except (i) those cancelled by it, (ii) those delivered to it for cancellation and (iii) those deemed not outstanding under Sections 3.05 and 9.02 hereof and clauses (a) and (b) of this Section 2.13.

(a) If a Note is replaced pursuant to Section 2.10 hereof, such Note will cease to be outstanding at the time of its replacement unless the Trustee and the Company receive proof satisfactory to them that such Note is held by a bona fide purchaser.

(b) In addition, if the Company or an Affiliate of the Company holds a Note, such Note will be disregarded and deemed not to be outstanding for purposes of determining whether the Holders of the requisite aggregate principal amount of Notes have given or concurred in any request, demand, authorization, direction, notice, consent, waiver or other action hereunder, except that for the purposes of determining whether the Trustee shall be protected in conclusively relying on any such request, demand, authorization, direction, notice, consent or waiver, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such request, demand, authorization, direction, notice, consent or waiver with respect to the Notes and that the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor. Subject to the foregoing, only Notes outstanding at the time of any such determination will be considered in such determination (including determinations pursuant to Articles 6 and 9 hereof).

Section 2.14 *Persons Deemed Owners.* Prior to due presentment of a Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the person in whose name such Note is registered in the Register as the owner of such Note for the purpose of receiving the payment of the principal, the Fundamental Change Repurchase Price of, and interest, if any, on, such Note, for the purpose of conversion of such Note and for all other purposes whatsoever with respect to such Note, and none of the Company, the Trustee or any agent of the Company or the Trustee will be affected by any notice to the contrary.

Section 2.15 *Repurchases.* The Company may, from time to time, at its option, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders.

Section 2.16 *CUSIP and ISIN Numbers.*

(a) The Company in issuing the Notes may use "CUSIP" or "ISIN" numbers (if then generally in use). The Company will promptly notify the Trustee in writing of any change in the CUSIP or ISIN numbers.

(b) In addition, if, when any shares of Common Stock are issued upon conversion of a Note, CUSIP and ISIN numbers are generally in use, the Company will use CUSIP and ISIN numbers with respect to such shares of Common Stock.

(c) Whenever any of the CUSIP numbers with respect to the Notes or the shares of Common Stock issuable upon conversion of the Notes changes, ceases to be used, or begins to be used, the Company will deliver prompt written notice of such change, cessation, or beginning to each of the Trustee and the Holders.

**ARTICLE 3**  
**REPURCHASE AT THE OPTION OF THE HOLDER**

Article 3 (Redemption) of the Base Indenture is hereby amended and restated in full, with respect to the Notes, to read as follows:

Section 3.01 *Fundamental Change Permits Holders to Require the Company to Repurchase the Notes.*

(a) *General.* If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder will have the right, at such Holder's option, to require the Company to repurchase for cash all, or any portion, of its Notes in principal amount equal to \$1,000 or an integral multiple of \$1,000 on the Fundamental Change Repurchase Date for such Fundamental Change for an amount of cash equal to the corresponding Fundamental Change Repurchase Price.

(b) *Fundamental Change Repurchase Price.* The "**Fundamental Change Repurchase Price**" means, for any Notes to be repurchased on any Fundamental Change Repurchase Date, a price equal to 100% of the principal amount of such Notes, plus accrued and unpaid interest, if any, on such Notes to, but excluding, such Fundamental Change Repurchase Date; *provided, however,* that if a Fundamental Change Repurchase Date occurs after a Regular Record Date, but on or prior to the corresponding Interest Payment Date, the Company will pay the full accrued and unpaid interest on such Notes on such Interest Payment Date to the Holder of such Notes as of the Close of Business on the corresponding Regular Record Date and the Fundamental Change Repurchase Price will equal 100% of the principal amount of such Notes.

(c) *Fundamental Change Repurchase Date.* The "**Fundamental Change Repurchase Date**" means, for any Fundamental Change, the date specified by the Company in the Fundamental Change Notice for such Fundamental Change, which date will be not less than 20 Business Days, nor more than 35 Business Days, following the Fundamental Change Notice Date for such Fundamental Change.

Section 3.02 *Fundamental Change Notice.*

(a) *General.* On or before the 15th Business Day after the effective date of a Fundamental Change, the Company will deliver, or cause to be delivered, to each Holder (and to any beneficial owners of a Global Note, as required by applicable law), the Trustee and the Paying Agent written notice of the occurrence of such Fundamental Change and the resulting fundamental change repurchase right (the "**Fundamental Change Notice**," and the date of such mailing or delivery, the "**Fundamental Change Notice Date**"). Simultaneously with sending any Fundamental Change Notice to the Holders, the Trustee and the Paying Agent, the Company will publish a notice containing the same information as the Fundamental Change Notice on its website or through such other public medium as the Company may use at such time.

For any Fundamental Change, the Fundamental Change Notice corresponding to such Fundamental Change will specify:

- (A) the events causing such Fundamental Change;
- (B) the effective date of such Fundamental Change;
- (C) the Fundamental Change Repurchase Date for such Fundamental Change;
- (D) the last date on which a Holder may exercise its right to require the Company to repurchase its Notes as a result of such Fundamental Change under this Article 3, which will be the Business Day immediately preceding the Fundamental Change Repurchase Date;
- (E) the procedures that a Holder must follow to require the Company to repurchase a Note;
- (F) the Fundamental Change Repurchase Price for each \$1,000 principal amount of Notes for such Fundamental Change;
- (G) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (H) if applicable, the Conversion Rate in effect on the Fundamental Change Notice Date for such Fundamental Change and the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Fundamental Change Notice Date;
- (I) if applicable, any adjustments that will be made to the Conversion Rate as a result of such Fundamental Change, including any Additional Shares by which the Conversion Rate will be increased pursuant to Section 9.07 hereof for a Holder that converts a Note “in connection with” such Fundamental Change;
- (J) if applicable, that following delivery of a Fundamental Change Repurchase Notice for Notes by a Holder such Notes may be converted only if such Holder withdraws such Fundamental Change Repurchase Notice in accordance with the terms of the Indenture;
- (K) the procedures for withdrawing a Fundamental Change Repurchase Notice;
- (L) that if a Note or portion of a Note is subject to a validly delivered Fundamental Change Repurchase Notice, unless the Company defaults in paying the Fundamental Change Repurchase Price for such Note or portion of a Note, interest, if any, on such Note or portion of a Note will cease to accrue on and after the Fundamental Change Repurchase Date; and

(M) the CUSIP and ISIN number(s) of the Notes.

(b) *Failure or Defect.* Notwithstanding anything provided elsewhere in the Indenture, neither the failure of the Company to deliver a Fundamental Change Notice nor a defect in a Fundamental Change Notice delivered by the Company will limit the repurchase rights of any Holder under this Article 3 or impair or otherwise affect the validity of any proceedings relating to the repurchase of any Note pursuant to this Article 3.

Section 3.03 *Fundamental Change Repurchase Notice.*

(a) *General.* To exercise its repurchase rights under Section 3.01(a) hereof with respect to any Fundamental Change, a Holder must deliver to the Paying Agent, on or before the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date, subject to extension to comply with applicable law:

(A) a duly completed "Form of Fundamental Change Repurchase Notice" in the form of Attachment 2 of the Notes that such Holder is tendering for repurchase (a "**Fundamental Change Repurchase Notice**"); and

(B) the Notes that such Holder is tendering for repurchase, (A) by book-entry transfer if such Notes are Global Notes, or (B) by physical delivery, if such Notes are Definitive Notes, in each case, together with any endorsements or other documents reasonably requested by the Paying Agent, the Trustee or the Company.

(b) *Contents of Fundamental Change Repurchase Notice.* The Fundamental Change Repurchase Notice for any Note must state:

(i) if such Note is to be repurchased in part, the principal amount of such Note to be repurchased, which principal amount must equal \$1,000 or an integral multiple of \$1,000 in excess thereof;

(ii) that such Note will be repurchased by the Company pursuant to the provisions of this Article 3 hereof; and

(iii) if such Note is a Definitive Note, the certificate number of such Note.

If the Notes to be repurchased are Global Notes, the Fundamental Change Repurchase Notice for such Notes must comply with the Applicable Procedures.

(c) *Notice to Company.* If any Holder validly delivers to the Paying Agent a Fundamental Change Repurchase Notice with respect to a Note or any portion of a Note, the Paying Agent will promptly deliver to the Company a copy of such Fundamental Change Repurchase Notice.

(d) *Effect of Improper Notice.* Unless and until the Paying Agent receives a validly endorsed and delivered Fundamental Change Repurchase Notice with respect to a Note, together with such Note, in a form that conforms in all material aspects with the description contained in such Fundamental Change Repurchase Notice, the Holder submitting the Notes will not be entitled to receive the Fundamental Change Repurchase Price for such Note.

Section 3.04 *Withdrawal of Fundamental Change Repurchase Notice.*

(a) *General.* After a Holder delivers a Fundamental Change Repurchase Notice with respect to a Note, such Holder may withdraw such Fundamental Change Repurchase Notice with respect to such Note or any portion of such Note in principal amount equal to \$1,000 or an integral multiple of \$1,000 in excess thereof by delivering to the Paying Agent a written notice of withdrawal prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date. Any such withdrawal notice must state:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal pertains, which must equal \$1,000 or an integral multiple of \$1,000 in excess thereof;
- (ii) the principal amount of the Notes, if any, that remains subject to the original Fundamental Change Repurchase Notice, which portion must have a principal amount equal to \$1,000 or an integral multiple of \$1,000 in excess thereof; and
- (iii) if the Notes subject to such Fundamental Change Repurchase Notice were Definitive Notes, the certificate numbers of the Notes to be withdrawn.

If the Notes to be withdrawn are Global Notes, a Holder must deliver its notice of withdrawal in compliance with the Applicable Procedures.

(b) *Return of Note.* Upon receipt of a validly delivered withdrawal notice, the Paying Agent will promptly (i) if such notice pertains to a Definitive Note or a portion of a Definitive Note, return such Note or portion of a Note to such Holder, in the amount specified in such withdrawal notice; and, (ii) if such notice pertains to a beneficial interest in a Global Note, in compliance with the Applicable Procedures, deem to be cancelled any instructions for book-entry transfer of such beneficial interest, in the amount specified in such withdrawal notice.

(c) *Notice to Company.* If any Holder validly delivers to the Paying Agent a notice of withdrawal with respect to a Note or any portion of a Note, the Paying Agent will promptly deliver to the Company a copy of such notice of withdrawal.

Section 3.05 *Effect of Fundamental Change Repurchase Notice.*

(a) *General.* If a Holder validly delivers to the Paying Agent a Fundamental Change Repurchase Notice (together with all necessary endorsements) with respect to a Note, such Holder may no longer convert such Note unless and until such Holder validly withdraws such Fundamental Change Repurchase Notice in accordance with Section 3.04 hereof.

(b) *Timing of Payment.* Promptly following the Paying Agent's receipt of (i) a valid Fundamental Change Repurchase Notice (together with all necessary endorsements) and (ii) the Notes to which such Fundamental Change Repurchase Notice pertains, the Holder of the Notes to which such Fundamental Change Repurchase Notice pertains will be entitled, except to the extent such Holder has validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 3.04 hereof, to receive the Fundamental Change Repurchase Price with respect to such Notes promptly following the later of (i) the Fundamental Change Repurchase Date and (ii)(A) if such Notes are Definitive Notes, the date of delivery of such Notes to the Paying Agent, or (B) if such Notes are Global Notes, the date of book-entry transfer of such Notes to the Paying Agent, or, if such later date is not a Business Day, the Business Day immediately following such later date.

(c) *Effect of Deposit.* If, as of 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date for any Fundamental Change, the Company, in accordance with Section 3.08 hereof, has deposited with the Paying Agent money sufficient to pay the Fundamental Change Repurchase Price for all Notes subject to a Fundamental Change Repurchase Notice validly delivered in accordance with Section 3.03 hereof and not validly withdrawn in accordance with Section 3.04 hereof, at the Close of Business on the Fundamental Change Repurchase Date:

- (1) the Notes to be repurchased will cease to be outstanding and interest will cease to accrue on such Notes (whether or not book-entry transfer of such Notes is made or whether or not such Notes are delivered to the Paying Agent); and
- (2) all other rights of the Holders of such Notes with respect to such Notes (other than the right to receive payment of the Fundamental Change Repurchase Price upon delivery or transfer of such Notes with respect to the Notes) will terminate.

Section 3.06 *Notes Repurchased in Part.* If any Definitive Note is to be repurchased only in part, the Holder must surrender such Note at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder of such Note or such Holder's attorney-in-fact, duly authorized in writing), whereupon the Company, in accordance with Section 2.05 hereof, will promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 2.05 hereof, will promptly authenticate and deliver, to the surrendering Holder, a new Note or Notes of any authorized denomination or denominations requested by such Holder in aggregate principal amount equal to the portion of the principal amount of the Note so surrendered which is not repurchased. If any Global Note is repurchased in part, the Company will instruct the Trustee to decrease the principal amount of such Global Note by the principal amount repurchased.

Section 3.07 *Covenant to Comply with Securities Laws upon Repurchase of Notes.* In connection with any repurchase offer pursuant to a Fundamental Change Notice under this Article 3, the Company will, to the extent applicable, (i) comply with Rule 13e-4 and any other tender offer rules under the Exchange Act that may be applicable at the time of the offer to repurchase the Notes, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with any United States federal and state securities laws applicable to any offer by the Company to repurchase the Notes.

Section 3.08 *Deposit of Fundamental Change Repurchase Price.* Prior to 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Company will deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, will segregate and hold in trust as provided in Section 2.07 hereof) an amount of immediately available funds sufficient to pay the Fundamental Change Repurchase Price of all the Notes or portions thereof that the Company is required to repurchase on such Fundamental Change Repurchase Date.

Section 3.09 *Covenant Not to Repurchase Notes upon Certain Events of Default.*

(a) *General.* Notwithstanding anything to the contrary in this Article 3, the Company will not purchase any Notes under this Article 3 if, as of the Fundamental Change Repurchase Date, the principal amount of the Notes has been accelerated, such acceleration has not been rescinded and such acceleration did not result from a Default that would be cured by the Company's payment of the Fundamental Change Repurchase Price.

(b) *Deemed Withdrawals.* If, on any Fundamental Change Repurchase Date, (i) a Fundamental Change Repurchase Notice for a Note has been validly tendered in accordance with Section 3.03 hereof and has not been validly withdrawn in accordance with Section 3.04 hereof, and (ii) pursuant to Section 3.09(a), the Company is not permitted to purchase Notes, the Paying Agent, upon receipt of written notice from the Company stating that the Company, pursuant to Section 3.09(a), is not permitted to purchase Notes, will deem such Fundamental Change Repurchase Notice withdrawn.

(c) *Return of Notes.* If a Holder tenders a Note for purchase pursuant to this Article 3 and, on the Fundamental Change Repurchase Date, pursuant to Section 3.09(a), the Company is not permitted to purchase such Note, the Paying Agent will (i) if such Note is a Definitive Note, return such Note to such Holder, and (ii) if such Note is held in book-entry form, in compliance with the Applicable Procedures, deem to be cancelled any instructions for book-entry transfer of such Note.

#### **ARTICLE 4 COVENANTS**

Article 4 (Covenants) of the Base Indenture is hereby supplemented, with respect to the Notes, to add or replace the following covenants, as indicated:

Section 4.01 *Payment of Notes.* The following covenant replaces Section 4.1 of the Base Indenture with respect to the Notes:

The Company will pay or cause to be paid the principal of, the Fundamental Change Repurchase Price for, and any accrued and unpaid interest on, the Notes on the dates and in the manner required under this Supplemental Indenture. Any principal of, the Fundamental Change Repurchase Price for, or interest on, a Note will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds, as of 10:00 a.m. New York City time on the due date, money deposited by the Company in immediately available funds and designated for, and sufficient to pay, such principal, Fundamental Change Repurchase Price, or interest then due.

Section 4.02 *Reports.* The following covenant replaces Section 4.2 of the Base Indenture with respect to the Notes:

The Company will deliver to the Trustee copies of its annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe, but excluding any information, documents or reports, or portions thereof subject to confidential treatment and correspondence with the SEC) that the Company is required to file with the SEC under Sections 13 or 15(d) of the Exchange Act within 15 days after the Company is required to file such information, documents or other reports with the SEC (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any document filed by the Company with the SEC via the EDGAR system (or any successor thereto) will be deemed to be delivered to the Trustee at the time such document is filed via the EDGAR system (or any successor thereto); *provided, however*, that the Trustee will have no responsibility whatsoever to determine whether the Company has made any filing via the EDGAR system (or any successor thereto). The Company will also comply with the other provisions of TIA Section 314(a).

Delivery of such annual reports, and such other documents, information and other reports to the Trustee will be for informational purposes only, and the Trustee's receipt of such will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officer's Certificates).

Section 4.03 *Par Value Limitation.* The following covenant is added with respect to the Notes:

The Company will not take any action that, after giving effect to any adjustment pursuant to Section 9.05 or 9.07, would result in the Conversion Price becoming less than the par value of one share of Common Stock. In addition, the Company will not adjust the Conversion Rate pursuant to Section 9.06 such that the Conversion Price would be less than the par value of one share of Common Stock.

#### **ARTICLE 5 CONSOLIDATION, MERGER AND SALE OF ASSETS**

Article 5 (Successors) of the Base Indenture is hereby amended and restated in full, with respect to the Notes, to read as follows:

Section 5.01 *Company May Consolidate, Merge or Sell Its Assets Only on Certain Terms.* The Company will not, directly or indirectly, (1) consolidate with or merge with or into any other person, or (2) sell, convey, transfer or lease all or substantially all of its consolidated properties and assets to any other person (any such transaction, a "**Reorganization Event**"), unless:



(a) either:

(i) the Company is the surviving corporation; or

(ii) the resulting, surviving or transferee person (if other than the Company) of such Reorganization Event (the “**Reorganization Successor Corporation**”):

(A) is a corporation organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia; and

(B) expressly assumes, by executing and delivering to the Trustee a supplemental indenture, that is reasonably satisfactory in form to the Trustee, in accordance with Section 8.03 hereof, all of the obligations of the Company under the Notes and the Indenture; and

(b) immediately after giving effect to such Reorganization Event, no Default will have occurred and be continuing.

Notwithstanding the above, any of the Subsidiaries may consolidate with, merge into or transfer all or part of its properties to the Company.

Section 5.02 *Successor Substituted*. If any Reorganization Event occurs that complies with Section 5.01(a)(ii) and 5.01(b) hereof, and the Company has complied with Section 5.03 hereof:

(a) from and after the date of such Reorganization Event, the Reorganization Successor Corporation will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture with the same effect as if such Reorganization Successor Corporation had been named as the Company herein; and

(b) except in the case of a Reorganization Event that is a lease of all or substantially all of the Company’s consolidated property and assets, the person named as the “Company” in the first paragraph of this Supplemental Indenture or any successor that will thereafter have become such in the manner prescribed in this Article 5 will be released from its obligations under the Indenture and may be dissolved, wound up and liquidated at any time.

Section 5.03 *Opinion of Counsel to Be Given to Trustee*. The Company shall deliver to the Trustee prior to the consummation of a proposed Reorganization Event, an Officer’s Certificate to the foregoing effect and an Opinion of Counsel stating that the proposed Reorganization Event and any supplemental indenture comply with the Indenture.

## **ARTICLE 6 DEFAULTS AND REMEDIES**

Article 6 (Defaults and Remedies) of the Base Indenture is hereby amended and restated in full, with respect to the Notes, to read as follows:

Section 6.01 *Events of Default*. Each of the following events will be an “**Event of Default**”:

- (i) the Company fails to pay the principal of the Notes (including any Fundamental Change Repurchase Price) when due at maturity, upon a Fundamental Change, upon declaration of acceleration or otherwise;
- (ii) the Company fails to pay any interest on the Notes when due and such failure continues for a period of 30 days;
- (iii) the Company fails to give any Fundamental Change Notice or notice of a Make-Whole Fundamental Change, in each case, when due;
- (iv) the Company fails to comply with its obligation to convert a Note in accordance with Article 9 hereof upon a Holder’s exercise of its conversion rights with respect to such Note and such failure continues for a period of 5 Business Days;
- (v) the Company fails to comply with its obligations under Article 5 hereof;
- (vi) the Company fails to perform or observe any of its covenants or warranties in the Indenture or in the Notes (other than a covenant or agreement specifically addressed in clauses (i) through (v) above) and such failure continues for a period of 60 days after (A) the Company receives notice of such failure from the Trustee or (B) the Company and the Trustee receive written notice of such failure from Holders of at least 25% of the aggregate principal amount of then outstanding Notes;
- (vii) the default by the Company or any of the Subsidiaries with respect to any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company and/or any of the Subsidiaries (or the payment of which is guaranteed by the Company or any of the Subsidiaries), whether such indebtedness or guarantee exists as of the Issue Date or is later created, if that default:
  - (A) results in the acceleration of such indebtedness (prior to its express maturity); or
  - (B) is caused by a failure to pay principal of, or interest or premium, if any, on, such indebtedness prior to the expiration of the grace period provided in such indebtedness on the date of such default (a “**Payment Default**”);

and, in each case, the principal amount of any such indebtedness, together with the principal amount of any other such indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$30,000,000 or more and such acceleration is not annulled within 30 days thereof or such Payment Default continues for 30 days;

(viii) failure by the Company or any of the Subsidiaries to pay final non-appealable judgments entered by a court or courts of competent jurisdiction aggregating in excess of \$30,000,000 (net of any amounts as to which a reputable and solvent third party insurer has accepted full coverage), which judgments are not paid, discharged, bonded or stayed for a period of 60 days;

- (ix) the Company or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences a voluntary case;
  - (B) consents to the entry of an order for relief against it in an involuntary case;
  - (C) consents to the appointment of a Custodian of it or for all or substantially all of its property; or
  - (D) makes a general assignment for the benefit of its creditors;
- (x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (A) is for relief against the Company or any Significant Subsidiary in an involuntary case;
  - (B) appoints a Custodian of the Company or any Significant Subsidiary, or for all or substantially all of the property of the Company or any Significant Subsidiary; or
  - (C) orders the liquidation of the Company or any Significant Subsidiary;

and, in each such case, the order or decree remains unstayed and in effect for 60 days.

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

Section 6.02 *Acceleration.*

(a) *Automatic Acceleration in Certain Circumstances.* If an Event of Default specified in Sections 6.01(ix) or 6.01(x) hereof occurs with respect to the Company (but not any of the Significant Subsidiaries), the principal amount of, and all accrued and unpaid interest, if any, on, all of the then outstanding Notes will immediately become due and payable without any further action or notice by any party.

(b) *Optional Acceleration.* If any Event of Default (other than an Event of Default specified in Sections 6.01(ix) or 6.01(x) hereof with respect to the Company) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding may declare the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding Notes to be immediately due and payable by delivering written notice to the Company, and upon such declaration, the principal amount of, and all accrued and unpaid interest, if any, on all then outstanding Notes will immediately become due and payable.

(c) *Rescission of Acceleration.* Notwithstanding anything to the contrary in the Indenture, the Holders of a majority of the aggregate principal amount of the then outstanding Notes may, on behalf of the Holders of all of the then outstanding Notes, rescind any acceleration of the Notes and its consequences hereunder by delivering written notice to the Company and the Trustee if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) any and all existing Events of Default, other than the nonpayment of the principal of, the Fundamental Change Repurchase Price for, or any interest on, the Notes that has become due solely as a result of acceleration, have been cured or waived. No such rescission will affect any subsequent Default.

Section 6.03 *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Repurchase Price for, the Notes or to enforce the performance of any provision of the Notes or the Indenture regarding any other matter.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of the Notes in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.10 or at the Company's election with respect to a Reporting Event of Default pursuant to Section 6.04, no remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Sole Remedy for Failure to Report.*

(a) *General.* Notwithstanding anything to the contrary in the Notes or in the Indenture, the Company may elect that the sole remedy for any Event of Default specified in Section 6.01(vi) hereof relating to the Company's failure to comply with the reporting obligations under Section 4.02 hereof (a "**Reporting Event of Default**") will, for the period beginning on the date on which such Reporting Event of Default first occurred (taking into account the 60 day grace period set forth in Section 6.01(vi) hereof) and ending on the earlier of (A) the date on which such Reporting Event of Default is cured or validly waived in accordance with Section 6.05 hereof and (B) the 365th day immediately following the date on which such Reporting Event of Default first occurred, consist exclusively of the right to receive additional interest (the "**Special Interest**") on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes for the first 90 days and at a rate equal to 0.50% per annum of the principal amount of the Notes from the 91st day until the 365th day. If the Company elects, the Special Interest will be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 365<sup>th</sup> day immediately following, and including, the date on which such Reporting Event of Default first occurred, if the Special Interest has not previously ceased to accrue, the Special Interest will cease to accrue.

(b) *Limitation on Remedy.* If (i) a Reporting Event of Default occurs and the Company elects that the sole remedy with respect to such Reporting Event of Default will be the payment of Special Interest and (ii) on the 365th day immediately following, and including, the date on which such Reporting Event of Default first occurred, such Reporting Event of Default has not been cured or validly waived in accordance with Section 6.05 hereof, then the Notes will become subject to acceleration under Section 6.02(b) hereof on account of such Reporting Event of Default.

(c) *Company Election Notice.* To elect to pay the Special Interest as the sole remedy for a Reporting Event of Default, the Company must deliver written notice of such election to the Holders, the Paying Agent and the Trustee prior to the date that is 60 days after the notice of such Reporting Event of Default is given to the Company by the Trustee or Holders of at least 25% in principal amount of outstanding Notes. The Trustee and the Paying Agent shall not at any time be under any duty or responsibility to any Holder to determine the Special Interest, or with respect to the nature, extent, or calculation of the amount of Special Interest owed, or with respect to the method employed in such calculation of the Special Interest.

If a Reporting Event of Default occurs and the Company fails to timely deliver such notice for such Reporting Event of Default, the Notes will be subject to acceleration under Section 6.02(b) hereof on account of such Reporting Event of Default.

(d) *Other Events of Default.* Notwithstanding anything to the contrary herein, if the Company elects to pay the Special Interest with respect to any Reporting Event of Default, the Company's election will not affect the rights of any Holder with respect to any other Event of Default. For the avoidance of doubt, in no event will the Company be obligated to pay the Special Interest at a rate greater than 0.50% per annum on the principal amount of then outstanding Notes, regardless of the number of events or circumstances giving rise to requirements to pay such Special Interest.

Section 6.05 *Waiver of Past Defaults.* If an Event of Default described in Sections 6.01(i), 6.01(ii), 6.01(iv) or 6.01(vi) (which, in the case of Section 6.01(vi) only, relates to a covenant that cannot be amended without the consent of each affected Holder) or a Default that would lead to such an Event of Default occurs and is continuing, such Event of Default or Default may be waived only with the consent of each affected Holder. Every other Event of Default or Default may be waived, and any acceleration of the Notes and the consequences thereof following any such Event of Default may be rescinded, by the Holders of a majority of the aggregate principal amount of then outstanding Notes. Whenever any Event of Default is so waived, it will cease to exist, and whenever any Default is so waived, it will be deemed cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any consequent right.

Section 6.06 *Control by Majority.* At any time, the Holders of a majority of the aggregate principal amount of then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or for exercising any trust or power conferred on the Trustee with respect to the Notes. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture or, subject to Section 7.1 of the Base Indenture, that the Trustee determines to be unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action hereunder, the Trustee will be entitled to indemnification satisfactory to it against all losses and expenses caused by taking or not taking such action.

Section 6.07 *Limitation on Suits.* Except (i) to enforce its rights to receive the principal of, the Fundamental Change Repurchase Price for, or interest, if any, on, a Note, or (ii) following the failure of the Company to comply with its obligations under Article 9 to convert any Note, no Holder may pursue a remedy with respect to the Indenture or the Notes unless:

- (a) such Holder has previously delivered to the Trustee written notice that an Event of Default has occurred and is continuing;
- (b) the Holders of not less than 25% of the aggregate principal amount of then outstanding Notes have made to the Trustee a written request that the Trustee institute the proceedings with respect to such Event of Default in its own name as Trustee under the Indenture;
- (c) such Holder or Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by the Trustee in compliance with such request;
- (d) the Trustee has failed to institute any such proceeding for 60 days after its receipt of such written notice, request and offer of indemnity; and
- (e) no direction, in the opinion of the Trustee, inconsistent with such written request has been given to the Trustee during such 60-day period by Holders of a majority in principal amount of the Notes.

A Holder may not use the Indenture to prejudice the rights of any other Holder or to obtain a preference or priority over any other Holder, it being understood that the Trustee does not have any affirmative duty to ascertain whether any usage of the Indenture by a Holder is unduly prejudicial to such other Holders.

Section 6.08 *Rights of Holders to Receive Payment.* Notwithstanding any other provision of the Indenture, the right of any Holder to receive payment of the principal of, the Fundamental Change Repurchase Price for, accrued and unpaid interest, if any, on, and any consideration due under Article 9 upon conversion of, its Note, on or after the respective due date, or to bring suit for the enforcement of any such payment and/or delivery on or after the respective due date, will not be impaired or affected without the consent of such Holder and will not be subject to the requirements of Section 6.07 hereof.

Section 6.09 *Collection Suit by Trustee.* If an Event of Default specified in Section 6.01(i), 6.01(ii) or 6.01(iv) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, the Fundamental Change Repurchase Price for, and interest, if any, on, the Notes, and such further amount as is sufficient to cover the costs and expenses of collection provided for under Section 7.7 of the Base Indenture.

Section 6.10 *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company, its creditors or its property and, unless prohibited by law or applicable regulations, will be entitled to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 of the Base Indenture. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 7.7 of the Base Indenture out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to, or to accept or to adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.11 *Priorities.* Any money and property collected by the Trustee pursuant to this Article 6 shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money and property to Holders, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: to the Trustee, its agents and attorneys for amounts due under Section 7.7 of the Base Indenture, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

SECOND: to the Holders, for any amounts due and unpaid on the principal of, the Fundamental Change Repurchase Price for, accrued and unpaid interest, if any, on, and any cash in lieu of fractional shares due upon the conversion of, any Note, without preference or priority of any kind, according to such amounts due and payable on all of the Notes; and

THIRD: the balance, if any, to the Company or to such other party as a court of competent jurisdiction directs.

Section 6.12 *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Company, the Trustee, a suit by a Holder pursuant to Section 6.08 hereof or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

**ARTICLE 7**  
**SATISFACTION AND DISCHARGE**

Article 8 (Satisfaction and Discharge; Defeasance) of the Base Indenture is hereby amended and restated in full, with respect to the Notes, to read as follows:

Section 7.01 *Discharge of Liability on Notes.* When (a)(i) the Company delivers to the Trustee all outstanding Notes (other than Notes replaced pursuant to Section 2.10 hereof) for cancellation or (ii) all outstanding Notes have become due and payable, whether at the Maturity Date, any Fundamental Change Repurchase Date, or upon conversion or otherwise, and the Company irrevocably deposits with the Trustee or delivers to the Holders, as applicable, cash or U.S. government obligations and/or shares of Common Stock and cash (in lieu of fractional shares of Common Stock) (solely to satisfy amounts due and owing as a result of conversions of the Notes), sufficient to pay all amounts due and owing on all outstanding Notes (other than Notes replaced pursuant to Section 2.10 hereof), (b) the Company pays all other sums payable by it under the Indenture with respect to the then outstanding Notes and (c) upon demand of the Company, the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all of the applicable conditions precedent to the discharge of the Indenture described in this section have been satisfied, then, subject to Section 7.7 of the Base Indenture, the Indenture will cease to be of further effect with respect to the Notes and the Holders and the Trustee will acknowledge the satisfaction and discharge of the Indenture with respect to the Notes.

Notwithstanding the satisfaction and discharge of the Indenture, (i) any obligation of the Company to any Holder under Article 9 hereof with respect to the conversion of any Note or to the Trustee under Section 7.7 of the Base Indenture with respect to compensation or indemnity, and (ii) any obligation of the Trustee with respect to money deposited with the Trustee under this Article 7 and Section 10.2 of the Base Indenture, will survive.

Section 7.02 *Repayment to the Company.* Subject to any applicable unclaimed property law, the Trustee and the Paying Agent, upon receiving a written request from the Company, will promptly turn over to the Company any cash or securities, including shares of Common Stock, held for payment on the Notes that remains unclaimed two years after the date on which such payment was due. After the Trustee and the Paying Agent return such cash and securities, including shares of the Common Stock, to the Company, the Trustee and the Paying Agent will have no further liability to any Holder with respect to such cash and securities, including shares of Common Stock, and any Holder entitled to the payment of such cash or securities, including shares of Common Stock, under the Notes or the Indenture must look to the Company for payment as a general creditor of the Company.



**ARTICLE 8**  
**AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Article 9 (Amendments and Waivers) of the Base Indenture is hereby amended and restated in full, with respect to the Notes, to read as follows:

Section 8.01 *Without Consent of Holders.* The Company and the Trustee may amend or supplement the Indenture or the Notes without the consent of any Holder:

- (a) to add guarantees with respect to the Company's obligations under the Indenture or the Notes;
- (b) to secure the Notes;
- (c) to provide for the assumption of the Company's obligations under the Indenture and under the Notes by a Reorganization Successor Corporation as described in Article 5 hereof;
- (d) to provide for the conversion of the Notes into Reference Property and effect any other changes to the terms of the Notes required under the Indenture in connection therewith;
- (e) to surrender any right or power conferred upon the Company under the Indenture;
- (f) to add covenants or events of default for the benefit of the Holders;
- (g) to cure any ambiguity or correct any inconsistency or defect in the Indenture or in the Notes;
- (h) to modify or amend the Indenture to permit the qualification of the Indenture or any supplemental indenture under the TIA as then in effect;
- (i) to evidence the acceptance of appointment by a successor Trustee with respect to the Indenture;
- (j) to make any other change that does not adversely affect the rights of any Holder of the Notes;
- (k) to comply with the rules of any applicable Depositary; and
- (l) to conform the provisions of the Indenture and the form or terms of the Notes to the "Description of Notes" section of the Preliminary Prospectus Supplement, as supplemented by the Pricing Term Sheet, as evidenced in an Officer's Certificate or supplemental indenture.

Section 8.02 *With Consent of Holders.* With the written consent of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a repurchase of, or tender offer or exchange offer for, Notes), by Act of such Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, may amend or supplement the Indenture or the Notes, or waive any past Default or Event of Default or compliance with any provision of the Indenture or the Notes; *provided, however,* that, without the consent of each affected Holder, no amendment or supplement to the Indenture or the Notes, or waiver of any provision of the Indenture or the Notes, may:

- (a) reduce the principal amount of, or change the Maturity Date of, any Note;
- (b) reduce the rate of, or extend the stated time for payment of, interest on any Note;
- (c) reduce the Fundamental Change Repurchase Price of any Note or change the time at which, or the circumstances under which the Notes may or will be repurchased;
- (d) impair the right of any Holder to institute suit for any payment of principal of and interest on any Note, including with respect to any consideration due upon conversion of a Note on or after the due date therefor;
- (e) make any Note payable in a currency other than that stated in the Note;
- (f) impair the conversion rights of any Holder under Article 9 hereof or otherwise reduce the number of shares of Common Stock, amount of cash or any other property receivable by a Holder upon conversion;
- (g) change the ranking of the Notes;
- (h) make any change to any amendment, modification or waiver provision of the Indenture that requires the consent of each affected Holder; or
- (i) reduce the percentage of the aggregate principal amount of then outstanding Notes whose Holders must consent to an amendment or modification of the Indenture or a waiver of a past Default.

It will not be necessary for the consent of the Holders under this Section 8.02 to approve the particular form of any proposed amendment or modification, but it will be sufficient if such consent approves the substance of such proposed amendment or modification.

Section 8.03 *Execution of Supplemental Indentures.* Upon the request of the Company, the Trustee will sign any supplemental indenture authorized pursuant to this Article 8 if the amendment contained therein does not affect the rights, duties, liabilities or immunities of the Trustee under the Indenture. If the supplemental indenture adversely affects the Trustee's rights, duties, liabilities or immunities under the Indenture, then the Trustee may, but need not, sign such supplemental indenture. In executing any such supplemental indenture, the Trustee will be provided with, and, subject to the provisions of Section 7.1 of the Base Indenture, will be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel stating that such supplemental indenture is authorized and permitted under the Indenture and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (subject to customary exceptions).

Section 8.04 *Notices of Supplemental Indentures.* After an amendment or supplement to this Supplemental Indenture or the Notes pursuant to Sections 8.01 or 8.02 hereof becomes effective, the Company will promptly deliver written notice to the Trustee, which notice will briefly describe such amendment or supplement to the Indenture and state the effective date of such amendment or supplement. The Company, or the Trustee, at the direction of the Company, will then promptly deliver a copy of such notice to each Holder. The failure to deliver such notice to each Holder, or any defect in such notice, will not impair or affect the validity of such amendment or supplement to the Indenture.

Section 8.05 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article 8:

- (a) the Indenture will be modified in accordance therewith;
- (b) such supplemental indenture will form a part of the Indenture for all purposes; and
- (c) every Holder of Notes theretofore, or thereafter, authenticated and delivered hereunder will be bound thereby.

Section 8.06 *Revocation and Effect of Consents, Waivers and Actions.*

(a) *Revocation.* Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder, and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder, or subsequent Holder, may revoke the consent as to its Note or portion of a Note if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

(b) *Regular Record Dates.* The Company may, but is not obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required, or permitted, to be taken pursuant to the Indenture. If a record date is fixed, then those persons who were Holders at such record date (or their duly designated proxies), and only those persons, will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such persons continue to be Holders after such record date. No such consent will be valid or effective for more than 120 days after such record date.

(c) *Binding Effect.* After an amendment, supplement or waiver becomes effective, it will bind every applicable Holder. Any amendment or supplement will become effective in accordance with the terms of the supplemental indenture relating thereto, which will become effective upon the execution thereof by the Trustee.

Section 8.07 *Notation on, or Exchange of, Notes.* If any amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder of such Note to deliver such Note to the Trustee. The Trustee may place an appropriate notation on such Note about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company, in exchange for the Note, will issue and the Trustee will authenticate a new Note that reflects the changed terms.

**ARTICLE 9**  
**CONVERSIONS**

Section 9.01 *Right to Convert.*

(a) *In General.* Subject to, and upon compliance with, the provisions of this Article 9, until the Close of Business on the Business Day immediately preceding the Maturity Date, a Holder may, at its option, convert all of its Notes, or any portion of its Notes having a principal amount equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, into a number of shares of Common Stock and an amount of cash in lieu of fractional shares of Common Stock, all as determined in accordance with Section 9.03 hereof. Notes may not be converted after the Close of Business on the Business Day immediately preceding the Maturity Date.

(b) *Closed Periods.* Notwithstanding anything to the contrary in the Indenture, if a Holder tenders a Fundamental Change Repurchase Notice with respect to its Notes in accordance with Article 3 hereof, such Notes may not be converted except to the extent (A) such Notes are not subject to such Fundamental Change Repurchase Notice; (B) such Fundamental Change Repurchase Notice is withdrawn in accordance with Article 3 hereof; or (C) the Company fails to pay the Fundamental Change Repurchase Price for such Notes in accordance with Section 3.08 hereof.

Section 9.02 *Conversion Procedures.*

(a) *General.* To exercise its conversion right with respect to a beneficial interest in a Global Note, the owner of such beneficial interest must (i) comply with the Applicable Procedures for converting such beneficial interest; (ii) pay any funds equal to interest payable on the next Interest Payment Date that such Holder is required to pay under clause (d) of this Section 9.02; and (iii) pay any transfer or similar taxes or duties that such Holder is required to pay under the proviso to clause (e) of this Section 9.02.

To exercise its conversion right with respect to a Definitive Note, the Holder of such Note must (i) complete and manually sign the conversion notice in the form of Attachment 1 to the Note, or a facsimile of such conversion notice (such notice, or such facsimile, the “**Conversion Notice**”); (ii) deliver such signed and completed Conversion Notice, which is irrevocable, and such Note to the Conversion Agent at its office; (iii) furnish any endorsements and transfer documents that the Company, Conversion Agent, Trustee or Transfer Agent may require; (iv) pay any funds equal to interest payable on the next Interest Payment Date that such Holder is required to pay under clause (d) of this Section 9.02; and (v) pay any transfer or similar taxes or duties that such Holder is required to pay under the proviso to clause (e) of this Section 9.02.

The first Business Day on which a Holder satisfies the foregoing requirements with respect to a Note and on which conversion of such Note is not otherwise prohibited under the Indenture will be the “**Conversion Date**” for such Note.

The conversion of any Note will be deemed to occur at the Close of Business on the Conversion Date for such Note, and any converted Note or portion thereof will cease to be outstanding upon conversion.

(b) *Holder of Record.* If a Holder surrenders the entire principal amount of a Note for conversion, such person will no longer be the Holder of such Note as of the Close of Business on the Conversion Date for such Note.

Upon the conversion of a Note, the person in whose name such shares of Common Stock will be registered will become the holder of record of such shares of Common Stock at the Close of Business on the Conversion Date for such Note.

(c) *Conversions in Part.* If a Holder surrenders only a portion of the principal amount of a Definitive Note for conversion, promptly after the Conversion Date for such portion, the Company will, in accordance with Section 2.05 hereof, execute and deliver to the Trustee, and the Trustee will, upon receipt of a Company Order, in accordance with Section 2.05 hereof, authenticate and deliver to such Holder a new Definitive Note in an authorized denomination, having a principal amount equal to the aggregate principal amount of the unconverted portion of the Definitive Note surrendered for conversion and bearing registration numbers not contemporaneously outstanding.

Upon the conversion of any beneficial interest in a Global Note, the Conversion Agent will promptly request that the Trustee make a notation on the "Schedule of Increases and Decreases of Global Note" of such Global Note to reduce the principal amount represented by such Global Note by the principal amount of the converted beneficial interest. If all of the beneficial interests in a Global Note are so converted, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Applicable Procedures.

(d) *Reimbursement of Interest upon Conversion.* If a Holder converts a Note after the Close of Business on a Regular Record Date, but prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, such Holder must accompany such Note with an amount of cash equal to the amount of interest, if any, that will be payable on such Note on the corresponding Interest Payment Date; *provided, however*, that a Holder need not make such payment (A) for conversions following the Regular Record Date immediately preceding the Maturity Date; (B) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date and the Holder converts its Note after the Close of Business on such Regular Record Date and on or prior to the Open of Business on such Interest Payment Date; or (C) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Note.

(e) *Taxes and Duties.* If a Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion; *provided, however*, that if any tax is due because the converting Holder requested that shares of Common Stock be issued in a name other than its own, such Holder will pay any such documentary, stamp or similar issue or transfer tax and the Conversion Agent, until having received a sum sufficient to pay such tax, may refuse to deliver any certificates representing the shares of Common Stock being issued in a name other than that of such Holder.

(f) *Notices.* Whenever a Conversion Date occurs with respect to a Note, the Conversion Agent will, as promptly as possible, and in no event later than the Business Day immediately following such Conversion Date, deliver to the Company and the Trustee notice that a Conversion Date has occurred, which notice will state such Conversion Date, the principal amount of Notes converted on such Conversion Date and the names of the Holders that converted Notes on such Conversion Date.

Section 9.03 *Conversion Obligation.*

(a) *Conversion Obligation.* Except as set forth in Sections 9.07 and 9.08 hereof, if a Holder surrenders all or a portion of a Note for conversion, the Company will deliver to such Holder, on the third Business Day immediately following the Conversion Date for such Note, (i) a number of shares of Common Stock equal to the product of (A)(x) the aggregate principal amount of such Note to be converted *divided by* (y) \$1,000 and (B) the Conversion Rate in effect on such Conversion Date, rounded down to the nearest whole number, and (ii) an amount of cash equal to the product of (A) the fraction of a share of Common Stock eliminated by such rounding and (B) the Last Reported Sale Price of the Common Stock on such Conversion Date (or if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(b) *Conversion of Multiple Notes by a Single Holder.* If a Holder converts more than one Note on a single Conversion Date, the number of shares of Common Stock that the Company will deliver to the converting Holder, and the amount of cash that the Company will pay to such Holder in lieu of fractional shares of Common Stock, will be computed based on the total principal amount of Notes converted on such Conversion Date by such Holder.

(c) *Settlement of Accrued Interest and Deemed Payment of Principal.* If a Holder converts a Note, the Company will not make any separate cash payment or adjust the Conversion Rate to account for any accrued and unpaid interest on the Note, and the Company's delivery of the number of shares of Common Stock and the amount of cash that the Company will pay to such Holder in lieu of fractional shares of Common Stock, if any, into which a Note is convertible will be deemed to satisfy and discharge in full the Company's obligation to pay the principal of such Note and accrued and unpaid interest, if any, on, such Note to, but excluding, the Conversion Date; *provided, however*, that if a Holder converts a Note after the Close of Business on a Regular Record Date and prior to the Open of Business on the corresponding Interest Payment Date, the Company will still be obligated to pay the interest due on such Interest Payment Date to the Holder of such Note as of the Close of Business on such Regular Record Date.

As a result, except as otherwise provided in the proviso to the immediately preceding sentence, any accrued and unpaid interest with respect to a converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

Section 9.04 *Common Stock Issued upon Conversion.*

(a) Prior to issuing of any shares of Common Stock under this Article 9, and from time to time thereafter as may be necessary, the Company will reserve out of its authorized but unissued shares of Common Stock a number of shares of Common Stock sufficient to permit the conversion of the Notes.

(b) Any shares of Common Stock delivered upon the conversion of the Notes will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or other person to whom such shares of Common Stock will be delivered). In addition, the Company will endeavor to comply promptly with all federal and state securities laws regulating the offer and delivery of any shares of Common Stock issuable upon conversion of the Notes. The Company will also use commercially reasonable efforts to cause any shares of Common Stock issuable upon conversion of a Note to be listed on whatever stock exchange(s) the Common Stock is listed on the date the converting Holder becomes a record holder of such Common Stock.

Section 9.05 *Adjustment of Conversion Rate.* The Company will adjust the Conversion Rate from time to time as described in this Section 9.05.

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

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

Where:

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such share split or share combination, as applicable;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or such Effective Date;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or such Effective Date; and
- OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

If any dividend or distribution of the type described in this Section 9.05(a) is declared, but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date that the Board of Directors determines not to pay such dividend or distribution to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

Any adjustment made under this clause (a) shall become effective 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 for such share split or share combination, as applicable.

(b) *Rights, Options and Warrants.* If the Company issues to all or substantially all holders of its outstanding Common Stock any rights, options or warrants entitling such holders for a period of not more than 45 calendar days after the date of such issuance to subscribe for, or purchase, shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

Where:

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
- OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the quotient of (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 9.05(b) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the Open of Business on the Ex-Dividend Date for such issuance. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be decreased to the Conversion Rate that would then be in effect had the increase with respect to 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 will be immediately decreased to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such issuance had not occurred.



For purposes of this Section 9.05(b), in determining whether any rights, options or warrants entitle holders of the Common Stock to subscribe for, or purchase, shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement for an issuance, and in determining the aggregate offering price of such shares of Common Stock, there will be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) *Spin-Offs and Other Distributed Property.*

(i) If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

- (A) dividends, distributions, rights, options or warrants as to which an adjustment was effected pursuant to Section 9.05(a) hereof or Section 9.05(b) hereof, as applicable;
- (B) dividends or distributions paid exclusively in cash;
- (C) distributions of Reference Property in a transaction described in Section 9.08(a); and
- (D) Spin-Offs for which the provisions set forth in Section 9.05(c)(ii) hereof will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

Where:

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

$SP_0$	=	the average of the Last Reported Sale Prices of the Common Stock over the 10 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 Company's Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property of the Company, or rights, options or warrants to acquire the Company's Capital Stock or other securities distributed with respect to each outstanding share of Common Stock on the Ex-Dividend Date for such distribution.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the " $SP_0$ " (as defined above), in lieu of the foregoing increase, each Holder will receive, for each \$1,000 principal amount of Notes held on the Record Date for the distribution, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property of the Company, or rights, options or warrants to acquire Capital Stock or other securities that such Holder would have received if such Holder had owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for such distribution.

Any foregoing increase made under the portion of this clause (c) above will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate will be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared.

(ii) With respect to an adjustment pursuant to this Section 9.05(c) where there has been a payment of 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, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

Where:

$CR_0$	=	the Conversion Rate in effect immediately prior to the Close of Business on the last Trading Day of the Valuation Period for such Spin-Off;
$CR_1$	=	the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Valuation Period for such Spin-Off;

FMV<sub>0</sub> = 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 Common Stock over the first 10 consecutive Trading Day period after, and including, the Effective Date of the Spin-Off (the “**Valuation Period**”); and

MP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

If, however, the Conversion Date for a Note occurs after the Record Date for a Spin-Off, but on or prior to the first Trading Day of the Valuation Period for such Spin-off, the Conversion Date will be postponed until the Business Day immediately following such Trading Day (and the definition of “FMV<sub>0</sub>” will be modified pursuant to the immediately following proviso); and *provided, further*, that if the Conversion Date for a Note occurs after the first Trading Day of the Valuation Period for a Spin-Off, but during the Valuation Period, the reference in the above definition of “FMV<sub>0</sub>” to “10” will be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Effective Date of such Spin-Off to, but excluding, such Conversion Date.

(d) *Tender Offers or Exchange Offers.* If the Company or any of the Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock (other than an odd lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (such last date, the “**Expiration Date**”), the Conversion Rate will 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:

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

CR<sub>1</sub> = the Conversion Rate in effect immediately after the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the 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 purchased in such tender offer or exchange offer;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the expiration time on the Expiration Date (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer);

- OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the expiration time on the Expiration Date (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer); and
- SP<sub>1</sub> = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on the Trading Day next succeeding the Expiration Date.

Any increase made under this clause (d) will become effective immediately after the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date. If, however, the Conversion Date for a Note occurs on or after the Expiration Date and on or prior to the Trading Day next succeeding the Expiration Date, the Conversion Date for such Note will be postponed until the first Business Day immediately following such Trading Day (and the reference in the above definition of “SP<sub>1</sub>” to “10” and the references in the above definitions of “CR<sub>0</sub>” and “CR<sub>1</sub>” to “10th” will be modified pursuant to the immediately following proviso); provided, further, that if the Conversion Date for a Note occurs after the first Trading Day during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date, but on or prior to the last Trading Day of such period, the reference in the above definition of “SP<sub>1</sub>” to “10” and the references in the above definitions of “CR<sub>0</sub>” and “CR<sub>1</sub>” to “10th” shall be deemed replaced with references to such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding such Conversion Date.

(e) Notwithstanding the foregoing, in any case in which the foregoing subsections (a) through (d) of this Section 9.05 require that an adjustment be made to the Conversion Rate, in lieu of the adjustment, the Company may, at its option, distribute to Holders of Notes, concurrently with the distribution to the Holders of the Common Stock (and without having to convert), such shares of the Common Stock, rights, options, warrants, any shares of the Capital Stock (other than Common Stock), evidences of indebtedness or other non-cash assets (or the fair market value, as reasonably determined by the Board of Directors, of the foregoing in cash) that such Holders of Notes would have been entitled to receive had such Notes been converted immediately prior to the Record Date relating to the event that would have caused such adjustment.

(f) *Successive Adjustments.* After an adjustment to the Conversion Rate under this Article 9, any subsequent event requiring an adjustment under this Article 9 will cause an adjustment to the Conversion Rate as so adjusted, without duplication.

(g) *Shareholder Rights Plans.* To the extent that the Company has a rights plan in effect when a Holder converts a Note, the Company will deliver to such Holder, in addition to each share of Common Stock otherwise issuable to such Holder upon conversion of such Note, any rights that, under the rights plan, would be applicable to a share of Common Stock, unless prior to the Conversion Date for such Note, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 9.05(c)(i) as if, at the time of such separation, the Company had distributed to all Holders of the Common Stock shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire the Company’s Capital Stock or other securities as described in Section 9.05(c)(i), subject to readjustment in the event of the expiration or termination of such rights.

(h) *Other Adjustments.* Whenever any provision of this Supplemental Indenture requires the calculation of the Last Reported Sale Price or a function thereof over a span of multiple days, the Company will make appropriate adjustments to the Last Reported Sale Price or such function thereof 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, Effective Date or expiration date of the event occurs at any time during the period when the Last Reported Sale Prices or functions thereof are to be calculated. In addition, if the Ex-Dividend Date or the expiration date for any event requiring an adjustment to the Conversion Rate occurs before the date on which the Last Reported Sale Price or function thereof is to be calculated, but the event does not give rise to an adjustment to the Conversion Rate until after such date, the Company will make an appropriate adjustment to the relevant calculation to account for such event.

(i) *Restrictions on Adjustments.* Except as provided in this Section 9.05, the Company will not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities. Without limiting the foregoing, the Conversion Rate will not be adjusted:

(i) upon the issuance of any shares of 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 Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase 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 Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause and outstanding as of the Issue Date;

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

(v) for accrued and unpaid interest.

(j) *Deferral of Adjustments.* Adjustments to the applicable Conversion Rate will be calculated to the nearest 1/10,000th of a share, with five one-hundred-thousandths rounded upward (e.g., 0.76545 would be rounded up to 0.7655).

(k) *Calculation of Adjustments.* No adjustment to the Conversion Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate; provided, however, that if an adjustment is not made because the adjustment does not change the conversion rate by at least 1%, then such adjustment will be carried forward and taken into account in any future adjustment. Notwithstanding the foregoing, (i) upon any conversion of the Notes and (ii) annually, on the anniversary of the original Issue Date, the Company will give effect to all adjustments that it has otherwise deferred pursuant to the immediately preceding sentence, and those adjustments will no longer be carried forward and taken into account in any future adjustment.

(l) *Certain Definitions.*

(A) For purposes of this Section 9.05, the term “**Effective Date**” will mean the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(B) For purposes of this Section 9.05, the term “**Ex-Dividend Date**” will mean the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(C) For purposes of this Section 9.05, the term “**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock have the right to receive any cash, securities or other property or in which 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 holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

Section 9.06 *Voluntary Adjustments.*

(a) *Best Interest Increases.* Subject to the limitations of Section 9.06(d) hereof, the Company may, from time to time, to the extent permitted by law, increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is in the best interest of the Company, (ii) such increase is in effect for a period of at least 20 Business Days, and (iii) during such period, such increase is irrevocable.

(b) *Tax-Related Increases.* Subject to the limitations of Section 9.06(d) hereof and to the extent permitted by law, the Company may (but is not required to) increase the Conversion Rate to avoid, or diminish, any income tax imposed on holders of the Common Stock or rights to purchase shares of the Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) or similar event treated as such for U.S. federal income tax purposes.

(c) *Notices.* Whenever the Board of Directors determines that the Company will increase the Conversion Rate pursuant to this Section 9.06, the Company will deliver to the Trustee and each Holder written notice of such increase at least 15 Business Days before such increase will take effect.

(d) *Voluntary Actions.* The Company will not take any voluntary action that would result in an adjustment to the Conversion Rate pursuant to Sections 9.05, 9.06 and 9.07 without complying, if applicable, with the stockholder approval rules of The New York Stock Exchange or any similar rule of any stock exchange on which the Common Stock is listed at the relevant time. In accordance with such listing standards, this restriction will apply at any time when the Notes are outstanding, regardless of whether the Company then has a class of securities listed on The New York Stock Exchange.

Section 9.07 *Adjustments upon Certain Fundamental Changes.*

(a) *General.* If a Fundamental Change (determined after giving effect to the paragraph immediately following clause (iv) of the definition thereof, but without regard to the exclusion in clause (ii) of the definition thereof) occurs (a **“Make-Whole Fundamental Change”**), and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company will, in the circumstances described in this Section 9.07, increase the Conversion Rate for such Notes by the number of additional shares of Common Stock (the **“Additional Shares”**) described in this Section 9.07. For purposes of this Section 9.07, a conversion of Notes will be deemed to be “in connection with” a Make-Whole Fundamental Change if the Conversion Notice for such Notes is received by the Conversion Agent during the period beginning on, and including, the Make-Whole Fundamental Change Effective Date and ending on, and including, (A) if such Make-Whole Fundamental Change is also a Fundamental Change, the later of (x) the Close of Business on the Business Day immediately prior to the related Fundamental Change Repurchase Date and (y) the Close of Business on the 35th Business Day immediately following the date the Company delivers notice to each Holder of such Make-Whole Fundamental Change pursuant to this Section 9.07, and (B) if such Make-Whole Fundamental Change is not a Fundamental Change, the Close of Business on the 35th Business Day immediately following the date the Company delivers notice to each Holder of such Make-Whole Fundamental Change pursuant to this Section 9.07.

The Company will notify Holders of the anticipated effective date of any Make-Whole Fundamental Change and issue a press release announcing such anticipated effective date no later than 10 Business Days immediately prior to such anticipated effective date; provided, however, that if the Company does not have knowledge of such Make-Whole Fundamental Change or its anticipated effective date at such time, the Company will issue such press release as promptly as practicable following the date on which the Company becomes aware of such Make-Whole Fundamental Change and its anticipated effective date, but in no event later than 5 Business Days immediately following the actual effective date of such Make-Whole Fundamental Change.

(b) *Determination of Additional Shares.* The number of Additional Shares by which the Conversion Rate will be increased if a Holder converts a Note in connection with a Make-Whole Fundamental Change will be determined by reference to the table below, and will be based on the Make-Whole Fundamental Change Effective Date and the Stock Price paid (or deemed paid) per share of our Common Stock in the Make-Whole Fundamental Change. For any Make-Whole Fundamental Change, the **“Make-Whole Fundamental Change Effective Date”** will mean the effective date of such Make-Whole Fundamental Change.

(c) *Adjustment of Stock Prices and Additional Shares.* The Stock Prices set forth in the first row (i.e., the column headers) of the table below will be adjusted on each date on which the Conversion Rate must be adjusted pursuant to Section 9.05. The adjusted Stock Prices will equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment, and (ii) the denominator of which is the Conversion Rate in effect immediately after the adjustment. The numbers of Additional Shares set forth in the table below will be adjusted in the same manner, at the same time and for the same events for which the Conversion Rate is adjusted pursuant to Section 9.05 hereof.

(d) *Additional Shares Table.* The following table sets forth the number of Additional Shares by which the Conversion Rate will be increased per \$1,000 principal amount of Notes for a Holder that converts a Note in connection with a Make-Whole Fundamental Change having such Make-Whole Fundamental Change Effective Date and Stock Price.

Effective Date	Stock Price											
	\$ 14.80	\$ 15.25	\$ 16.00	\$ 17.00	\$ 18.50	\$ 21.00	\$ 25.00	\$ 30.00	\$ 37.00	\$ 45.00		
November 20, 2012	13.5135	13.4186	13.2015	12.8479	9.4826	5.9015	3.0047	1.4945	0.6119	0.1678		
January 15, 2013	13.5135	13.3522	13.0826	12.5380	9.2666	5.7306	2.9083	1.4426	0.5869	0.1567		
January 15, 2014	13.5135	13.2001	12.7737	12.0413	8.7458	5.2339	2.5343	1.2189	0.4855	0.1195		
January 15, 2015	13.5135	12.9067	12.4034	11.3216	8.0145	4.5687	2.0682	0.9597	0.3742	0.0795		
January 15, 2016	13.5135	12.5915	11.9348	10.2654	6.9764	3.6770	1.5021	0.6740	0.2590	0.0403		
January 15, 2017	13.5135	12.2584	11.3548	8.8487	5.5858	2.5351	0.8685	0.3930	0.1553	0.0143		
January 15, 2018	13.5135	11.8981	10.0267	7.0263	3.7156	1.0849	0.2357	0.1231	0.0484	0.0022		
January 15, 2019	13.5135	11.5197	8.4459	4.7695	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000		

(e) *Use of Additional Shares Table.* If the Stock Price and/or Make-Whole Fundamental Change Effective Date for a Make-Whole Fundamental Change are not set forth in the table above, then:

- (1) if the Stock Price is between two Stock Prices in the table or the Make-Whole Fundamental Change Effective Date is between two Make-Whole Fundamental Change Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased for a Holder that converts a Note in connection with such Make-Whole Fundamental Change will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices listed in the table and the earlier and later Make-Whole Fundamental Change Effective Dates listed in the table, as applicable, based on a 365-day year;
- (2) if the Stock Price is greater than \$45.00, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate; and
- (3) if the Stock Price is less than \$14.80, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table, no Additional Shares will be added to the Conversion Rate.



Notwithstanding the foregoing, in no event will the Conversion Rate be increased as a result of this Section 9.07 to exceed 67.5676 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment in the same manner, at the same time and for the same events for which the Conversion Rate must be adjusted as set forth in Section 9.05 hereof.

(f) *Settlement or Conversion.* Except as provided in Section 9.08 hereof, if a Holder converts a Note in connection with a Make-Whole Fundamental Change, the Company will settle such conversion by delivering, on the third Business Day immediately following the Conversion Date for such Note, a number of shares of Common Stock and an amount of cash in lieu of fractional shares of Common Stock in accordance with Section 9.03 hereof; *provided, however, that notwithstanding anything to the contrary in Section 9.03 hereof, if a Holder converts a Note in connection with a Make-Whole Fundamental Change described in clause (ii) of the definition of Fundamental Change in which the holders of the Common Stock receive only cash in consideration for their shares of Common Stock, the Company will settle such conversion by delivering to such Holder, on the third Business Day immediately following the Conversion Date for such Note, an amount of cash, for each \$1,000 principal amount of such Note converted, equal to the product of (i) the Conversion Rate on the Conversion Date applicable to such Note (including any Additional Shares added to such Conversion Rate pursuant to this Section 9.07) and (ii) the Stock Price for such Make-Whole Fundamental Change.*

Section 9.08 *Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.*

(a) *General.* If any of the following events occur:

- (1) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination or change only in par value or from par value to no par value or no par value to par value);
- (2) any consolidation, merger or combination involving the Company;
- (3) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Subsidiaries substantially as an entirety; or
- (4) any statutory share exchange;

in each case, as a result of which the Common Stock would be converted into, or exchanged for, Capital Stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “**Merger Event**”), then, at and after the effective time of such Merger Event, the right to convert each \$1,000 principal amount of Notes into shares of Common Stock and cash in lieu of fractional shares of Common Stock will be changed into the right to convert each \$1,000 principal amount of Notes into the kind and amount of shares of stock, other 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 Merger Event would have owned or been entitled to receive in exchange for its shares of Common Stock upon such Merger Event (the “**Reference Property**”, together with an amount of cash in lieu of any fractional units of Reference Property based on the value of a Unit of Reference Property). Prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture pursuant to Section 8.03 hereof providing for such change in the right to convert each \$1,000 principal amount of Notes.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), then the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election. The Company shall notify Holders of such weighted average as soon as practicable after such determination is made.

As promptly as practicable after executing a supplemental indenture in accordance with Section 9.08(a) hereof, the Company will (i) file with the Trustee an Officer's Certificate briefly describing the reasons therefor, the composition of a Unit of Reference Property for such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent under the Indenture to such Merger Event have been complied with; and (ii) cause to be sent to each Holder, at the address of such Holder as it appears in the register of the Notes maintained by the Registrar, a notice of the execution of such supplemental indenture and the composition of a Unit of Reference Property for such Merger Event; *provided*, that the failure to deliver such notice to any Holder will not affect the validity or legality of such supplemental indenture.

- (b) *Successive Merger Events.* If more than one Merger Event occurs, this Section 9.08 will apply successively to each Merger Event.
- (c) *Compliance Covenant.* The Company will not become a party to any Merger Event unless its terms are consistent with this Section 9.08.

Section 9.09 *Notice to Holders Prior to Certain Actions.*

(a) In case of any Merger Event then the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be sent to each Holder at its address appearing on the Register, as promptly as possible but in any event at least 20 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 action by the Company or one of the Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Issuer or one of the Subsidiaries, (ii) the date on which such Merger Event is expected to become effective or occur, (iii) the Conversion Rate in effect as of the date the Company delivers such notice, (iv) the composition of a Unit of Reference Property for such Merger Event and (v) if applicable, 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 Merger Event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of the Subsidiaries.

(b) Whenever the Company adjusts the Conversion Rate pursuant to Section 9.05 (other than the issuance of dividends in the form of Common Stock), the Company will promptly deliver to each Holder a written notice, which notice will include (i) a brief description of the event requiring adjustment to the Conversion Rate pursuant to Section 9.05, (ii) the effective date of such adjustment, (iii) the Conversion Rate in effect after such adjustment is made and (iv) the manner of computing such adjustment. On the same day the Company delivers such notice to each Holder, the Company will deliver to the Trustee, the Paying Agent and the Conversion Agent an Officer's Certificate that includes all of the information contained in such notice, which Officer's Certificate each of the Trustee, the Paying Agent and the Conversion Agent may treat as conclusive evidence that the adjustment specified in such Officer's Certificate is correct and will be in effect as of the effective date specified in such Officer's Certificate. The failure to deliver such notice will not affect the legality or validity of any such adjustment.

Section 9.10 *No Responsibility of Trustee.* The Trustee and the Conversion Agent will not have any duty or responsibility to any Holder to determine whether any facts exist that require an adjustment 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 in making the same. Neither the Trustee nor the Conversion Agent will be responsible for any failure of the Company to deliver the number of shares of Common Stock and any amount of cash in lieu of fractional shares of Common Stock due upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 9. Without limiting the generality of the foregoing, neither the Trustee nor the Conversion Agent will be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 9.08 hereof, including with respect to the calculation of the amount of cash and the number of Units of Reference Property, if any, receivable by Holders upon the conversion of their Notes after any Merger Event, and each, subject to the provisions of Article 6, may accept as conclusive evidence of the correctness of any such provisions, and will be protected in relying upon, the Officer's Certificate (which the Company will be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

## **ARTICLE 10 MISCELLANEOUS**

Article 10 (Miscellaneous) of the Base Indenture is hereby supplemented, with respect to the Notes, to add the following:

Section 10.01 *No Personal Liability of Shareholders, Employees, Officers or Directors.* None of the Company's, or of any successor entity's, direct or indirect shareholders, employees, officers or directors, as such, past, present or future, shall have any personal liability in respect of the Company's obligations under the Indenture of the Notes solely by reason of his, her or its status as such shareholder, employee, officer or director.

Section 10.02 *Calculations.* Except as otherwise provided in this Supplemental Indenture, the Company or our agents will be responsible for making all calculations called for under the Notes and this Supplemental Indenture. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of the Common Stock or any other security, accrued interest payable on the Notes and the Conversion Rate in effect on any Conversion Date. Neither the Trustee nor the Conversion Agent will be responsible for making any such calculations.

The Company or its agents will make these calculations in good faith and, absent manifest error, its calculations will be final and binding on all Holders. The Company or its agents will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. If any Holder requests from the Trustee a copy of such schedule, the Trustee will promptly forward a copy of such schedule to such Holder.

Section 10.03 *Legal Holidays.* If the Maturity Date or any Interest Payment Date, Fundamental Change Repurchase Date, or Conversion Date is not 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 immediately following Business Day with the same force and effect as if taken on such date, and no interest will accrue for the period from and after such date.

[Signature Page Follows]

IN WITNESS WHEREOF, Vector Group Ltd. has caused this Supplemental Indenture to be duly executed as a deed the day and year first before written.

VECTOR GROUP LTD., as Issuer

By: /s/ Howard M. Lorber

Name: Howard M. Lorber

Title: President and Chief Executive Officer

Signature Page to Indenture

---

IN WITNESS WHEREOF, the undersigned, being duly authorized, has executed this Supplemental Indenture as of the day and year first before written.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee, Paying Agent,  
Registrar and Conversion Agent

By: /s/ Stefan Victory  
Name: Stefan Victory  
Title: Vice President

Signature Page to Indenture

---

[FORM OF FACE OF NOTE]

*[Include the following legend for Global Notes only (the “Global Notes Legend”):]*

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

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

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE DEPOSITARY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

---

No.: [            ]  
CUSIP: [            ]  
ISIN: [            ]

Principal Amount \$[            ]  
[as revised by the Schedule of Increases  
and Decreases of Global Note attached hereto]<sup>1</sup>

**Vector Group Ltd.**  
**Variable Interest Convertible Senior Notes due 2019**

Vector Group Ltd., a Delaware corporation, promises to pay to [            ],<sup>2</sup> or registered assigns, the principal amount of \$[            ] on January 15, 2019.

Interest Payment Dates: January 15, April 15, July 15 and October 15 of each year, beginning [            ].

Regular Record Dates: January 1, April 1, July 1 and October 1 of each year.

Additional provisions of this Note are set forth on the other side of this Note.

VECTOR GROUP LTD.

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

\_\_\_\_\_

<sup>1</sup> Include for Global Notes only.  
<sup>2</sup> Insert Cede & Co. for Global Notes.



TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

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

Signature Page to the Note

---

[FORM OF REVERSE OF NOTE]

VECTOR GROUP LTD.

Variable Interest Convertible Senior Notes due 2019

This Note is one of a duly authorized issue of notes of Vector Group Ltd. (the “**Company**”), designated as its Variable Interest Convertible Senior Notes due 2019 (the “**Notes**”), all issued or to be issued under and pursuant to an indenture dated as of the Issue Date (the “**Base Indenture**”), between the Company and Wells Fargo Bank, National Association (the “**Trustee**”), as supplemented by the First Supplemental Indenture, dated as of the Issue Date (the “**Supplemental Indenture**” and the Base Indenture as supplemented by the Supplemental Indenture, the “**Indenture**”), between the Company and the Trustee, to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders. Capitalized terms used herein and not defined herein have the meanings ascribed to them in the Indenture, and the terms of the Notes include those stated in the Indenture and those incorporated into the Indenture.

1. Interest.

This Note will bear cash interest at an annual rate of 2.50% (the “**Fixed Interest**”), with an additional amount of cash interest payable on the Notes on each Interest Payment Date equal to the product of (i) the total amount of cash dividends and cash distributions per share actually paid by the Company on the Common Stock during the prior three-month period ending on the Record Date for such interest payment and (ii) the total number of shares of the Common Stock into which the Notes are convertible on such Record Date (the “**Dividend Interest**,” together with the Fixed Interest, the “**Total Interest**”). Notwithstanding the foregoing, however, the interest payable on each Interest Payment Date will be the higher of (i) the Total Interest and (ii) 7.50% per annum. Interest on this Note will accrue from the Issue Date or from the most recent date to which interest has been paid or provided for. Each payment of cash interest on this Note will include interest accrued for the period commencing on and including the immediately preceding Interest Payment Date (or, if none, the Issue Date) through the day before the applicable Interest Payment Date.

In addition, if the Notes would otherwise constitute “applicable high yield discount obligations” within the meaning of Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, on each Interest Payment Date on or after January 15, 2018, the Company will pay additional interest on a Note in an amount equal to the amount required to be paid to prevent such Note from being treated as an applicable high yield discount obligation.

Payments of the Fundamental Change Repurchase Price, principal and interest that are not made when due will accrue interest at an annual rate equal to the then-applicable interest rate plus one percent from the applicable payment date.

Pursuant to Section 6.04 of the Indenture, in certain circumstances, the Company will pay Special Interest on this Note.

2. Method of Payment.

The Company will promptly make all payments on this Note on the dates and in the manner provided herein and in the Indenture. Payments on Notes represented by a Global Note (including principal and interest) will be made by wire transfer of immediately available funds to the accounts specified by Depository. The Company will pay principal of, and any Fundamental Change Repurchase Price for, Definitive Notes at the office or agency designated by the Company for such purpose. Interest on Definitive Notes will be made by check or by wire transfer, as described in Section 2.04, except that any payment of interest due on the Maturity Date will be made at the office or agency designated by the Company for such purpose. All payments on this Note will be made in money of the United States that at the time of payment is legal tender for payment of public and private debts.

3. Paying Agent, Conversion Agent and Registrar.

Initially, Wells Fargo Bank, National Association will act as the Trustee, Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Registrar; *provided*, that the Company will maintain at least one Paying Agent, Conversion Agent and Registrar in the continental United States. The Company or any of the Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Registrar.

4. Repurchase By the Company at the Option of the Holder upon a Fundamental Change.

At the option of the Holder, and subject to the terms and conditions of the Indenture, upon the occurrence of a Fundamental Change, each Holder will have the right, at its option, to require the Company to repurchase for cash all of its Notes, or any portion of its Notes having a principal amount equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, at a Fundamental Change Repurchase Price equal to 100% of the principal amount of Notes to be purchased plus accrued and unpaid interest, if any, to but excluding, the Fundamental Change Repurchase Date, unless the Fundamental Change Repurchase Date occurs after a Regular Record Date and on or before the Interest Payment Date corresponding to such Regular Record Date, in which case accrued and unpaid interest, if any, on the Notes will be paid to the Holders of such Notes as of the Close of Business on such Regular Record Date and the Fundamental Change Repurchase Price will equal 100% of the principal amount of such Notes. To exercise its purchase right, a Holder must comply with the procedures set forth in Article 3 of the Supplemental Indenture.

5. No Redemption at the Option of the Company.

The Company may not redeem the Notes prior to the Maturity Date. The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

6. Conversion.

Subject to, or upon, compliance with the provisions set forth in the Indenture, a Holder of this Note has the right, at such Holder's option, to convert the principal amount hereof or any portion of such principal amount that is equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, into (i) a number of shares of Common Stock equal to the product of (A) the Conversion Rate in effect on the applicable Conversion Date and (B) the principal amount of Notes converted *divided by* \$1,000, rounded down to the nearest whole number, and (ii) an amount of cash equal to the product of (A) the fraction of a share of Common Stock eliminated by such rounding and (B) the Last Reported Sale Price of the Common Stock on such Conversion Date.

7. Denominations; Transfer; Exchange.

The Notes are in fully registered form, without coupons, in denominations of \$1,000 of principal amount and integral multiples of \$1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture.

8. Amendment, Supplement and Waiver.

Subject to certain exceptions, the Indenture permits the Indenture and the Notes to be amended or supplemented with the written consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes. In certain circumstances, the Company and the Trustee may also amend or supplement the Indenture or the Notes without the consent of any Holder. Subject to certain exceptions, the Indenture permits the waiver of certain Events of Default or the noncompliance with certain provisions of the Indenture and of the Notes with the written consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes.

9. Defaults and Remedies.

Subject to the following paragraph, if an Event of Default specified in the Indenture occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Notes may declare all the Notes to be due and payable immediately by delivering notice to the Company. In addition, certain specified Events of Default will cause the Notes to become immediately due and payable without the Holders taking any action.

If the Company so elects, the sole remedy for an Event of Default relating to the Company's failure to comply with the reporting obligations under Section 4.02 of the Indenture will, for the 365 days after the occurrence of such Event of Default, consist exclusively of the right to receive Special Interest on the principal amount of the Notes.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority of the principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. Subject to certain exceptions, the Trustee may withhold from Holders notice of any continuing Event of Default or Default (except in payment on any Notes or the failure to convert Notes in accordance with the Indenture) if it determines in good faith that withholding notice is in their interest.

10. Persons Deemed Owners.

The Holder of this Note will be treated as the owner of this Note for all purposes.

11. Unclaimed Money or Notes.

The Trustee and the Paying Agent will return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors, unless an applicable abandoned property law designates another person.

12. Trustee Dealings with the Company.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee.

13. Calculations in Respect of Notes.

Except as otherwise provided in the Indenture, the Company or its agents will be responsible for making all calculations called for under the Notes and the Indenture. These calculations include, but are not limited to, determinations of the Last Reported Sale Price of the Common Stock or any other security, accrued interest payable on the Notes and the Conversion Rate in effect on any Conversion Date.

The Company will make all these calculations in good faith and, absent manifest error, its calculations will be final and binding on all Holders.

14. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company will not 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. By accepting a Note, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

15. Authentication.

This Note will not be valid until an authorized signatory of the Trustee manually signs the Trustee's certificate of authentication on the other side of this Note.

16. Abbreviations.

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

17. GOVERNING LAW.

THE INDENTURE AND THE NOTES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK BUT WITHOUT REGARD TO CHOICE OF LAWS OR CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

18. CUSIP Numbers.

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

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

Vector Group Ltd.  
100 S.E. Second Street  
Miami, Florida 33131  
Telephone Number: (305) 579-8000

**Attachment 1**

**CONVERSION NOTICE**

VECTOR GROUP LTD.  
Variable Interest Convertible Senior Notes due 2019

To convert this Note, check the box

To convert the entire principal amount of this Note, check the box

To convert only a portion of the principal amount of this Note, check the box  and here specify the principal amount to be converted, which principal amount must equal \$1,000 or an integral multiple of \$1,000 in excess thereof:

Signature Guaranteed

\_\_\_\_\_  
Participant in a Recognized Signature  
Guarantee Medallion Program

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

Attachment 2

**FUNDAMENTAL CHANGE REPURCHASE NOTICE**  
Variable Interest Convertible Senior Notes due 2019

Wells Fargo Bank, National Association  
7000 Central Parkway NE  
Suite 550  
Atlanta, GA 30328  
Attn: Vector Group Ltd. Account Manager

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Vector Group Ltd. (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 pay to the 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 equal to \$1,000 principal amount or an integral multiple of \$1,000 in excess thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not occur during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

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

Signature Guaranteed

\_\_\_\_\_  
Participant in a Recognized Signature  
Guarantee Medallion Program

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



[Include for Global Note]

**SCHEDULE OF INCREASES AND DECREASES OF GLOBAL NOTE**

Initial Principal Amount of Global Note: [            ]

<b>Date</b>	<b>Amount of Increase in Principal Amount of Global Note</b>	<b>Amount of Decrease in Principal Amount of Global Note</b>	<b>Principal Amount of Global Note After Increase or Decrease</b>	<b>Notation by Registrar or Note Custodian</b>
-------------	--------------------------------------------------------------------------	--------------------------------------------------------------------------	-------------------------------------------------------------------------------	--------------------------------------------------------

---



O'MELVENY & MYERS LLP

BEIJING  
BRUSSELS  
CENTURY CITY  
HONG KONG  
JAKARTA†  
LONDON  
NEWPORT BEACH

400 South Hope Street  
Los Angeles, California 90071-2899  
TELEPHONE (213) 430-6000  
FACSIMILE (213) 430-6407  
www.omm.com

NEW YORK  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY  
SINGAPORE  
TOKYO  
WASHINGTON, D.C.

November 20, 2012

Vector Group Ltd.  
100 S.E. Second Street  
Miami, FL 33131

**Re: Variable Interest Convertible Senior Notes due 2019 of Vector Group Ltd.**

Ladies and Gentlemen:

We have acted as special counsel to Vector Group Ltd., a Delaware corporation (the "Company") in connection with the issuance and sale of \$230,000,000 aggregate principal amount of the Company's Variable Interest Convertible Senior Notes due 2019 (the "Notes") convertible into shares of the Company's common stock, par value \$0.10 per share (the "Common Stock" and, when issued upon conversion of the Notes, the "Conversion Shares"), pursuant to an Underwriting Agreement, dated as of November 15, 2012 (the "Underwriting Agreement"), between the Company and Jefferies & Company, Inc. (the "Underwriter"). The Notes constitute a series of the debt securities registered on a Registration Statement on Form S-3 (File No. 333-184878) (the "Registration Statement"), filed by the Company with the Securities and Exchange Commission (the "Commission") on November 9, 2012 and amended by Post-Effective Amendment No. 1 filed by the Company with the Commission on November 13, 2012. The Notes are being issued pursuant to an indenture, dated as of November 20, 2012 (the "Base Indenture"), between the Company and Wells Fargo Bank, National Association, as trustee (the "Trustee"), as supplemented by the First Supplemental Indenture, dated as of November 20, 2012, between the Company and the Trustee (as so supplemented, the "Indenture").

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion.

In our examination, we have assumed that the certificates for the Notes will conform to the forms thereof examined by us, the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. To the extent the Company's obligations depend on the enforceability of any agreement against the other parties to such agreement, we have assumed that such agreement is enforceable against such other parties. As to any facts material to the opinions expressed herein which were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company. In addition, we have obtained and relied upon those certificates of public officials we considered appropriate.

† In association with Tumbuan & Partners

---

On the basis of such examination, our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that:

1. The issuance of the Notes has been duly authorized by all necessary corporate action on the part of the Company and, upon payment for and delivery of the Notes in accordance with the Underwriting Agreement and the authentication of the certificate or certificates representing the Notes by a duly authorized signatory of the Trustee in accordance with the Indenture, the Notes will be legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws), and by general principles of equity including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding at law or in equity.

2. The Conversion Shares initially issuable upon conversion of the Notes have been duly authorized by all necessary corporate action on the part of the Company, and, assuming issuance of the Conversion Shares upon the permitted conversion of the Notes on the date hereof in accordance with the terms of the Notes and the Indenture, the Conversion Shares would be validly issued, fully paid and non-assessable.

The law covered by this opinion is limited to the present law of the State of New York and the current General Corporation Law of the State of Delaware. We express no opinion as to the laws of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act of 1933, as amended, or the rules and regulations of the Commission promulgated thereunder, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, the prospectus included in the Registration Statement or any prospectus supplement, other than as expressly stated herein with respect to the Securities.

---

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Current Report on Form 8-K dated the date hereof filed by the Company and incorporated by reference into the Registration Statement, and to the reference to O'Melveny & Myers under the caption "Legal Matters" in the prospectus constituting a part of such Registration Statement.

Respectfully submitted,

/s/ O'Melveny & Myers LLP

---



O'MELVENY & MYERS LLP

BEIJING  
BRUSSELS  
CENTURY CITY  
HONG KONG  
JAKARTA†  
LONDON  
NEWPORT BEACH

400 South Hope Street  
Los Angeles, California 90071-2899  
TELEPHONE (213) 430-6000  
FACSIMILE (213) 430-6407  
www.omm.com

NEW YORK  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY  
SINGAPORE  
TOKYO  
WASHINGTON, D.C.

November 20, 2012

Vector Group Ltd.  
100 S.E. Second Street  
Miami, FL 33131

**Re: 6,114,000 Shares of Common Stock of Vector Group Ltd.**

Ladies and Gentlemen:

We have acted as special counsel to Vector Group Ltd., a Delaware corporation (the "Company") in connection with the issuance and sale of 6,114,000 shares (the "Shares") of the Company's common stock, par value \$0.10 per share (the "Common Stock"), pursuant to an Underwriting Agreement, dated as of November 15, 2012 (the "Underwriting Agreement"), between the Company and Jefferies & Company, Inc. ("Jefferies"), as the underwriter. The Company has agreed to loan the Shares to Jefferies (in such capacity, the "Share Borrower") pursuant to a Share Lending Agreement, dated as of November 15, 2012 (the "Share Lending Agreement"), between the Company and the Share Borrower. The Shares constitute equity securities registered on a Registration Statement on Form S-3 (File No. 333-184878) (the "Registration Statement"), filed by the Company with the Securities and Exchange Commission (the "Commission") on November 9, 2012 and amended by Post-Effective Amendment No. 1 filed by the Company with the Commission on November 13, 2012.

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. To the extent the Company's obligations depend on the enforceability of any agreement against the other parties to such agreement, we have assumed that such agreement is enforceable against such other parties. As to any facts material to the opinions expressed herein which were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company. In addition, we have obtained and relied upon those certificates of public officials we considered appropriate.

† In association with Tumbuan & Partners

---

In connection with the opinion expressed in paragraph 1 below, we have assumed that the resolutions of the Board of Directors of the Company relating to the issuance and sale of the Shares and related matters (the “Resolutions”) will be in full force and effect at all times at which the Shares are issued and delivered by the Company, and the Company will take no action inconsistent with such Resolutions.

On the basis of such examination, our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that:

1. The Shares, upon their payment for and delivery in accordance with the Share Lending Agreement and the Underwriting Agreement, will be validly issued, fully paid and non-assessable.

The law covered by this opinion is limited to the present law of the State of New York and the current General Corporation Law of the State of Delaware. We express no opinion as to the laws of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction.

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act of 1933, as amended, or the rules and regulations of the Commission promulgated thereunder, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, the prospectus included in the Registration Statement or any prospectus supplement, other than as expressly stated herein with respect to the Securities.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Current Report on Form 8-K dated the date hereof filed by the Company and incorporated by reference into the Registration Statement, and to the reference to O’Melveny & Myers under the caption “Legal Matters” in the prospectus constituting a part of such Registration Statement.

Respectfully submitted,

/s/ O’Melveny & Myers LLP

---

**FOR IMMEDIATE RELEASE**

Contact: Paul Caminiti / Jonathan Doorley  
Sard Verbinnen & Co  
212-687-8080

**VECTOR CLOSES OFFERING OF \$230 MILLION OF  
VARIABLE INTEREST CONVERTIBLE SENIOR NOTES**

---

**Miami, FL, November 20, 2012** - Vector Group Ltd. (NYSE: VGR) (“Vector” or the “Company”) today announced the closing of its previously announced registered public offering of \$230.0 million aggregate principal amount of its Variable Interest Convertible Senior Notes due 2019 (the “Notes”), which includes the underwriter’s full exercise of its over-allotment option (the “Notes Offering”). The Notes will bear cash interest at a rate of 2.50% per year, plus an additional amount of interest based on the amount of cash dividends per share actually paid by the Company on its common stock, provided that the interest payable on the Notes shall not be less than 7.50% per year.

In connection with the Notes Offering, the Company entered into a share lending agreement with Jefferies & Company, Inc. (in such capacity, the “Share Borrower”), under which it lent the Share Borrower 6,114,000 shares of its common stock, par value \$0.10 per share (the “Borrowed Shares”), to facilitate hedging transactions related to the Notes Offering. Within one business day after the closing of the Notes Offering, the Share Borrower will return 3,057,000 of the Borrowed Shares to the Company, reducing the number of shares outstanding under the share lending agreement to 3,057,000 shares. Subject to certain limitations, the Share Borrower may from time to time during the term of the share lending agreement borrow from the Company up to 1,000,000 additional shares of the Company’s common stock for additional offerings that may be made in subsequent offerings, on a delayed basis, in transactions that may include block sales, sales in the over-the-counter market, sales pursuant to negotiated transactions or otherwise.

---

The Company intends to use the net proceeds received from the Notes Offering for general corporate purposes, including in its existing tobacco business and in additional investments in real estate through its wholly owned subsidiary, New Valley LLC. The Company may also consider using a portion of the proceeds of the Notes Offering to address upcoming debt maturities. The Company will not receive any proceeds from the offering of the Borrowed Shares, but the Company will receive a nominal loan fee from the Share Borrower for the use of the Borrowed Shares, which the Company intends to use for general corporate purposes.

Jefferies & Company, Inc. acted as the underwriter for the Notes Offering and the offering of the Borrowed Shares. Copies of the prospectus supplement and the accompanying prospectus relating to the Notes Offering and the offering of the Borrowed Shares may be obtained from Jefferies & Company, Inc., Attention: Equity Syndicate Prospectus Department, 520 Madison Avenue, 12<sup>th</sup> Floor, New York, NY 10022, by email at Prospectus\_Department@Jefferies.com, or by telephone at (877) 547-6340.

This news release does not constitute an offer to sell or a solicitation of an offer to buy any of the Notes, the Borrowed Shares or any other securities, nor will there be any sale of the Notes, the Borrowed Shares or any other securities in any state or jurisdiction in which such an offer, solicitation or sale is not permitted.

#### **Cautionary Note Regarding Forward-Looking Statements**

This press release contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The Company has tried, whenever possible, to identify these forward-looking statements using words such as “anticipates”, “believes”, “estimates”, “expects”, “plans”, “intends” and similar expressions. These statements reflect the Company’s current beliefs and are based upon information currently available to it. Accordingly, such forward-looking statements involve known and unknown risks, uncertainties and other factors which could cause the Company’s actual results, performance or achievements to differ materially from those expressed in, or implied by, such statements.

All information set forth in this press release is as of November 20, 2012. Vector does not intend, and undertakes no duty, to update this information to reflect future events or circumstances. Information about certain other potential factors that could affect Vector’s business and financial results and cause actual results to differ materially from those expressed or implied in any forward-looking statements are included from time to time in Vector’s filings with the SEC, including Part I, Item 1A “Risk Factors” of Vector’s Annual Report on Form 10-K for the year ended December 31, 2011 and Part II, Item 1A “Risk Factors” of Vector’s Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2012, June 30, 2012 and September 30, 2012.

---



Vector has filed a registration statement (including prospectus) with the SEC for the offerings to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents Vector has filed with the SEC for more complete information about Vector and these offerings. You may obtain these documents for free by visiting EDGAR on the SEC website at [www.sec.gov](http://www.sec.gov).

\*\*\*

Vector Group is a holding company that indirectly owns Liggett Group LLC and Vector Tobacco Inc. and directly owns New Valley LLC.

---