UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

Current Report Pursuant to Section 13 or 15(d)
Of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **April 18, 2012**

TITAN MACHINERY INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

001-33866	**45-0357838**
(Commission File Number)	(IRS Employer Identification No.)

644 East Beaton Drive
West Fargo, North Dakota 58078
(Address of Principal Executive Offices) (Zip Code)

(701) 356-0130
(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 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On April 18, 2012, Titan Machinery Inc. (the "Company") entered into a purchase agreement (the "Purchase Agreement") with certain initial purchasers (collectively, the "Initial Purchasers"), relating to the sale by the Company to the Initial Purchasers of $135,000,000 aggregate principal amount of the Company's 3.75% convertible senior notes due 2019 (the "Notes") for resale to qualified institutional buyers, as defined in, and in reliance on, Rule 144A of the Securities Act of 1933, as amended (the "Securities Act"). Under the terms of the Purchase Agreement, the Company granted the Initial Purchasers an option to purchase up to an additional $15,000,000 aggregate principal amount of the Notes to cover overallotments. On April 19, 2012, the Initial Purchasers exercised in full their option to purchase additional Notes.

The net proceeds from the offering of the Notes were approximately $145.2 million, after deducting the Initial Purchasers' discounts and commissions and estimated offering expenses payable by the Company. The Company expects to use the net proceeds from the offering of the Notes for working capital and general corporate purposes, which could include repaying portions of its floorplan financing facilities and the acquisition of, or investment in, companies or assets that complement its business.

The Purchase Agreement includes customary representations, warranties and covenants by the Company, as well as an agreement by the Company to indemnify the Initial Purchasers against certain liabilities.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Purchase Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

Indenture

The Notes were issued pursuant to an indenture, dated as of April 24, 2012 (the "Indenture"), between the Company and Wells Fargo Bank, National

Association, as trustee.

The Notes are general unsecured and unsubordinated obligations of the Company, and interest will be payable semiannually at a rate of 3.75% per annum. The Notes mature on May 1, 2019, unless earlier converted, redeemed or purchased by the Company in accordance with their terms. The Notes will be convertible at the option of the holders of the Notes under certain conditions described below. Upon conversion, the Company will pay cash up to the aggregate principal amount of converted notes and pay or deliver, as the case may be, cash, shares of Company common stock or a combination thereof, at the Company's election, for any conversion obligation in excess thereof, subject to certain limitations described below. The initial conversion rate for the Notes is 23.1626 shares of Company common stock per $1,000 principal amount of notes, and is subject to certain adjustments as set forth in the Indenture.

Prior to the close of business on the business day immediately preceding February 1, 2019, holders may convert their Notes, only if one of the following conditions has been satisfied:

- during any fiscal quarter (and only during such fiscal quarter) commencing after July 31, 2012, if, for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on the last trading day of the immediately preceding fiscal quarter, the last

reported sale price of Company common stock for such trading day is greater than or equal to 120% of the applicable conversion price on such trading day;

- during the five consecutive business day period immediately following any five consecutive trading day period in which, for each such trading day, the trading price per $1,000 principal amount of Notes for such trading day was less than 98% of the product of the last reported sale price of Company common stock for such trading day and the applicable conversion rate for such trading day;

- if the Company calls any or all of the Notes for redemption, at any time prior to the close of business on the business day immediately preceding the applicable redemption date; or

- upon the occurrence of specified corporate transactions.

On and after February 1, 2019 to, and including, the close of business on the business day immediately preceding the maturity date, a holder may convert all or a portion of its notes, in principal amounts equal to $1,000 or an integral multiple thereof, regardless of the foregoing circumstances.

Holders of the Notes who convert their Notes in connection with a make-whole fundamental change, as defined in the Indenture, may be entitled to a make-whole premium in the form of an increase in the conversion rate. Additionally, in the event of a fundamental change, as defined in the Indenture, the holders of the Notes may require the Company to purchase all or a portion of their Notes for cash at a purchase 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 purchase date.

Certain listing standards of the NASDAQ Global Select Market prohibit the Company from issuing 20% or more of its outstanding common stock upon conversion of the Notes, without obtaining stockholder approval for such issuance. Accordingly, unless the Company has received the required NASDAQ stockholder approval, the number of shares the Company delivers per $1,000 principal amount of converted Notes in respect of any "VWAP trading day" in the relevant "observation period" (each, as defined in the Indenture), will be subject to a daily NASDAQ share cap, initially equal to 1.3949 shares of Company common stock per $1,000 principal amount of Notes. Such cap will be subject to adjustment in connection with stock splits, reverse stock splits and stock dividends. The Company will not pay cash in lieu of any shares it does not deliver as a result of the daily NASDAQ share cap. Pursuant to the Indenture, the Company has agreed not to make distributions on its common stock or take any other action that would result in an adjustment to the conversion rate of the Notes if, following such adjustment, the conversion rate would exceed 27.8980 shares per $1,000 principal amount of Notes (as adjusted in connection with stock splits, reverse stock splits and stock dividends), unless the Company has received the required NASDAQ stockholder approval.

In addition, unless and until the Company's stockholders approve a sufficient increase in the authorized shares of Company common stock such that the number of authorized and unissued shares that have not been reserved for any other purpose equals or exceeds the "maximum number of underlying shares" (as defined in the Indenture), the number of shares that the Company delivers per $1,000 principal amount of converted Notes in respect of any VWAP trading day in the relevant observation period, will be subject to a daily authorized share cap, initially equal to 1.0000 share of Company common stock per $1,000 principal amount of Notes. The Company is obligated to pay cash in lieu of any shares that it does not deliver as a result of the daily authorized share cap.

Pursuant to the Indenture, the Company may not redeem the Notes prior to May 6, 2015. On and after May 6, 2015, the Company may redeem for cash all or a portion of the Notes at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, if the last reported sale price of Company common stock has been at least 120% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of such redemption.

The Indenture provides for customary events of default, including, but not limited to, cross acceleration to certain other indebtedness of the Company and its subsidiaries. In the case of an event of default arising from specified events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. If any other event of default under the Indenture occurs or is continuing, the trustee or holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all of the Notes to be due and payable immediately.

The foregoing description of the Notes and the Indenture does not purport to be complete and is qualified in its entirety by reference to the complete text of the Indenture, a copy of which is attached hereto as Exhibit 4.1 and is incorporated by reference herein.

The Purchase Agreement and the Indenture have been included herein to provide the Company's security holders with information regarding the terms of the offering of the Notes. The Purchase Agreement and the Indenture are not intended to provide any other factual information about the Company. The

Company's representations in the Purchase Agreement and Indenture were made as of the date thereof in connection with negotiating the contract, are subject to qualifications and limitations agreed to by the parties, may have been used for purposes of allocating risk between the parties rather than for the purpose of establishing matters as facts, and should not be relied upon as though such representations were made to any holders of securities of the Company. Security holders should not rely on such representations and warranties as characterizations of the actual state of facts, since they were made only as of the date of such documents and the information concerning the subject matter of such representations and warranties may change after the date of such documents, which subsequent information may or may not be fully reflected in the Company's public disclosures.

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

The information set forth in Item 1.01 hereof is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 hereof is incorporated by reference into this Item 3.02.

Item 8.01. Other Events.

On April 18, 2012, the Company issued a press release announcing the pricing and other terms of the Notes. As required by Rule 135c(d) under the Securities Act, this press release is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

On April 24, 2012, the Company issued a press release announcing the exercise by the Initial Purchasers of their option to purchase additional Notes and the closing of the sale of the Notes. As required by Rule 135c(d) under the Securities Act, this press release is attached hereto as Exhibit 99.2 and is incorporated by reference herein.

The announcements are neither offers to sell nor solicitations of offers to buy any of the securities and shall not constitute offers, solicitations, or sales in any jurisdiction in which such offers, solicitations or sales are unlawful. The Notes and the shares of Company common stock issuable upon conversion of the Notes, if any, will not be registered under the Securities Act or any state securities laws, and unless so registered, may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Securities Act and applicable state laws.

Item 9.01 Financial Statements and Exhibits.

(a) Financial statements: None

(b) Pro forma financial information: None

(c) Shell Company Transactions: None

(d) Exhibits:

Exhibit No.	Description
4.1	Indenture, dated as of April 24, 2012, by and between Wells Fargo Bank, National Association, as Trustee, and Titan Machinery Inc.
10.1	Purchase Agreement, dated April 18, 2012, by and among Titan Machinery Inc. and certain initial purchasers.
99.1	Press Release dated April 18, 2012.
99.2	Press Release dated April 24, 2012.

SIGNATURES

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

TITAN MACHINERY INC.

Date: April 24, 2012

By /s/ Mark P. Kalvoda
Mark P. Kalvoda
Chief Financial Officer

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

EXHIBIT INDEX
to
FORM 8-K

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Date of Report:
April 18, 2012

Commission File No.:
001-33866

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Exhibit 4.1

TITAN MACHINERY INC.

AS ISSUER

3.75% CONVERTIBLE SENIOR NOTES DUE 2019

INDENTURE

DATED AS OF APRIL 24, 2012

WELLS FARGO BANK, NATIONAL ASSOCIATION

AS TRUSTEE

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INDENTURE dated as of April 24, 2012 between Titan Machinery Inc., a Delaware corporation, as issuer ("**Company**"), and Wells Fargo Bank, National Association, a national banking association, as trustee ("**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 Company's 3.75% Convertible Senior Notes due 2019:

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions.*

"**Additional Interest**" means all amounts that may be payable pursuant to Section 5.02(b), Section 5.02(c) and Section 7.01(c), as applicable.

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

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

"**Bid Solicitation Agent**" means the Trustee or such other Person as may be appointed from time to time by the Company, without prior notice to the Holders, to solicit market bid quotations for the Notes in accordance with Section 11.01(b)(ii) and the definition of "Trading Price" below.

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

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

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

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the equity of such Person, but excluding any debt securities convertible into such equity.

"**Certificated Notes**" means Notes that are in registered definitive form.

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

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

"**Common Stock**" means the shares of the common stock of the Company, par value $0.00001 per share, existing on the Issue Date, subject to Section 11.06 hereof.

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

"**Company Order**" means a written request or order signed in the name of the Company by any Officer.

"**Continuing Director**" means a director who either was a member of the Board of Directors on April 18, 2012 or who becomes a member of the Board of Directors subsequent to such date and whose election, appointment or nomination for election by the stockholders of the Company is duly approved by a majority of the Continuing Directors on the Board of Directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the entire Board of Directors in which such individual is named as nominee for director. Solely for purposes of this definition, " Board of Directors" means the board of directors of the Company and does not include any committee thereof.

"**Corporate Trust Office**" means the corporate trust office of the Trustee at which at any time the trust created by this Indenture shall be administered, which office at the date hereof is located at 45 Broadway, 14th Floor, New York, NY 10006, Attention: Corporate Trust Services, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor Trustee at which such trust shall be administered (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

"**Daily Conversion Value**" means, for each of the 20 consecutive VWAP Trading Days in the Observation Period for a Note, one-twentieth (1/20th) of the product of (i) the Conversion Rate on such VWAP Trading Day and (ii) the Daily VWAP on such VWAP Trading Day.

"**Daily NASDAQ Share Cap**" means, initially, 1.3949 shares of Common Stock per $1,000 principal amount of Notes; *provided* that the Daily NASDAQ Share Cap shall be subject to adjustment in the same manner and at the same time as the Conversion Rate in connection with any transaction or event described in Section 11.05(a).

"**Daily Net Settlement Amount**" means, for each of the 20 consecutive VWAP Trading Days in the relevant Observation Period:

(a) if the Company does not make a Cash Settlement Election pursuant to Section 11.03(a)(i), a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and $50, *divided by* (ii) the Daily VWAP for such VWAP Trading Day;

(b) if the Company elects a Cash Percentage of 100% pursuant to Section 11.03(a)(i), cash in an amount equal to the difference between the Daily Conversion Value and $50; or

(c) if the Company elects a Cash Percentage of less than 100% pursuant to Section 11.03(a)(i), (i) cash equal to the product of (x) the difference between the Daily Conversion Value and $50 and (y) the Cash Percentage, *plus* (ii) a number of shares of Common Stock equal to the product of (x) (A) the difference between the Daily Conversion Value and $50, *divided by* (B) the Daily VWAP for such VWAP Trading Day and (y) 100% *minus* the Cash Percentage.

"**Daily Settlement Amount**" means, for each of the 20 consecutive VWAP Trading Days in the relevant Observation Period:

(a) cash equal to the lesser of (i) $50 and (ii) the Daily Conversion Value for such VWAP Trading Day; and

(b) if the Daily Conversion Value for such VWAP Trading Day exceeds $50, the Daily Net Settlement Amount for such VWAP Trading Day.

"**Daily VWAP**" means, for any of the 20 consecutive VWAP Trading Days in the Observation Period for a Note, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "TITN <equity> AQR" (or any successor thereto if such page it not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such VWAP Trading Day, determined, if practicable, using a volume-weighted average method, by an independent, nationally recognized investment banking firm retained by the Company for this purpose). The Daily VWAP shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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

"**DTC**" mean The Depository Trust Company.

"**Ex-Dividend Date**" means, with respect to any issuance, dividend or distribution, the first date on which shares of Common Stock trade on the Relevant Stock Exchange, regular way, without the right to receive such issuance, dividend or distribution, from the Company or, if applicable, from the seller of the Common Stock on the Relevant Stock Exchange (in the form of due bills or otherwise) as determined by the Relevant Stock Exchange.

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

"**Fundamental Change**" means an event that shall be deemed to have occurred any time after the Issue Date when any of the following events occurs:

(1) a "person" or "group" within the meaning of Section l3(d) of the Exchange Act other than the Company, its Subsidiaries and the employee benefits plans of the Company and its Subsidiaries, has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(2) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) pursuant to which the Common Stock would be converted into, or exchanged for, stock, other securities or other property or assets; (B) any share exchange, consolidation, merger or similar event involving the Company pursuant to which the Common Stock will be converted into, or exchanged for, cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries (any such consolidation, merger, transaction or series of transactions being referred to for purposes of this definition as an "**event**"); *provided* that any such event described in clause (B) where the holders of all classes of the Company's Voting Stock immediately prior to such event own, directly or indirectly, more than 50% of the Voting Stock of the continuing or surviving Person or transferee or the parent thereof immediately after such event and such holders' proportional voting power immediately after such event vis-à-vis each other with respect to the securities they receive in such event will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such event shall not constitute a Fundamental Change under this clause (2);

(3) Continuing Directors cease to constitute at least a majority of the Board of Directors;

(4) the holders of the Common Stock approve any plan or proposal for the Company's liquidation or dissolution; or

(5) the Common Stock (or any other common stock into which the Notes are convertible at such time, subject to Section 11.03) ceases to be listed or admitted for trading on any Permitted Exchange, or the announcement by any Permitted Exchange on which the Common Stock (or such other common stock) is then listed or admitted for trading that the Common Stock (or such other common stock) will no longer be so listed or admitted for trading, unless the Common Stock (or such other common stock) has been accepted for listing or admitted for trading on another Permitted Exchange.

Notwithstanding the foregoing, a transaction or a series of transactions as set forth in clause (1) or clause (2) above shall not constitute a Fundamental Change if, at least 90% of the consideration received or to be received by holders of the Common Stock (excluding cash payments for fractional shares) in connection with such transaction or transactions consists of shares of common stock traded on a Permitted Exchange, and as a result of such transaction or

transactions, such consideration will constitute Reference Property for the Notes pursuant to Section 11.06.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect and, to the extent optional, adopted by the Company, on the Issue Date, consistently applied.

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

"**Global Securities Legend**" means a legend set forth in Exhibit A.

"**Holder**" or "**Holders**" means a Person or Persons in whose name a Note is registered in the Register.

"**Indenture**" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof.

"**Issue Date**" means April 24, 2012.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the last bid price and the last ask price or, if more than one in either case, the average of the average last bid prices and the average last ask prices) on such date as reported in composite transactions for the Relevant Stock Exchange, without regard to after-hours or extended market trading; *provided* that if the Common Stock is not listed for trading on any securities exchange or market on the relevant date, the "**Last Reported Sale Price**" of the Common Stock shall equal the average of the last quoted bid and ask prices for the Common Stock in the over-the-counter market on such date as reported by OTC Markets Group Inc. or a similar organization; *provided further* that if the Common Stock is not so quoted on such date, the "**Last Reported Sale Price**" will be the average of the mid-point of the last bid prices and the last ask prices for the Common Stock on such date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Make-Whole Fundamental Change**" means any Fundamental Change (as defined herein, but without regard to the proviso in clause (2) of such definition but, for the avoidance of doubt, subject to the paragraph immediately following clause (5) of such definition).

"**Maturity Date**" means May 1, 2019.

"**Maximum Number of Underlying Shares**" means, as of any date, the product of (i) the Maximum Conversion Rate on such date and (ii) the aggregate principal amount of outstanding Notes expressed in thousands.

"**Notes**" means any of the Company's 3.75% Convertible Senior Notes due 2019 issued under this Indenture.

"**Observation Period**" means, with respect to any converted Note:

(i) if the Conversion Date for such Note occurs prior to the 25th Scheduled Trading Day immediately preceding the Maturity Date, and does not occur during a Redemption Period, the 20 consecutive VWAP Trading Day period beginning on, and including, the second Scheduled Trading Day after such Conversion Date;

(ii) if the relevant Conversion Date occurs during a Redemption Period, the 20 consecutive Trading Days beginning on, and including, the 22nd Scheduled Trading Day immediately preceding such Redemption Date; and

(iii) if the Conversion Date for such Note occurs on or after the 25th Scheduled Trading Day immediately preceding the Maturity Date, and does not occur during a Redemption Period, the 20 consecutive VWAP Trading Day period beginning on, and including, the 22nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Offering Memorandum**" means the preliminary offering memorandum for the offering and sale of the Notes dated April 18, 2012, as supplemented and/or amended by the related pricing term sheet.

"**Officer**" means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Company.

"**Officer's Certificate**", when used with respect to the Company, means a written certificate (i) containing the information specified in Sections 14.02 and 14.03, signed in the name of the Company by any Officer, and delivered to the Trustee; or (ii) if given pursuant to Section 5.03 or Section 7.01(b), signed by the principal financial or accounting Officer of the Company, which certificate need not contain the information specified in Sections 14.02 and 14.03.

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

"**Opinion of Counsel**" means a written opinion containing the information specified in Sections 14.02 and 14.03, from legal counsel. The counsel may be an employee of, or counsel to, the Company who is reasonably satisfactory to the Trustee.

"**Permitted Exchange**" means the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any successor thereto).

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

"**QIB**" means a "qualified institutional buyer" (as defined in Rule 144A).

"**Relevant Stock Exchange**" means the NASDAQ Global Select Market or, if the Common Stock is not then listed on the NASDAQ Global Select Market, the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, the principal other market on which the Common Stock is then traded.

"**Restricted Securities Legend**" means a legend in the form set forth in Exhibit A, or any other substantially similar legend indicating the restricted status of the Notes under Rule 144.

"**Restricted Stock Legend**" means a legend in the form set forth in Exhibit B, or any other substantially similar legend indicating the restricted status of any shares of Common Stock issued upon conversion of the Notes under Rule 144.

"**Rule 144**" means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"**Scheduled Free Trade Date**" means the one year anniversary of the Issue Date.

"**Scheduled Trading Day**" means (i) a day that is scheduled to be a Trading Day on the Relevant Stock Exchange, or (ii) if the Common Stock is not listed or admitted for trading on any exchange or market, a Business Day.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Significant Subsidiary**" means, with respect to any Person, any "significant subsidiary" of such Person within the meaning of Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

"**Stock Price**" means, with respect to the Common Stock, in connection with a Fundamental Change, (i) in the case of a Fundamental Change described in clause (2) of the definition of Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash paid per share of the Common Stock in such Fundamental Change, and (ii) otherwise, the average of the Last Reported Sales Price of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the applicable Make-Whole Fundamental Change Effective Date.

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

"**TIA**" means the Trust Indenture Act of 1939 as in effect on the Issue Date, *provided*, *however*, that if the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

"**Trading Day**" means (i) a day on which (a) trading in the Common Stock generally occurs on the Relevant Stock Exchange and (b) a Last Reported Sale Price for the Common Stock is available, or (ii) if the Common Stock is not listed or traded on any exchange or other market, a Business Day.

"**Trading Price**" per $1,000 principal amount of the Notes on any date of determination means the average (per $1,000 principal amount of Notes) of the secondary market bid quotations obtained by the Bid Solicitation Agent for $5,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; *provided* that, if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for $5,000,000 principal amount of the Notes from an independent nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the Intrinsic Value of the Notes for such determination date. If the Company does not instruct the Bid Solicitation Agent to obtain bids when required under Section 11.01(b)(ii) or the Company so instructs the Bid Solicitation Agent but the Bid Solicitation Agent fails to determine the Trading Price, the Trading Price per $1,000 principal amount of the Notes shall be deemed to be less than 98% of the Intrinsic Value of the Notes on each day of such failure.

"**Trust Officer**" means any officer within the corporate trust department of the Trustee (or any successor group of the Trustee) with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter hereunder, any other officer of the Trustee to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

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

successors.

"**Uniform Commercial Code**" means the New York Uniform Commercial Code as in effect from time to time.

"**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 shall have or might have voting power by reason of the happening of any contingency).

"**VWAP Market Disruption Event**" means (i) the Relevant Stock Exchange fails to open for trading or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than a one half-hour period in the aggregate during regular trading hours, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Relevant Stock Exchange or otherwise) in the Common Stock or in any options contracts or future contracts relating to the Common Stock.

"**VWAP Trading Day**" means (i) a day on which (a) there is no VWAP Market Disruption Event and (b) trading in the Common Stock generally occurs on the Relevant Stock Exchange or (ii) if the Common Stock (or any other security for which a Daily VWAP must be determined) is not listed or traded on any exchange or other market, a Business Day.

Section 1.02. *Other Definitions.*

Term	**Section: Defined in:**
"Act"	1.04
"Additional Shares"	11.07(a)
"Authorized Share Approval"	11.03(a)(ii)
"Cash Merger"	11.07(e)
"Cash Percentage"	11.03(a)(i)
"Cash Settlement Election"	11.03(a)(i)
"Clause A Distribution"	11.05(c)(ii)
"Clause B Distribution"	11.05(c)(ii)
"Clause C Distribution"	11.05(c)(ii)
"Company's Filing Obligations"	7.01(c)
"Consummation Time"	11.05(e)
"Conversion Agent"	2.04
"Conversion Date"	11.02(b)
"Conversion Excess Obligation"	11.03(a)(i)
"Conversion Obligation"	11.01(a)
"Conversion Rate"	11.01(a)
"Daily Authorized Share Cap"	11.03(a)(ii)
"Defaulted Interest"	12.02
"Depositary"	2.02(a)
"Distributed Property"	11.05(c)(i)
"Event of Default"	7.01(a)
"Expiration Date"	11.05(e)
"Fundamental Change Notice"	3.02
"Fundamental Change Notice Date"	3.02
"Fundamental Change Purchase Date"	3.01
"Fundamental Change Purchase Notice"	3.03(a)
"Fundamental Change Purchase Price"	3.01
"Interest Payment Date"	12.01
"Intrinsic Value"	11.01(b)(ii)
"Make-Whole Fundamental Change Effective Date"	11.07(a)
"Maximum Conversion Rate"	11.07(d)

"Measurement Period"	11.01(b)(ii)
"Notice of Conversion"	11.02(a)
"Optional Redemption"	4.01
"Paying Agent"	2.04
"Record Date"	12.01
"Redemption Date"	4.02(a)
"Redemption Notice"	4.02(a)
"Redemption Period"	11.03(a)(i)
"Redemption Price"	4.01
"Reference Property"	11.06(a)(iv)
"Register"	2.04
"Registrar"	2.04
"Required NASDAQ Stockholder Approval"	11.03(b)
"Resale Restriction Termination Date"	2.06(f)(ii)

"Restricted Notes"	2.06(f)(i)
"Sale Price Condition"	11.01(b)(i)
"Settlement Amount"	11.03(a)
"Settlement Method Notice"	11.03(a)(i)
"Share Exchange Event"	11.06(a)(iv)
"Special Record Date"	12.02(a)
"Specified Corporate Transaction Notice"	11.01(b)(iv)
"Spin-Off"	11.05(c)(ii)
"Stock Price"	11.07(b)
"Successor Company"	6.01(a)
"Temporary Notes"	2.09
"Trading Price Condition"	11.01(b)(ii)
"transfer"	2.06(f)(i)
"Trigger Event"	11.05(c)(ii)
"Unit of Reference Property"	11.06(a)(iv)
"Valuation Period"	11.05(c)(ii)

Section 1.03. *Rules of Construction.*

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it and shall be construed in accordance with GAAP;

(3) "**or**" is not exclusive;

(4) "**including**" means including, without limitation;

(5) words in the singular include the plural, and words in the plural include the singular;

(6) all references to $, dollars, cash payments or money refer to United States currency; and

(7) unless the context requires otherwise, all references to payments of interest on the Notes shall include Additional Interest, if any, payable in accordance with the terms of Sections 5.02 or 7.01, as applicable.

Section 1.04. *Acts of Holders.* Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee or to the Company, as applicable. 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 shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.04.

(a) 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 shall 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.

(b) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall 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 or the Conversion Agent in reliance thereon, whether or not notation of such action is made upon such Note.

(c) If the Company shall 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 shall 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 shall 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 shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE 2
THE NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the "3.75% Convertible Senior Notes due 2019." The aggregate principal

amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $150,000,000, subject to Section 2.14 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes hereunder.

Section 2.02. *Form and Dating.* The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A, which is a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage (*provided* that any such notation, legend or endorsement required by usage is in a form acceptable to the Company). The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Note shall be dated the date of its authentication. Except as otherwise expressly permitted in this Indenture, all Notes shall be identical in all respects. Notwithstanding any differences among them, all Notes issued under this Indenture shall vote and consent together on all matters as one class.

(a) *Initial Notes*. The Notes initially shall be issued in the form of one Global Note that shall be deposited with the Trustee at its Corporate Trust Office or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, as custodian for the Depositary and registered in the name of DTC or the nominee thereof (DTC, or any successor thereto, and any such nominee being hereinafter referred to as the "**Depositary**"), duly executed by the Company and authenticated by the Trustee as hereinafter provided.

(b) *Global Notes in General*. Each Global Note shall represent the outstanding Notes as shall be specified therein and each Global Note shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, purchases by the Company and conversions.

Any adjustment of the aggregate principal amount of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depositary. Payment of the principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Purchase Price on the Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

(c) *Book-Entry Provisions*. This Section 2.02(c) shall apply only to Global Notes deposited with or on behalf of the Depositary. The Company shall execute and the Trustee shall, in accordance with Section 2.03, authenticate and deliver Global Notes that (i) shall be registered

in the name of the Depository or the nominee of the Depositary and (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions.

(d) *Legends*. Each Global Note shall bear the Global Securities Legend set forth in Exhibit A unless otherwise directed by the Company.

Section 2.03. *Execution and Authentication.* The Notes shall be executed on behalf of the Company by any Officer. The signature of the Officer on the Notes may be manual or facsimile.

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

At any time after the Issue Date, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee, in accordance with such Company Order, shall authenticate and deliver such Notes.

A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Notes shall originally be issued only in registered form without coupons and only in denominations of $1,000 of principal amount and any integral multiple thereof.

The Trustee may appoint authenticating agents. The Trustee may at any time after the Issue Date appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so, except any Notes issued pursuant to Section 2.07 hereof. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent shall have the same right to deal with the Company as the Trustee with respect to such matters for which it has been appointed.

Section 2.04. *Registrar, Paying Agent and Conversion Agent.* The Company shall maintain in the Borough of Manhattan, New York City an office or agency where Notes may be presented for registration of transfer or for exchange ("**Registrar**"), an office or agency in where Notes may be presented for payment ("**Paying Agent**"), an office or agency where Notes may be presented for conversion ("**Conversion Agent**") and an office or agency where notices to or upon the Company in respect of the Notes and this Indenture may be served. The Registrar shall keep a register for the recordation of, and shall record, the names and addresses of Holders of the Notes, the Notes held by each Holder and the transfer, exchange and conversion of Notes (the "**Register**"). The entries in the Register shall 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 this Indenture. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any such additional paying agents. The term Conversion Agent includes any such additional conversion agents.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar not a party to this Indenture, which (i) shall implement the provisions of this Indenture relating to such agent and (ii) in the case of the Paying Agent, shall include the provisions set forth in Section 5.05. The Company shall promptly notify the Trustee of the name and address of any such agent, and of any change therein. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, any presentations, surrenders, notices and demands required to be made by, or at the office of, any such agent may be made or served at the Corporate Trust Office or in accordance with Section 14.01; *provided* that the Trustee shall be entitled to appropriate compensation therefor pursuant to Section 8.06. The Company may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as the Paying Agent, the Conversion Agent, and the Registrar, in connection with the Notes, and the Corporate Trust Office to be such office or agency of the Company for the aforesaid purposes. The Company may at any time rescind the designation of the Paying Agent, Conversion Agent or the Registrar or approve a change in the location through which any of them acts; *provided* that the Paying Agent, Conversion Agent and Registrar must be located within the Borough of Manhattan, New York City.

Section 2.05. *Holder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee, promptly after each 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 2.06. *Transfer and Exchange.*

(a) Subject to Section 2.12 hereof, upon surrender for registration of transfer of any Note, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Holder or such Holder's attorney-in-fact duly authorized in writing, at the office or agency of the Company-designated Registrar or co-Registrar pursuant to Section 2.04, (i) the Company shall execute, and the Trustee (or any authenticating agent) shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations, of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture and (ii) the Registrar shall record the information required pursuant to Section 2.04 regarding the designated transferee or transferees in the Register. No service charge shall be imposed by the Company, the Trustee, the Registrar, any co- Registrar or the Paying Agent for any registration of transfer or exchange of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or other similar governmental charge required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for registration of transfer or exchange.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Notes to be exchanged, at such office or agency, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Holder or such Holder's attorney-in-fact duly

authorized in writing, and documents of identity and title satisfactory to the Registrar. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of any Note (x) surrendered for conversion, (y) in respect of which a Fundamental Change Purchase Notice has been given and not validly withdrawn by the Holder thereof in accordance with the terms of this Indenture or (z) selected for Optional Redemption in accordance with Article 4, in the case of an Optional Redemption of less than all of the Notes (except, in the case of a Note to be converted, purchased or redeemed in part by the Company, the portion of such Note not to be so converted, purchased or redeemed).

(b) Notwithstanding any provision to the contrary herein, so long as a Global Note remains outstanding and is held by or on behalf of the Depositary, transfers of a Global Note, in whole or in part, shall be made only in accordance with Section 2.12 and this Section 2.06(b). Transfers of a Global Note shall be limited to transfers of such Global Note to the Depositary, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

(c) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the Register.

(d) Any Registrar appointed pursuant to Section 2.04 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

(e) No Registrar shall be required to make registrations of transfer or exchange of Notes during any periods designated in the form of Note attached as Exhibit A hereto (regarding any Notes or portion thereof in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn) or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

(f) *Transfer Restrictions*.

(i) Every Note that bears or is required under this Section 2.06(f) to bear the Restricted Securities Legend (the "**Restricted Notes**") shall be subject to the restrictions on transfer set forth in this Section 2.06(f) and such legend unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Note, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. If a request is made to remove the Restricted Securities Legend from any Restricted Note prior to the Resale Restriction Termination Date, the legend shall not be removed unless there is delivered to the Company and the Registrar such certificates, legal opinions and other information as they may reasonably require confirming that such Notes, upon such transfer, will not be "restricted" within the meaning of Rule 144. In such a case, upon (A) provision of such certificates, legal opinions and/or other information, or (B) notification by the Company to the Trustee and

Registrar of the sale of such Note pursuant to a registration statement that is effective at the time of such sale, the Trustee, pursuant to a Company Order, shall authenticate and deliver a Note that does not bear the Restricted Securities Legend.

(ii) Except as provided elsewhere in this Indenture, until the later of (x) the date that is one year after the Issue Date or such shorter period of time as permitted by Rule 144 or any successor provision thereto and (y) such other date as may be required by applicable law (such date the "**Resale Restriction Termination Date**"), any certificate evidencing such Notes (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the Restricted Stock Legend, if applicable) shall bear the Restricted Securities Legend unless (I) such Notes have been transferred (A) under a registration statement that has been declared effective under the Securities Act, or (B) in accordance with Rule 144, or (II) such requirement is waived by the Company.

(iii) No transfer of any Restricted Note will be registered by the Registrar unless the applicable box on the Form of Transfer Certificate attached to such Restricted Note has been checked and such certificates, legal opinions and other information as reasonably required by the Registrar or Company confirming that the applicable condition to transfer has been satisfied have been provided.

(g) *Legends on the Common Stock*. Except as provided elsewhere in this Indenture (including, without limitation, Section 2.06(j) below), until the later of (x) the Scheduled Free Trade Date and (y) the date that is three months after the holder of such shares of Common Stock ceases to be an Affiliate of the Company, any stock certificate representing shares of the Common Stock issued upon conversion of any Notes shall bear the Restricted Stock Legend unless (I) such Notes or such Common Stock, as applicable, has been transferred (i) under a registration statement that has been declared effective under the Securities Act; or (ii) in accordance with Rule 144 under the Securities Act or (II) such requirement is waived by the Company.

(h) The Company shall not permit any of its Affiliates to sell any Note or Common Stock issued upon the conversion of a Note, unless upon such resale such security will no longer be a "restricted security" (as defined in Rule 144 under the Securities Act). If the Restricted Securities Legend is removed from the face of a Note and the Note is subsequently held by an Affiliate of the Company, the Restricted Securities Legend shall be reinstated.

(i) Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Registrar in accordance with the provisions of this Section 2.06, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the custodian for the Depositary (or its nominee) in writing to so surrender any Global Note as to which such restrictions on transfer shall have expired in accordance with their terms for exchange, and, upon such instruction, such custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the Restricted Securities Legend and shall not be assigned a restricted

CUSIP number. The Company shall promptly notify the Trustee upon the occurrence of the Scheduled Free Trade Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act.

(j) The Company shall use its commercially reasonable efforts to cause the removal, no later than the Scheduled Free Trade Date, of any Restricted Stock Legend from any shares of its Common Stock that were delivered upon conversion prior to the Scheduled Free Trade Date. Upon the removal of such Restricted Stock Legend, the Company shall also (i) notify the holders of any such shares that such Restricted Stock Legend has been removed; (ii) notify the transfer agent for the Common Stock to change the CUSIP number for any such shares to the applicable unrestricted CUSIP number, if such shares are in certificated form, and (iii) if such shares are in global form, comply with Applicable Procedures regarding such de-legending and the change from a restricted to unrestricted CUSIP number. Any shares of Common Stock (x) delivered upon the conversion of any Note to any Person that is not an Affiliate of the Company following the Scheduled Free Trade Date or (y) delivered upon conversion of a Note that does not, or would not be required hereunder to, bear the Restricted Securities Legend, in each case, shall be issued without any Restricted Stock Legend. Notwithstanding anything in this Indenture or the Notes to the contrary, any Person, other than an Affiliate of the Company, who holds shares of Common Stock that were issued upon conversion shall have the right to enforce this Section 2.06(j) notwithstanding that such Person is not a Holder of Notes.

Section 2.07. *Replacement Notes.* If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that such Note has been lost, destroyed or stolen and the Holder provides evidence of the loss, theft or destruction reasonably satisfactory to the Company and the Trustee, the Company shall issue, and the Trustee shall authenticate, a replacement Note if the requirements of Section 8-405 of the Uniform Commercial Code are met and the Holder satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond reasonably sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss that any of them may suffer if a Note is replaced. The Company and the Trustee may charge the Holder for their expenses in replacing a Note.

Upon the issuance of any new Notes under this Section 2.07, 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 2.07 in exchange for any mutilated Note, or in lieu of any destroyed, lost or stolen Note, shall constitute an original additional contractual obligation of the Company and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of (and shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

Section 2.08. *Outstanding Notes.* Notes outstanding at any time include and are limited to all Notes authenticated by the Trustee except (a) Notes cancelled by the Trustee or required to

be delivered to the Trustee for cancellation in accordance with Section 2.10, (b) Notes, or portions thereof, the principal of which has become due and payable on the Maturity Date, on a Fundamental Change Purchase Date or otherwise, and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent), (d) Notes, or portions thereof, that have been converted pursuant to Article 11 and that are required to be cancelled pursuant to Section 2.10 and (e) Notes repurchased by the Company, directly or indirectly, whether by the Company or its Subsidiaries, pursuant to Section 2.14 (other than Notes repurchased pursuant to cash-settled swaps or other derivatives). For the purpose of determining whether the Holders of the requisite principal amount of Notes have given or concurred in any request, demand, authorization, direction, notice, consent, waiver or other action hereunder (including, without limitation, determinations pursuant to Articles 7 and 10) only outstanding Notes shall be considered in any such determination. In addition, for the purpose of any such determination, Notes that are owned by the Company, by any Subsidiary thereof or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Trust Officer knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 2.08 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 8.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 2.09. *Temporary Notes.* Until Certificated Notes are ready for delivery, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed) ("**Temporary Notes**"). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of Certificated 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 shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Certificated Notes. Without unreasonable delay the Company will prepare, execute and deliver to the Trustee or such authenticating agent Certificated 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 2.04 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such Temporary Notes an equal aggregate

principal amount of Certificated Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the Temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Certificated Notes authenticated and delivered hereunder.

Section 2.10. *Cancellation.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase (including pursuant to Section 3.01 or Section 2.14, other than Notes repurchased pursuant to cash-settled swaps or other derivatives), redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's Agents, Subsidiaries or Affiliates), to be delivered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it, and no Notes shall be authenticated in exchange therefor except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request in a Company Order.

Section 2.11. *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 payment of principal, interest, if any, or payment of the Fundamental Change Purchase Price, for the purpose of conversion and for all other purposes whatsoever, subject to Section 2.06(j), Section 2.08 and Section 2.12(a)(ii), whether or not such Note be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 2.12. *Transfer of Notes.*

(a) Notwithstanding any other provisions of this Indenture or the Notes, (A) transfers of a Global Note, in whole or in part, shall be made only in accordance with Sections 2.06 and 2.12(a)(i); and (B) transfers of a beneficial interest in a Global Note for a Certificated Note shall comply with Sections 2.06 and 2.12(a)(ii). All such transfers shall comply with the Applicable Procedures to the extent so required.

(i) *Transfer of Global Note.* A Global Note may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee or any successor thereof, and no transfer of a Global Note to any other Person may be registered; *provided* that this clause (i) shall not prohibit any transfer of a Note that is issued in exchange for a Global Note but is not itself a Global Note. No transfer of a Note to any Person shall be effective under this Indenture or the Notes unless and until such Note has been registered in the name of such Person. Nothing in this Section 2.12(a)(i) shall prohibit or render ineffective any transfer of a beneficial interest in a Global Note effected in accordance with the other provisions of this Section 2.12(a).

(ii) *Restrictions on Transfer of a Beneficial Interest in a Global Note for a Certificated Note.*

(A) A Certificated Note will be issued and delivered:

(1) To each person that DTC identifies as a beneficial owner of the related Notes only if (a) DTC notifies the Company that it is unwilling or unable to continue as Depositary for the Global Notes and a successor Depositary is not appointed by the Company within 90 days of such notice; or (b) DTC ceases to be registered as a clearing agency under the Exchange Act and a successor Depositary is not appointed by the Company within 90 days of such cessation; or

(2) if an Event of Default has occurred and is continuing, to each beneficial owner who requests that its beneficial interests in the Notes be exchanged for Certificated Notes.

Notwithstanding anything to the contrary in this Indenture or in the Notes, following the occurrence and during the continuance of an Event of Default, any beneficial owner of a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such beneficial owner's right to exchange its beneficial interest in such Global Note for a Certificated Note in accordance with this Section 2.12(a)(ii).

In connection with the exchange of an entire Global Note for Certificated Notes pursuant to this Section 2.12(a)(ii), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and upon Company Order the Trustee shall authenticate and deliver, to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations.

(B) Upon receipt by the Registrar of instructions from the Holder of a Global Note directing the Registrar to (x) issue one or more Certificated Notes in the amounts specified to the owner of a beneficial interest in such Global Note and (y) debit or cause to be debited an equivalent amount of beneficial interest in such Global Note, subject to the Applicable Procedures:

(1) the Registrar shall notify the Company and the Trustee of such instructions and identify the owner of and the amount of such beneficial interest in such Global Note;

(2) the Company shall promptly execute, and upon Company Order, the Trustee shall authenticate and deliver, to such beneficial owner Certificated Note(s) in an equivalent amount to such beneficial interest in such Global Note; and

(3) the Registrar shall decrease such Global Note by such amount in accordance with the foregoing.

(iii) *Restrictions on Transfer of a Certificated Note for a Beneficial Interest in a Global Note*. A Certificated Note may not be exchanged for a beneficial interest in a Global Note except upon satisfaction of the requirements set forth below.

Upon receipt by the Trustee of a Certificated Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with written instructions directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information regarding the Depositary account to be credited with such increase, then the Trustee shall cancel such Certificated Note and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Notes represented by the Global Note to be increased by the aggregate principal amount of the Certificated Note to be exchanged, and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Certificated Note so cancelled. If no Global Notes are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officer's Certificate, a new Global Note in the appropriate principal amount.

Section 2.13. *CUSIP and ISIN Numbers.*

(a) The Company, in issuing the Notes, shall use restricted CUSIP and ISIN numbers for such Notes (if then generally in use) until such time as the Restricted Securities Legend is removed therefrom. At such time as the legend is removed from such Notes, the Company will use an unrestricted CUSIP number for such Note, but only with respect to the Notes where so removed. The Trustee may use CUSIP and ISIN numbers in notices as a convenience to Holders; *provided*, *however*, that neither the Company nor the Trustee shall have any responsibility for any defect in the CUSIP or ISIN number that appears on any Note, check, advice of payment or notice, and any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Notes, and any action taken in connection with such a notice shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee in the event of any change in the CUSIP or ISIN numbers.

(b) Until such time as the Restricted Stock Legend is no longer required to be borne by any shares of Common Stock issued upon the conversion of the Notes pursuant to Section 2.06(g) or otherwise, any shares of Common Stock issued upon conversion of the Notes shall bear a restricted CUSIP number. At such time as the Restrictive Stock Legend is no longer required to be borne by any shares of Common Stock issued upon the conversion of the Notes pursuant to Section 2.06(g) or otherwise, any shares of Common Stock issued upon conversion of the Notes shall bear an unrestricted CUSIP number.

Section 2.14. *Additional Notes; Repurchases.* The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes with the same terms as the Notes initially issued hereunder in an unlimited aggregate principal amount, which will form the same series with the Notes initially issued hereunder, *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes, such additional Notes shall have a separate CUSIP number. Prior to the issuance of any such additional Notes, the Company shall deliver to

the Trustee a Company Order and an Officer's Certificate, which shall cover such matters, in addition to those required by Section 14.03, as the Trustee shall reasonably request. In addition, upon the reasonable request of the Trustee, the Company shall furnish to the Trustee an Opinion of Counsel which shall cover such legal conclusions, in addition to the matters required by Section 14.03, as the Trustee shall reasonably request. The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash settled swaps or other derivatives.

ARTICLE 3
REPURCHASES

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

If a Fundamental Change occurs at any time, each Holder shall have the right, at its option, to require the Company to purchase for cash, on the Fundamental Change Purchase Date, its Note, or any portion of its Note equal in principal amount to $1,000 or an integral multiple thereof, on a date (the "**Fundamental Change Purchase Date**") specified by the Company in the Fundamental Change Purchase Notice for such Fundamental Change and that is not less than 20 calendar days nor more than 35 calendar days immediately following the relevant Fundamental Change Notice Date, at a price (the "**Fundamental Change Purchase Price**") equal to 100% of the principal amount of the Note to be purchased, plus accrued and unpaid interest, if any, to, but excluding, the Fundamental Change Purchase Date; *provided, however*, that if the Fundamental Change Purchase Date occurs after a Record Date for the payment of interest, and on or prior to the corresponding Interest Payment Date, the Company shall pay the full amount of accrued and unpaid interest payable on such Interest Payment Date to the Holder of record of such Note on such Record Date and the Fundamental Change Purchase Price shall instead be equal to 100% of the principal amount of such Note.

Section 3.02. *Fundamental Change Conversion Right Notice.* On or before the 20th calendar day immediately following the occurrence of a Fundamental Change, the Company shall deliver written notice of such Fundamental Change and the resulting purchase right (the "**Fundamental Change Notice**," and the date of such mailing, the "**Fundamental Change Notice Date**") to each Holder, the Trustee and the Paying Agent. Such Fundamental Change Notice shall state:

(a) the events causing the relevant Fundamental Change;

(b) the effective date of such Fundamental Change;

(c) the last date on which a Holder may exercise its right to require the Company to purchase such Holder's Notes under this Article 3;

(d) the Fundamental Change Purchase Price;

(e) the Fundamental Change Purchase Date;

(f) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(g) the Conversion Rate in effect on the Fundamental Change Notice Date and, if the relevant Fundamental Change constitutes a Make-Whole Fundamental Change, any adjustment that will be made to the Conversion Rate for a Holder that converts its Note in connection with such Make-Whole Fundamental Change pursuant to Section 11.07;

(h) that the Fundamental Change Purchase Price for any Notes as to which a Fundamental Change Purchase Notice has been duly tendered and not withdrawn will be paid on the later of the Fundamental Change Purchase Date and the time of book-entry transfer or delivery of such Notes;

(i) that payment may be collected only if the Notes to be purchased are surrendered to the Paying Agent;

(j) the procedures the Holder must follow to exercise its right to require the Company to purchase such Holder's Notes under this Article 3 and the procedures that a Holder must follow to convert its Note pursuant to Article 11;

(k) the conversion rights of the Notes, including an explanation that a condition to conversion has been satisfied;

(l) that any Notes with respect to which a Fundamental Change Purchase Notice has been given may be converted only if such Fundamental Change Purchase Notice is validly withdrawn in accordance with the terms of this Indenture;

(m) the procedures for withdrawing a Fundamental Change Purchase Notice;

(n) that unless the Company defaults in making payment of such Fundamental Change Purchase Price on the Notes surrendered for purchase by the Company, interest, if any, on Notes for which a Fundamental Change Purchase Notice has been validly given and not withdrawn will cease to accrue on and after the Fundamental Change Purchase Date; and

(o) the CUSIP and ISIN numbers of the Notes.

Section 3.03. *Fundamental Change Purchase Notice.*

(a) To exercise its purchase right upon the occurrence of a Fundamental Change under Section 3.01, a Holder or beneficial owner of a Note, as the case may be, must (i) deliver, by the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date, the Notes to be purchased, duly endorsed for transfer, together with the duly completed "Form of Fundamental Change Purchase Notice" on the reverse side of the Notes that such Holder is tendering for purchase (such notice, a "**Fundamental Change Purchase Notice**") to the Paying Agent if the Notes that such Holder is

delivering for purchase are Certificated Notes, or (ii) comply with the procedures of the Depositary for tendering interests in global notes

if the Notes (or portions thereof) being delivered for purchase are Global Notes. The Fundamental Change Purchase Notice must state:

(A) if the Notes being delivered for purchase are Certificated Notes, the certificate numbers of such Notes;

(B) the portion of the principal amount of the Notes to be purchased, which portion must be $1,000 or an integral multiple thereof; and

(C) that such Notes shall be purchased by the Company pursuant to the terms and conditions specified in this Article 3 and the Notes;

provided that the beneficial owner of an interest in a Global Note must comply with Applicable Procedures to cause the corresponding portion of such Global Note to be purchased pursuant to this Article 3.

(b) Unless and until the Paying Agent receives a validly endorsed and delivered Fundamental Change Purchase Notice, together with any Notes to which such Fundamental Change Purchase Notice pertains, in a form that conforms with the description contained in such Fundamental Change Purchase Notice in all material aspects, the Holder submitting the Notes shall not be entitled to receive the Fundamental Change Purchase Price for such Notes.

(c) After delivering a Fundamental Change Purchase Notice to the Paying Agent, a Holder may withdraw such Fundamental Change Purchase Notice (in whole or in part) by delivering to the Paying Agent a written notice of withdrawal at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date. Such notice of withdrawal shall state:

(i) the principal amount of any Notes with respect to which the Fundamental Change Purchase Notice is to be withdrawn, which must equal $1,000 or an integral multiple thereof;

(ii) if the Notes to be withdrawn are Certificated Notes, the certificate numbers of the Notes to be withdrawn; and

(iii) the principal amount, if any, which amount must equal $1,000 or an integral multiple thereof, that remains subject to the original Fundamental Change Purchase Notice;

provided that, with respect to a Global Note, the beneficial owner of an interest therein must comply with Applicable Procedures to cause any Fundamental Change Purchase Notice with respect to such Global Note (or portion thereof) to be withdrawn (in whole or in part, as the case may be) pursuant to this Article 3.

Section 3.04. *Effect of Fundamental Change Purchase Notice.*

(a) If a Holder validly delivers to the Paying Agent a Fundamental Change Purchase 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 Purchase Notice in accordance with Section 3.03(c) above.

(b) Upon the Paying Agent's receipt of (i) a valid Fundamental Change Purchase Notice (together with all necessary endorsements) and (ii) the Notes to which such Fundamental Change Purchase Notice pertains, the Holder of the Notes to which such Fundamental Change Purchase Notice pertains shall be entitled, except to the extent such Holder has validly withdrawn such Fundamental Change Purchase Notice in accordance with Section 3.03(c) above, to receive the Fundamental Change Purchase Price with respect to such Notes promptly on the later of (i) the Fundamental Change Purchase Date and (ii) if the Notes are Certificated Notes, the date of delivery of such Notes to the Paying Agent, or, if the Notes are Global Notes, the date of book-entry transfer.

(c) If, on the Fundamental Change Purchase Date, the Company, in accordance with Section 3.05 below, has deposited with the Paying Agent money sufficient to pay the Fundamental Change Purchase Price of all of the Notes for which the Holders thereof have tendered and not validly withdrawn a Fundamental Change Purchase Notice in accordance with Section 3.03 above:

(i) such Notes shall cease to be outstanding and interest shall cease to accrue thereon (whether or not such Notes were delivered to the Paying Agent or book-entry transfer of such Notes has been made, as the case may be); and

(ii) all other rights of the Holders with respect to the tendered Notes shall terminate (other than the right to receive payment of the Fundamental Change Purchase Price, upon delivery or transfer of the Notes, and previously accrued and unpaid interest, if any).

Section 3.05. *Deposit of Fundamental Change Purchase Price.* Prior to 10:00 a.m., New York City time, on the Fundamental Change Purchase Date, as the case may be, the Company shall 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, shall segregate and hold in trust as provided in Section 5.05(b)) an amount of cash (in immediately available funds if deposited on such Business Day), sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof which are to be purchased as of the Fundamental Change Purchase Date. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for purchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date) will be made on the later of (i) the Fundamental Change Purchase Date (*provided* the Holder has satisfied the conditions in Section 3.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the

Holder thereof in the manner required by Section 3.01 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Register; *provided*, *however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

Section 3.06. *Notes Purchased in Part.* Any Certificated Note that is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney-in-fact duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered which is not purchased, or in the case of a Global Note, the Company shall instruct the Registrar to decrease such Global Note by the principal amount of the purchased portion of the Note surrendered.

Section 3.07. *Covenant to Comply with Securities Laws Upon Purchase of Notes.* In connection with any offer to purchase Notes under this Article 3, the Company shall, if required, (a) comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable, (b) file a Schedule TO (or any successor thereto) or any other required schedule under the Exchange Act, and (c) otherwise comply with all applicable U.S. federal and state securities laws, in each case so as to permit the rights and obligations under this Article 3 to be exercised in the time and in the manner specified herein.

Section 3.08. *Repayment to the Company.* To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.03 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date, then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Fundamental Change Purchase Date, the Paying Agent shall, subject to Section 8.06, return any such excess to the Company.

Section 3.09. *Covenant Not to Purchase Notes Upon Certain Events of Default.*

(a) Notwithstanding anything to the contrary in this Article 3, the Company shall not purchase any Notes under this Article 3 if there has occurred and is continuing an Event of Default with respect to the Notes, unless the payment by the Company of the Fundamental Change Purchase Price will cure such Event of Default.

(b) If a Fundamental Change Purchase Notice is tendered and, on the Fundamental Change Purchase Date, such Fundamental Change Purchase Notice has not been validly withdrawn in accordance with Section 3.03(c) above, and, pursuant to this Section 3.09, the Company is not permitted to purchase Notes, the Paying Agent will deem withdrawn such Fundamental Change Purchase Notice.

(c) If a Holder tenders a Note for purchase pursuant to this Article 3 and, on the Fundamental Change Purchase Date, pursuant to this Section 3.09, the Company is not permitted to purchase such Note, the Paying Agent will (i) if such Note is a Certificated 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
OPTIONAL REDEMPTION

Section 4.01. *Optional Redemption*. No sinking fund is provided for the Notes. Prior to May 6, 2015, the Notes shall not be redeemable by the Company. On or after May 6, 2015, the Company may redeem (an "**Optional Redemption**") for cash all or part of the Notes, at its option, if the Last Reported Sale Price of the Common Stock has been at least 120% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive) during the 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date on which the Company provides the Redemption Notice. The Company shall provide notice as set forth in Section 4.02 and the redemption price shall be equal to 100% of the principal amount of the Notes to be redeemed, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date (the "**Redemption Price**") (unless the Redemption Date falls after a Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case the Company shall pay the full amount of accrued and unpaid interest to the Holder of record as of the Close of Business on such Record Date, and the Redemption Price shall be equal to 100% of the principal amount of the Notes to be redeemed).

Section 4.02. *Notice of Optional Redemption; Selection of Notes*.

(a) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any part of the Notes pursuant to Section 4.01, it shall fix a date for redemption (each, a "**Redemption Date**"), which must be a Business Day, and it or, at its written request received by the Trustee not less than 60 calendar days prior to the Redemption Date (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall mail or cause to be mailed or deliver electronically a notice of such Optional Redemption (a "**Redemption Notice**") not less than 45 nor more than 60 calendar days prior to the Redemption Date to each Holder of Notes at its last address as the same appears on the Register; *provided*, *however*, that if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee, the Paying Agent and the Conversion Agent.

(b) The Redemption Notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Redemption Notice by mail or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each Redemption Notice shall specify:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon all outstanding Notes or each Note selected for redemption, as the case may be, and, if applicable, that interest thereon shall cease to accrue on and after said date;

(iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date;

(vi) the procedures a converting Holder must follow to convert its Notes and the Cash Percentage that will apply to any conversion during the applicable Redemption Period (or, if applicable, that no Cash Percentage will apply to any such conversion);

(vii) the Conversion Rate and the Observation Period that will apply to any conversion during the Redemption Period;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes;

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed; and

(x) in the case of an Optional Redemption of less than all of the Notes outstanding, that the Company will not be required to register the transfer of or exchange any Note selected for redemption (except the unredeemed portion of any Note being redeemed in part).

A Redemption Notice shall be irrevocable.

(d) If fewer than all of the outstanding Notes are to be redeemed, the Trustee shall select the Notes or portions thereof to be redeemed (in principal amounts of $1,000 or multiples thereof) by lot, on a *pro rata* basis or by another method the Trustee considers to be fair and appropriate, in accordance with Applicable Procedures (in the case of a Global Note). If any Note selected for partial redemption is submitted for conversion in part after such selection, to the extent that the converted portion exceeds the portion selected for redemption, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption. On the Redemption Date, if only a portion of any Note is redeemed, appropriate adjustments will be made to reflect a decrease in the principal amount of such Note (in the case of a Global Note) or a new Note in principal amount equal to the unredeemed portion thereof shall be issued (in the case of a Certificated Note).

Section 4.03. *Payment of Notes Called for Redemption*.

(a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 4.02, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Prior to the open of business on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 5.05(b) an amount of cash (in

immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made promptly after the later of:

(i) the Redemption Date for such Notes; and

(ii) the time of presentation of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by this Section 4.03.

The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 4.04. *Restrictions on Redemption*. The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 5
COVENANTS

Section 5.01. *Payment of Notes.*

(a) The Company shall promptly make all payments on the Notes on the dates, in the manner and as otherwise required under the Notes or this Indenture. If the Company is required to pay any amounts of cash to the Trustee, the Paying Agent or the Conversion Agent, such amounts of cash shall be deposited by the Company with the Trustee, the Paying Agent or the Conversion Agent by 10:00 a.m., New York City time, on the required date. The

Company shall pay interest on any Certificated Notes (i) to a Holder of a Certificated Note having an aggregate principal amount of $5,000,000 or less, by check mailed to such Holder at its address as it appears in the Register and (B) to a Holder of a Certificated Note having an aggregate principal amount of more than $5,000,000, either by check mailed to such Holder or, upon written application by such Holder to the Registrar prior to the relevant Record Date, by wire transfer in immediately available funds to such Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary. The Company shall make all payments of principal and interest on Global Notes in immediately available funds to the Depositary or its nominee, in accordance with Applicable Procedures.

(b) The Company shall make any required interest payments, if any, to the Person in whose name each Note is registered at the Close of Business on the Record Date for such interest payment. The principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Purchase Price shall be considered paid on the applicable date due if on such date the

Trustee or the Paying Agent holds, in accordance with this Indenture, cash sufficient to pay all such amounts then due.

Section 5.02. *SEC and Other Reports.*

(a) The Company shall file with the Trustee within 15 days after the same are required to be filed with the SEC, copies of any documents or reports that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Any such document or report that the Company files with the SEC via the SEC's EDGAR system shall be deemed to be filed with the Trustee for purposes of this Section 5.02(a) at the time such documents are filed via the EDGAR system.

(b) If, at any time during the period beginning on, and including, the date which is six months after the Issue Date, the Company fails to timely file any report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (other than current reports on Form 8-K), or the Notes are not otherwise freely tradeable by Holders other than the Company's Affiliates (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes, which shall accrue at a rate of 0.50% *per annum*, from and including the later of the date six months after the Issue Date and the first date on which the Notes are not freely tradeable until the earlier of (i) the Scheduled Free Trade Date and (ii) the date the Notes become freely tradeable.

(c) In addition, the Company shall pay Additional Interest on the Notes, which shall accrue at a rate of 0.50% *per annum*, if, and for so long as, the Restricted Securities Legend on the Notes has not been removed, the Notes are assigned a restricted CUSIP or the Notes are not otherwise freely tradeable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), in each case, on or after the Scheduled Free Trade Date.

(d) Any Additional Interest payable in accordance with this Section 5.02 shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 7.01.

(e) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(f) If the Company is required to pay Additional Interest to Holders pursuant to clause (b) or (c) above, the Company shall provide an Officer's Certificate to the Trustee (and if the Trustee is not the Paying Agent, to the Paying Agent) to that effect, which shall be delivered in accordance with Section 14.01 no later than three Business Days prior to the date on which any such Additional Interest is scheduled to be paid and shall make explicit reference to this Indenture, the Notes and the Company. Such Officer's Certificate shall set forth the amount of Additional Interest to be paid by the Company on such payment date and direct the Trustee (or, if the Trustee is not the Paying Agent, to the Paying Agent) to make payment to the extent it receives funds from the Company to do so. Unless and until the Trustee receives such an

Officer's Certificate, subject to Article 8, the Trustee may assume without inquiry that no such Additional Interest is payable.

Section 5.03. *Compliance Certificate.* Within 120 days after the end of each fiscal year (beginning with the fiscal year ending January 31, 2013) of the Company, the Company shall deliver to the Trustee at its Corporate Trust Office in accordance with Section 14.01, making specific reference to this Indenture, the Notes and the Company, an Officer's Certificate stating whether, to the knowledge of the signers thereof, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 5.04. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 5.05. *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.05:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Purchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Purchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

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

sums so held in trust.

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

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Purchase Price or Redemption Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Purchase Price, if applicable) and accrued and unpaid interest so

becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Purchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 5.05 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 5.05, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

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

Section 5.06. *Delivery of Certain Information.* If, at any time, the Company is not subject to the reporting requirements of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof will, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, upon the request of any Holder, beneficial owner or prospective purchaser of the Notes or any shares of Common Stock issuable upon the conversion of Notes, promptly furnish to such Holder, beneficial owner or prospective purchaser the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of the Notes or such shares of Common Stock pursuant to Rule 144A, as such rule may be amended from time to time.

ARTICLE 6
CONSOLIDATION, MERGER AND SALE OF ASSETS

Section 6.01. *Company May Consolidate, Merge or Sell Its Assets on Certain Terms.* The Company shall not consolidate with, merge with or into or enter into any similar transaction

with, or convey, transfer or lease all or substantially all of its property and assets to, any Person unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**") 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 such Successor Company (if other than the Company) expressly assumes, by executing and delivering to the Trustee a supplemental indenture, all of the Company's obligations under the Notes and under this Indenture;

(b) if such transaction or event constitutes a Share Exchange Event and the relevant Reference Property includes common stock or other securities issued by a third party, such third party fully and unconditionally guarantees all obligations of the Company or such Successor Company, as the case may be, under the Notes and under this Indenture;

(c) immediately after giving effect to such transaction, no Default or Event of Default has occurred or is continuing; and

(d) the Company and the Successor Company (if other than the Company) shall have delivered to the Trustee an Officer's Certificate stating that:

(i) each of (x) such consolidation, merger (or similar transaction), conveyance, transfer or lease and (y) such supplemental indenture complies with this Article 6; and

(ii) all conditions precedent relating to such transaction provided herein have been complied with.

For purposes of this Section 6.01, any conveyance, transfer or lease of properties and assets of one or more Subsidiaries of the Company that would, if the Company had held such properties and assets directly, have constituted the conveyance, transfer or lease of substantially all of the Company's properties and assets shall be treated as such hereunder.

Section 6.02. *Successor Corporation to be Substituted.* Upon any such consolidation, merger (or similar transaction), conveyance or transfer (but not upon a lease) and the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of, accrued and unpaid interest, if any, on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue in its own name, any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit

under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. Upon any such consolidation, merger (or similar transaction), conveyance or transfer (but not upon a lease), the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 6 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

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

ARTICLE 7
DEFAULTS AND REMEDIES

Section 7.01. *Events of Default.*

(a) Each of the following events shall be an "**Event of Default**":

(i) the Company defaults in the payment of interest on any Note when the same becomes due and payable and such default continues for a period of 30 days;

(ii) the Company defaults in the payment of the principal of any Note when the same becomes due and payable at the Maturity Date, upon declaration of acceleration, upon redemption, upon any Fundamental Change Purchase Date or otherwise;

(iii) the failure by the Company to deliver the consideration due upon the conversion of any Notes;

(iv) the failure by the Company to give a Fundamental Change Notice in accordance with Section 3.02 or a Specified Corporate Transaction Notice in accordance with Section 11.01(b)(iv), in each case, at the time, in the manner, and with the contents set forth in, such section;

(v) the failure by the Company to comply with its obligations under Article 6 hereof;

(vi) the default by the Company in the performance of, or the breach of any other covenant or agreement of the Company in, the Notes or this Indenture (other than a covenant or agreement in respect of which a default or breach is specifically addressed in Sections 7.01(a)(i) through 7.01(a)(v) above) and such default or breach continues for a period of 60 consecutive days after written notice of such default is delivered to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding;

(vii) a default by the Company or any of its Subsidiaries under any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Company and/or any of its Subsidiaries for money borrowed in excess of $10 million in the aggregate, whether such indebtedness exists as of the Issue Date or is later created, which default (A) results in such indebtedness becoming or being declared due and payable or (B) constitutes a failure to pay the principal or interest of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(viii) a final judgment for the payment of $10 million or more (excluding any amounts covered by insurance) rendered against the Company or any Subsidiary of the Company, which judgment is not discharged or stayed within 60 days after (A) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (B) the date on which all rights to appeal have been extinguished;

(ix) the Company or any then-current Significant Subsidiary thereof shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(x) an involuntary case or other proceeding shall be commenced against the Company or any then-current Significant Subsidiary thereof seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days.

(b) Within the 30 days immediately following the occurrence of an Event of Default or any Default, the Company shall deliver to the Trustee at its Corporate Trustee Office, in accordance with Section 14.01, written notice thereof in the form of an Officer's Certificate describing each Event of Default or Default that has occurred and is continuing and its status and explaining what action the Company is taking or proposes to take in respect thereof, which notice shall make explicit reference to this Indenture, the Notes and the Company.

(c) Notwithstanding anything to the contrary in the Notes or elsewhere in this Indenture, except as provided in Section 5.02(b) or (c), at the election of the Company, the sole remedy for an Event of Default relating to the failure by the Company to comply with its obligation to file reports, information or documents with the Trustee pursuant to Section 5.02(a) (the "**Company's Filing Obligations**") shall, for the first 60 calendar days after the occurrence

of such an Event of Default, consist exclusively of the right to receive Additional Interest at a rate equal to 0.50% *per annum* on the principal amount of the Notes then outstanding. Such Additional Interest shall be in addition to, and not in lieu of, any Additional Interest that the Company is required to pay under Section 5.02(b) or (c). If the Company makes such election to pay Additional Interest, such Additional Interest shall be payable in arrears on each Interest Payment Date following the date on which such Event of Default first occurred in the same manner as stated interest payable on the Notes. On the 61st calendar day following the date on which such Event of Default first occurred (if the failure to comply with the Company's Filing Obligations is not cured or waived prior to such 61st calendar day), the Notes shall be subject to acceleration as provided in Section 7.02. The provisions contained in this Section 7.01(c) shall not affect the rights of Holders in the event of the occurrence of any other Event of Default. If the Company does not elect to pay Additional Interest upon an Event of Default in accordance with this Section 7.01(c), the Notes shall be subject to acceleration as provided in Section 7.02. In order to elect to pay Additional Interest as the sole remedy for the first 60 calendar days after the occurrence of an Event of Default relating to the failure by the Company to comply with the Company's Filing Obligations, the Company must notify, in the manner provided for in Section 14.01, all Holders of the Notes, the Paying Agent and the Trustee of such election at any time on or before the Close of Business on the fifth Business Day immediately following the date on which such Event of Default first occurs (which notice shall include a statement as to the date from which Additional Interest is payable and, in the case of the Trustee, shall be delivered to its Corporate Trust Office and shall make explicit reference to this Indenture, the Notes and the Company). Unless and until a Trust Officer receives at the Corporate Trust Office such notice, the Trustee may assume without inquiry that no Additional Interest is payable. Upon failure by the Company to timely give such notice to pay such Additional Interest, or if the Company has provided such notice but has failed to pay such Additional Interest, the Notes shall be immediately subject to acceleration as provided in Section 7.02. If Additional Interest has been paid by the Company directly to the Persons entitled to it, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 7.02. *Acceleration.* If an Event of Default (other than an Event of Default specified in Section 7.01(a)(ix) or 7.01(a)(x) with respect to the Company) occurs and is continuing, and in each and every such case, except with respect to any Notes the principal of which shall have already become due and payable, the Trustee, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, and the Trustee at the request of such Holders shall, declare 100% of the principal amount of, and accrued and unpaid interest on, all of the Notes then outstanding, to be due and payable immediately, and upon such a declaration, the same shall be immediately due and payable. If an Event of Default specified in Section 7.01(a)(ix) or 7.01(a)(x) occurs with respect to the Company, 100% of the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding shall, automatically and without any notice or other action by the Trustee or any Holder, be and become immediately due and payable, to the fullest extent permitted by applicable law. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by written notice to the Trustee and the Company, and without notice to any other Holder, may rescind any acceleration of the Notes if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, other than the nonpayment of the principal of and interest

on the Notes that has become due solely by such acceleration, have been cured or waived. Any such rescission shall not affect any subsequent Default or impair any right consequent thereon.

Section 7.03. *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 Purchase Price on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 7.04. *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by written notice to the Trustee and the Company and without notice to any other Holder, may waive any Default, except with respect to (a) any failure by the Company to pay the principal of or accrued interest on the Notes (including the Fundamental Change Purchase Price or Redemption Price, if applicable), (b) any failure by the Company to comply with its obligations to purchase Notes when required to do so under Article 3 or (c) any failure by the Company to comply with any covenant or provision of this Indenture or the Notes that under Section 10.02 cannot be modified or amended without the consent of each Holder. Any such waiver shall not affect any subsequent or other Default or impair any right consequent thereon.

Section 7.05. *Control by Majority.* The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee; *provided*

that (i) the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or would involve the Trustee in personal liability and (ii) for the avoidance of doubt, the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Subject to Article 8, if an Event of Default has occurred and is continuing, the Trustee shall be under no obligation to exercise any of its rights or powers hereunder at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security reasonably satisfactory to the Trustee against any loss, liability or expense caused by taking such action.

Section 7.06. *Limitation on Suits.* Except as provided in Section 7.07 and Section 8.07, no Holder may institute any proceeding, judicial or otherwise, with respect to this Indenture or the Notes, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder shall have previously given to the Trustee written notice that an Event of Default has occurred and is continuing;

(b) the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding shall have made a written request to the Trustee to take such action;

(c) such Holder or Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs and other liabilities of compliance with such written request;

(d) the Trustee shall not have complied with such written request during the first 60 calendar days after receiving such notice, request and offer of security or indemnity; and

(e) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes shall not have given the Trustee a direction inconsistent with such written request.

A Holder may not use this Indenture to prejudice the rights of any other Holder or to obtain a preference or priority over any other Holder.

Section 7.07. *Rights of Holders to Receive Payment; Suit Therefor.* Notwithstanding any other provision of this Indenture, each Holder shall have the right to receive payment or delivery, as the case may be, of (i) the principal (including the Fundamental Change Purchase Price or Redemption Price, if applicable) of, (ii) accrued and unpaid interest on and (iii) the consideration due upon conversion of, its Notes, on or after the respective due dates expressed or provided for in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, and such right to receive such payment or delivery, as the case may be, on or after such respective dates shall not be impaired or affected without the consent of such Holder and shall not be subject to the requirements of Section 7.06. Payments of the Redemption Price, the Fundamental Change Purchase Price, cash due upon conversion, and principal and interest that are not made when due shall accrue interest per annum at the then-applicable interest rate *plus* one percent from the applicable due date expressed in this Indenture.

Section 7.08. *Collection Suit by Trustee.* If an Event of Default specified in Section 7.01(a)(i) or 7.01(a)(ii) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest, if any, to the extent lawful) and the amounts provided for in Section 8.06.

Section 7.09. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee 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, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, if 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 its counsel, and any other amounts due the Trustee under Section 8.06.

Section 7.10. *Priorities.* Any monies collected by the Trustee pursuant to this Article 7 with respect to the Notes and any other monies or property distributable in respect of the Company's obligations under this Indenture following an Event of Default specified in Section 7.01(a)(ix) or Section 7.01(a)(x) with respect to the Company shall be applied in the following order:

FIRST: to the Trustee for amounts due under Section 8.06;

SECOND: to Holders for amounts due and unpaid on the Notes for principal, accrued and unpaid interest, if any, payment of the Fundamental Change Purchase Price and the cash deliverable upon conversion of Notes then submitted for conversion, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Notes; and

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

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 7.10.

Section 7.11. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as 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 7.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 7.07 or a suit by Holders of more than 10% in aggregate principal amount of the Notes at the time outstanding.

Section 7.12. *Waiver of Stay or Extension Laws.* The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in

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

ARTICLE 8
TRUSTEE

Section 8.01. *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 in the conduct of such Person's own affairs.

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

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or negligence on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, *however*, that the Trustee will examine the certificates and opinions to determine whether they conform to the requirements set forth in this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

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

(i) this sub-section (c) does not limit the effect of the remainder of this Section 8.01;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 7.05 hereof, or exercising any trust or power conferred upon the Trustee under this Indenture absent negligence or willful misconduct.

(d) All monies received by the Trustee shall, until delivered to the applicable Holders as herein provided, be held in trust in a non-interest bearing account for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers. The Trustee shall not be required to give any bond or surety in respect of the performance of its powers or duties hereunder.

(f) Whether herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article 8, and the provisions of this Article 8 shall apply to the Trustee, Registrar, Paying Agent, Bid Solicitation Agent and Conversion Agent.

(g) The Trustee shall not be deemed to have notice of a Default or an Event of Default, other than a failure by the Company to make any payment hereunder when due, unless (i) the Trustee has received written notice at its Corporate Trust Office thereof from the Company or any Holder or (ii) a Trust Officer shall have actual knowledge thereof.

Section 8.02. *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document 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. The Trustee may, however, in its discretion make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting (except in connection with an application for authorization of Notes pursuant to Section 2.03) at the direction of the Company, it may require an Officer's Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

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

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture; *provided*, *however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its own selection, and the written advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty unless so specified herein.

(g) 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, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee in accordance with such Section.

(h) 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, including, without limitation, the Registrar, Paying Agents, Bid Solicitation Agent and Conversion Agent.

(i) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

Section 8.03. *Individual Rights of Trustee.* The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or its affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Bid Solicitation Agent (if other than the Company), Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Section 8.10.

Section 8.04. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity, priority or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes, and it shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication.

Section 8.05. *Notice of Defaults.* If a Default or Event of Default occurs and is continuing and is known to the Trustee, the Trustee shall mail to each Holder notice of such Default or Event of Default within 90 days after it occurs; *provided* that except in the case of a Default described in Section 7.01(a)(i), 7.01(a)(ii) or 7.01(a)(iii), the Trustee may withhold the notice if and so long as a committee of Trust Officers of the Trustee in good faith determines that withholding the notice is in the interests of the Holders.

Section 8.06. *Compensation and Indemnity.*

(a) The Company shall pay to the Trustee from time to time such compensation as shall be agreed upon from time to time in writing for all services rendered by it hereunder in any capacity. 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 fees and expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation, fees and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall fully indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) incurred by it in connection with the acceptance and administration of this trust and the performance of its duties hereunder in any capacity, including the costs and expenses of defending itself against any claim (whether asserted by the Company, any Holder or any other Person). The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

All indemnifications and releases from liability granted hereunder to the Trustee shall extend to its officers, directors, employees, agents, attorneys, custodians, successors and assigns.

(b) To secure the Company's payment obligations under this Section 8.06, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay the principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Purchase Price or Redemption Price on particular Notes.

(c) The Company's payment obligations pursuant to this Section 8.06 shall survive the resignation or removal of the Trustee and the discharge of this Indenture. If the Trustee incurs expenses after the occurrence of a Default specified in Section 7.01(a)(ix) or Section 7.01(a)(x) with respect to the Company, the expenses are intended to constitute expenses of administration under applicable bankruptcy laws.

Section 8.07. *Replacement of Trustee.* (a) The Trustee may resign at any time by notifying the Company in writing and by mailing notice thereof to the Holders at their addresses as they shall appear on the Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor Trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor Trustee. If no successor Trustee shall have been so appointed and have accepted appointment within 60 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders, petition any court of competent jurisdiction for the appointment of a successor Trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six

months may on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

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

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.10 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor Trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment

of a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor Trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor Trustee that shall be deemed appointed as successor Trustee, unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as specified in clause (a) above, may petition any court of competent jurisdiction for an appointment of a successor Trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor Trustee pursuant to any of the provisions of this Section 8.07 shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 8.08.

Section 8.08. *Acceptance by Successor Trustee.* Any successor Trustee appointed as provided in Section 8.07 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor Trustee all the rights and powers of the Trustee so ceasing to act. Upon request of any such successor Trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien prior to the Notes on all money or property held or collected by the Trustee, other than money or property held in trust to pay the principal, accrued and unpaid interest, if any, or payment of the Fundamental Change Purchase Price or Redemption Price on particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.06.

No successor Trustee shall accept appointment as provided in this Section 8.08 unless at the time of such acceptance such successor Trustee shall be eligible under the provisions of Section 8.10.

Upon acceptance of appointment by a successor Trustee as provided in this Section 8.08, each of the Company and the successor Trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such Trustee hereunder to the Holders at their addresses as they shall appear on the Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

Section 8.09. *Successor Trustee by Merger.* (a) If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets (including administration of this Indenture) to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall

be the successor Trustee; *provided* that if such successor Trustee is not eligible to act as Trustee pursuant to Section 8.10, such successor Trustee shall promptly resign pursuant to Section 8.07.

(b) In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any such successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee.

Section 8.10. *Eligibility; Disqualification.* The Trustee must be a Person who is eligible to act as an indenture trustee under the TIA and must have a combined capital and surplus of at least $50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Article.

Section 8.11. *Trustee's Application for Instructions From The Company.* Any application by the Trustee for written instructions from the

Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 9
DISCHARGE OF INDENTURE

Section 9.01. *Discharge of Liability on Notes.* When (a) the Company delivers to the Registrar all outstanding Notes (other than Notes replaced pursuant to Section 2.07) for cancellation or (b) all outstanding Notes have become due and payable, whether at the Maturity Date, any Fundamental Change Purchase Date, upon conversion, upon redemption or otherwise, and the Company irrevocably deposits with the Trustee or delivers to the Holders, as applicable, cash and/or (solely to satisfy outstanding conversions, if applicable) shares of Common Stock sufficient to pay, or, if applicable, satisfy the Company's Conversion Obligation with respect to, all amounts due and owing on all outstanding Notes (other than Notes replaced pursuant to Section 2.07), and, in either case, the Company pays all other sums payable hereunder by the Company with respect to the outstanding Notes, then this Indenture shall, subject to Section 8.06, cease to be of further effect with respect to the Notes or any Holders. At the cost and expense of

the Company, the Trustee shall acknowledge satisfaction and discharge of this Indenture with respect to the Notes on demand of the Company accompanied by an Officer's Certificate and, at the request of the Trustee, an Opinion of Counsel.

ARTICLE 10
AMENDMENTS

Section 10.01. *Without Consent of Holders.* The Company and the Trustee may amend or supplement this Indenture or the Notes without the consent of any Holder to:

(a) cure any ambiguity, omission, defect or inconsistency in this Indenture or in the Notes in a manner that does not adversely affect the Holders;

(b) conform the terms of this Indenture or the Notes to the "Description of Notes" section of the Offering Memorandum;

(c) upon the occurrence of a Share Exchange Event, solely (i) provide that the Notes are convertible into Reference Property, subject to Section 11.03, and (ii) effect the related changes to the terms of the Notes required by Section 11.06, in each case, in accordance with Section 11.06;

(d) provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 6;

(e) add guarantees with respect to the Notes;

(f) secure the Notes;

(g) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred upon the Company; or

(h) make any change that does not adversely affect the rights of any Holder.

Section 10.02. *With Consent of Holders.* With the written consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the 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 this Indenture or the Notes or may prospectively waive compliance with any provisions of the Notes or this Indenture; *provided*, *however*, that, without the consent of each Holder of an outstanding Note affected thereby, no amendment or supplement to this Indenture or the Notes may:

(a) reduce the percentage in aggregate principal amount of Notes whose Holders must consent to an amendment of this Indenture;

(b) reduce the rate of or extend the stated time for payment of interest on any Note;

(c) reduce the principal amount or change the Maturity Date of any Note;

(d) make any change that impairs or adversely affects the conversion rights of any Notes under Article 11 hereof or reduces the consideration due upon conversion;

(e) reduce the Fundamental Change Purchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments;

(f) reduce the Redemption Price or amend or modify in any manner adverse to the Holders the provisions set forth in Article 4;

(g) make any Note payable in a currency other than that stated in the Note;

(h) change the ranking of the Notes;

(i) impair the right of any Holder to receive payment of the principal of, and interest on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes; or

(j) make any change to this *proviso* in Section 10.02 or to Section 7.04.

It shall not be necessary for the consent of the Holders under this Section 10.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

Section 10.03. *Execution of Supplemental Indentures.* Upon the request of the Company, the Trustee shall sign any supplemental indenture authorized pursuant to this Article 10 if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities under this Indenture of the Trustee. If the supplemental indenture adversely affects the Trustee's rights, duties, liabilities or immunities under this Indenture, then the Trustee may, but need not, sign such supplemental indenture. In executing any supplemental indenture hereto, the Trustee shall be provided with, and (subject to the provisions of Section 8.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such supplemental indenture is authorized and permitted under this Indenture and constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, which requirements shall be non-waive-able by the Trustee.

Section 10.04. *Notices of Supplemental Indentures.* After an amendment or supplement to this Indenture or the Notes pursuant to Sections 10.01 or 10.02 becomes effective, the Company shall promptly mail to each Holder a notice briefly describing such amendment or supplement to this Indenture. The failure to deliver such notice, or any defect in such notice, shall not impair or affect the validity of such amendment or supplement to this Indenture.

Section 10.05. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article 10, (a) this Indenture shall be modified in accordance therewith, (b) such supplemental indenture shall form a part of this Indenture for all purposes, and (c) every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 10.06. *Notation on or Exchange of Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 10 may, and shall, if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Notes.

Section 10.07. *Revocation and Effect of Consents, Waivers and Actions.* A consent to an amendment or a waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the supplemental indenture setting forth the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver becomes effective in accordance with the terms of the supplemental indenture, which shall become effective upon the execution thereof by the Trustee.

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 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 to 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.

ARTICLE 11
CONVERSIONS

Section 11.01. *Conversion Privilege and Consideration.*

(a) Subject to and upon compliance with the provisions of this Indenture, a Holder shall have the right, at such Holder's option, to convert the principal amount of its Notes, or any portion of such principal amount that is equal to $1,000 or an integral multiple thereof, (i) subject to satisfaction of the conditions described in Section 11.01(b), at any time prior to the Close of Business on the Business Day immediately preceding February 1, 2019 under the circumstances and during the periods set forth in Section 11.01(b), and (ii) irrespective of the conditions described in Section 11.01(b), on or after February 1, 2019 and prior to the Close of Business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 23.1626 shares of Common Stock (subject to adjustment as provided in this Article 11, the "**Conversion Rate**") per $1,000 principal amount of Notes (subject to the settlement provisions of Section 11.03, the "**Conversion Obligation**").

(b)

(i) Prior to the Close of Business on the Business Day immediately preceding February 1, 2019, the Notes may be surrendered for conversion during any fiscal quarter (and only during such fiscal quarter) commencing after July 31, 2012 if, for at least 20 Trading Days (whether or not consecutive) during the 30 consecutive Trading Day period ending on the last Trading Day of the immediately preceding fiscal quarter, the Last Reported Sale Price of the Common Stock on such Trading Day is greater than or equal to 120% of the applicable Conversion Price on such Trading Day (such condition, the "**Sale Price Condition**"). If the Sale Price Condition has been met, the Company shall notify Holders within one Business Day of the Sale Price Condition being met of its satisfaction and of the resulting right of Holders to convert their Notes.

(ii) Prior to the Close of Business on the Business Day immediately preceding February 1, 2019, the Notes may be surrendered for conversion during the five consecutive Business Day period immediately following any five consecutive Trading Day period (the "**Measurement Period**") in which, for each Trading Day of such Measurement Period, the Trading Price per $1,000 principal amount of Notes (as determined following a request by a Holder in accordance with the procedures set forth in this Section 11.01(b)(ii) and the definition of "Trading Price" in Section 1.01), was less than 98% of the product of (x) the Last Reported Sale Price of the Common Stock on such Trading Day and (y) the Conversion Rate on such Trading Day (such product, the "**Intrinsic Value**," and such condition, the "**Trading Price Condition**"). The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this Section 11.01(b)(ii) and the definition of Trading Price in Section 1.01. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of "Trading Price" in Section 1.01, along with appropriate contact information for each.

(A) The Bid Solicitation Agent shall have no obligation to determine the Trading Price of the Notes unless the Company has requested that the Bid Solicitation Agent determine the Trading Price of the Notes. The Company shall have no obligation to make such a request unless a Holder of Notes (x) provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes for the immediately following Trading Day would be less than 98% of the Intrinsic Value of the Notes for such Trading Day and (y) requests that the Company request the Bid Solicitation Agent to determine the Trading Price of the Notes.

(B) Upon receipt from a Holder of such evidence and such a request, the Company shall instruct the Bid Solicitation Agent to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until a Trading Day occurs in which the Trading Price per $1,000 principal amount of Notes for such Trading Day is greater than or equal to 98% of the Intrinsic Value of the Notes for such Trading Day.

(C) If the Trading Price Condition has been met on any Trading Day, the Company shall notify Holders on such Trading Day of its satisfaction and of

the resulting right of Holders to convert their Notes. If, on any Trading Day after the Trading Price Condition has been met, the Bid Solicitation Agent determines that the Trading Price per $1,000 principal amount of Notes for such Trading Day is greater than or equal to 98% of the Intrinsic Value of the Notes for such Trading Day, the Company shall promptly so notify the Holders that the Trading Price Condition is no longer met.

(iii) If, prior to the Close of Business on February 1, 2019, the Company elects to:

(A) issue to all or substantially all holders of its Common Stock rights, options or warrants entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share of Common Stock less than the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance; or

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

then, in each case, at least 30 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution, the Company shall mail notice to the Holders describing such issuance or distribution, the Holders' rights to convert their Notes in accordance with this Section 11.01(b)(iii), the Conversion Rate in effect on the date the Company mails such notice, any adjustments to the Conversion Rate that must be made as a result of such issuance or distribution, and the effective date for any such adjustments. Once the Company has given such notice, a Holder may surrender its Notes for conversion at any time until the earlier of (x) the Close of Business on the Business Day immediately preceding such Ex-Dividend Date and (y) the Company's announcement that such issuance or distribution will not take place.

(iv) If, prior to the Close of Business on February 1, 2019, the Company or any third party publicly announces a transaction or event that would, if consummated, constitute a Fundamental Change, a Make-Whole Fundamental Change or Share Exchange Event (regardless of whether the Holders would have the right to require the Company to purchase their Notes pursuant to Section 3.01), or any such transaction or event occurs without any public announcement, the Company shall mail notice (a "**Specified Corporate Transaction Notice**") of such Specified Corporate Transaction to the Holders within one Business Day of the first public announcement of such transaction or event or, in the case that no public announcement is made, the occurrence of such transaction or event. Upon receiving notice or otherwise becoming aware of a potential Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event, the

Company shall use commercially reasonable efforts to announce or cause the announcement of such potential transaction or event in time to deliver the related Specified Corporate Transaction Notice at least 30 Scheduled Trading Days prior to the anticipated effective date for such potential Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event. For any such potential Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event, the Specified Corporate Transaction Notice shall describe:

(A) the potential transaction or event;

(B) the anticipated effective date of such transaction or event;

(C) the Holders' right to convert their Notes in accordance with this Section 11.01(b)(iv);

(D) the Conversion Rate in effect on the date the Company mails such notice;

(E) that an adjustment to the Conversion Rate is expected to be made pursuant to Section 11.05 as a result of such transaction or event and the formula for determining such adjustment;

(F) whether the relevant transaction or event is expected to constitute a Share Exchange Event, and, if so, that the Notes will become convertible into Reference Property, subject to the settlement provisions of the Indenture;

(G) whether the relevant transaction or event is expected to constitute a Fundamental Change, and, if so, that Holders will have the right to require the Company to purchase their Notes pursuant to Article 3; and

(H) whether the relevant transaction or event is expected to constitute a Make-Whole Fundamental Change, and, if so, that the Conversion Rate will be increased under Section 11.07 for Notes converted in connection with such Make-Whole Fundamental Change.

Upon the Company's delivery of a Specified Corporate Transaction Notice with respect to any potential Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event, a Holder may surrender its Notes for conversion at any time until the 35th Trading Day immediately following the effective date of such transaction or event or, if such transaction or event constitutes a Fundamental Change, the Business Day immediately preceding the related Fundamental Change Purchase Date.

(v) If the Company calls any or all of the Notes for redemption pursuant to Article 4, Holders may convert their Notes at any time on or after the date the Company delivers the relevant Redemption Notice to Holders and prior to the Close of Business on the Business Day prior to the relevant Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right of Holders to convert their Notes on account of the Company's delivery of such Redemption Notice shall expire,

unless the Company defaults in the payment of the Redemption Price, in which case the Notes will be convertible under this Section 11.01(b)(v) until the Redemption Price has been paid or duly provided for.

Section 11.02. *Conversion Procedure.*

(a) To convert a Note or portion thereof, a Holder or beneficial owner, as the case may be, must (i) in the case of a Global Note, (A) comply with the procedures of the Depositary then in effect for converting a beneficial interest in a global note and (B) if applicable, pay all funds required under Sections 11.02(g) and 11.02(h) below, and (ii) in the case of a Certificated Note, (A) complete and manually sign the conversion notice in the form attached to such Certificated Note (a "**Notice of Conversion**") or a facsimile of the Notice of Conversion, (B) deliver the Notice of Conversion, which is irrevocable, and the Certificated Note to the Conversion Agent, (C) if required, furnish appropriate endorsements and transfer documents, (D) if applicable, pay all funds required under Section 11.02(h) below, and (E) if applicable, pay all funds required under Section 11.02(g) below.

(b) A Note shall be deemed to have been converted at the Close of Business on the first Business Day (the "**Conversion Date**") on which (i) the Holder thereof satisfies all of the requirements set forth in Section 11.02(a) with respect to such Note and (ii) the conversion of such Note is not otherwise prohibited by Section 3.04(a) hereof.

(c) If the last day during any period on which a Note may be converted is not a Business Day, the Note may be surrendered on the immediately following day that is a Business Day. Upon the conversion of a Note, the Conversion Agent, as promptly as possible, and in no event later than one Business Day immediately following the Conversion Date for the Note, will provide the Company with notice of the conversion of the Note, and the Company, as promptly as possible, and in no event later than two Business Days after such Conversion Date, will notify the Trustee, if other than the Conversion Agent, of the conversion of the Note.

(d) If a Holder converts the entire principal amount of a Note, such Person will no longer be a Holder of such Note, except that (i) such Holder shall have the right hereunder to receive the consideration due upon conversion and (ii) if the relevant Conversion Date occurred between a Record Date and on or prior to the corresponding Interest Payment Date, the Holder of record of such Note shall have the right to receive the related interest payment on such Interest Payment Date.

(e) If a Holder surrenders only a portion of a Certificated Note for conversion, promptly after the Conversion Date for such portion, the Company shall execute and the Trustee shall authenticate and deliver to such Holder, a new Certificated Note in an authorized denomination equal to the aggregate principal amount of the unconverted portion of the surrendered Note. Upon the conversion of an interest in a Global Note, the Trustee shall promptly make a notation on the "Schedule of Exchanges of Notes" of such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing upon any conversion of a Note effected through any Conversion Agent other than the Trustee.

(f) If any shares of Common Stock are issuable upon the conversion of a Note, the Person in whose name the certificate or certificates for such shares of Common Stock will be registered shall be treated as the holder of record of such shares at the Close of Business on the last VWAP Trading Day of the relevant Observation Period for such Note.

(g) Notwithstanding Section 11.03(e), if a Holder converts its Note after the Close of Business on a Record Date but prior to the Open of Business on the Interest Payment Date corresponding to such Record Date, the Holder of such Note at the Close of Business on such Record Date shall

receive the interest payment payable on such Note on such corresponding Interest Payment Date, notwithstanding the conversion. Any Note converted during the period beginning at the Close of Business on any Record Date and ending at the Open of Business on the Interest Payment Date corresponding to such Record Date must be accompanied by funds equal to the amount of interest payable on such Note on such corresponding Interest Payment Date; *provided*, *however*, that no such payment need be made: (i) for a Note surrendered for conversion after the Close of Business on the last Record Date immediately preceding the Maturity Date, (ii) if the Company has specified a Redemption Date or Fundamental Change Purchase Date that is after such Record Date and on or prior to such corresponding Interest Payment Date, or (iii) to the extent of any Defaulted Interest, if any Defaulted Interest exists at the time of conversion with respect to such Note.

(h) If a Holder converts a Note, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon such conversion; *provided* that if such tax is due because such converting Holder requested that such shares of Common Stock be issued in a name other than such Holder's name, such Holder shall pay such tax.

Section 11.03. *Settlement Upon Conversion.*

(a) Except as provided in Section 11.07(e), the Company shall pay or deliver, as the case may be, to a converting Holder on the third Business Day immediately following the final VWAP Trading Day of the relevant Observation Period for the converted Note, in respect of each $1,000 principal amount of the Note being converted, an amount of cash and a number of shares of Common Stock, if any, equal to the sum of the Daily Settlement Amounts for each of the 20 consecutive VWAP Trading Days during such Observation Period, together with cash in lieu of any fractional shares of Common Stock in accordance with Section 11.03(b) (the "**Settlement Amount**").

(i) If the Company elects to satisfy all or any portion of the remainder of its Conversion Obligation, if any, over the principal amount of Notes being converted (any such remainder, the "**Conversion Excess Obligation**") in cash (a "**Cash Settlement Election**"), the Company shall provide notice of the percentage of the Conversion Excess Obligation to be paid in cash (the "**Cash Percentage**") per $1,000 principal amount of Notes being converted (A) in the applicable Redemption Notice, with respect to any conversion following delivery of a Redemption Notice by the Company and prior to the Close of Business on the Business Day immediately preceding the related Redemption Date (such period, a "**Redemption Period**"), (B) by written notice to all Holders of Notes, the Trustee and the Conversion Agent on or prior to the 25th Scheduled Trading

Day immediately preceding the Maturity Date, in the case of any conversion occurring on or after such date other than during a Redemption Period and (C) by written notice to the converting Holder, the Trustee and the Conversion Agent, prior to the Close of Business on the first Scheduled Trading Day following the relevant Conversion Date, in the case of any other conversion (any notice described in clause (A), (B) or (C) above, a "**Settlement Method Notice**"). Any Cash Settlement Election shall be the same (x) for all conversions occurring during a Redemption Period, (y) for all conversions occurring on or after the 25th Scheduled Trading Day immediately preceding the Maturity Date and (z) for all conversions of Notes on the same Conversion Date. If the Company does not timely deliver a Settlement Method Notice with respect to any conversion in accordance with this Section 11.03(a)(i), a Cash Settlement Election will not apply with respect to such conversion.

(ii) Notwithstanding anything to the contrary herein, unless and until the Company's stockholders approve a sufficient increase in the authorized shares of Common Stock such that the number of authorized shares of Common Stock that has not been issued or reserved for any purpose other than settlement of the Notes equals or exceeds the Maximum Number of Underlying Shares ("**Authorized Share Approval**"), notwithstanding anything to the contrary herein, the number of shares included in the Daily Net Settlement Amount for any VWAP Trading Day during the relevant Observation Period shall not exceed the "**Daily Authorized Share Cap**" of 1.0000 share per $1,000 principal amount of Notes, and, if the number of shares included in the Daily Net Settlement Amount would otherwise exceed the Daily Authorized Share Cap, the Company shall pay to the converting Holder an amount in cash for such VWAP Trading Day, in addition to any other cash amounts owed hereunder, equal to (A) the difference between the number of shares that would have been included in the Daily Net Settlement Amount for such VWAP Trading Day (without giving effect to the Daily Authorized Share Cap) and the Daily Authorized Share Cap, *multiplied by* (B) the Daily VWAP on such VWAP Trading Day. If the Company receives Authorized Share Approval on any day, the Company shall so notify Holders, the Trustee and the Conversion Agent prior to the Close of Business on such day. For any Conversion Date that occurs prior to receipt by the Company of Authorized Share Approval, the Company shall notify the converting Holder, the Trustee and the Conversion Agent that the Daily Authorized Share Cap is applicable, either in the relevant Settlement Method Notice or, if the Company does not make a Cash Settlement Election, in writing on the date that the Company would have been required to deliver such a notice to validly make a Cash Settlement Election.

(b) Notwithstanding anything herein to the contrary, regardless of whether the Company then has a class of securities listed on The NASDAQ Global Select Market, the number of shares of Common Stock included in the Daily Net Settlement Amount on any VWAP Trading Day shall not exceed the Daily NASDAQ Share Cap unless, prior to such VWAP Trading Day, the Company has received the requisite approval from its stockholders in accordance with NASDAQ Stock Market Rule 5635 (the "**Required NASDAQ Stockholder Approval**") to permit issuance upon conversion of the Notes of a number of shares of the Common Stock up to the Maximum Number of Underlying Shares. If the Company receives the Required NASDAQ Stockholder Approval on any day, the Company shall so notify the Holders, the Trustee and the Conversion Agent prior to the Close of Business on such day. For the

avoidance of doubt, the Company shall not have any obligation to pay cash in lieu of any shares of Common Stock that would have been included in a Daily Net Settlement Amount that are not delivered as a result of the Daily NASDAQ Share Cap, and, subject to Section 11.05(l), the Company shall not have any obligation to seek the Required NASDAQ Stockholder Approval.

(c) Notwithstanding the foregoing, the Company shall not issue fractional shares of Common Stock as part of the Daily Settlement Amount. Instead, if, on any of the 20 consecutive VWAP Trading Days in the Observation Period for a Note, a fraction of a share of Common Stock would otherwise be included in the Daily Net Settlement Amount for such VWAP Trading Day, the Company shall deliver, in lieu of delivering such fraction of a share of Common Stock, an amount of cash equal to the product of (i) such fraction of a share and (ii) the Daily VWAP for such VWAP Trading Day in such Observation Period.

(d) If a Holder surrenders more than one Note for conversion on a single Conversion Date, the number of shares of Common Stock, if any, that the Company will deliver, and the amount of cash that the Company will pay pursuant to Section 11.03(c) in lieu of fractional shares of Common Stock, if any, shall be determined based on the total principal amount of Notes so surrendered by such Holder.

(e) If a Holder converts a Note, except as set forth in Section 11.02(g), (i) such Holder shall not receive any separate cash payment (in addition to the Conversion Obligation) for accrued and unpaid interest on such Note and (ii) the Company's delivery to such converting Holder of the amount of cash and the number of shares of Common Stock, if any, into which such Holder's Note is convertible shall be deemed to satisfy in full the Company's obligation to pay to such Holder (i) the principal amount of such converted Note and (ii) accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date. As a result, subject to Section 11.02(g), accrued and unpaid interest, if any, on a converted Note to but, excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes, subject to Section 11.02(g), accrued and unpaid interest, if any, shall be deemed to be paid first out of the cash paid upon such conversion.

(f) *Notices*.

(i) On the second Business Day immediately following the Conversion Date for any Notes, the Company shall deliver written notice to the Trustee stating (A) the aggregate principal amount of Notes converted on such Conversion Date, (B) whether the Company has made a Cash Settlement Election with respect to such Conversion Date, and (C) if the Company has made a Cash Settlement Election for such Conversion Date, the Cash Percentage for such Conversion Date.

(ii) On the first Business Day immediately following the last VWAP Trading Day of the Observation Period for each Conversion Date, the Company shall deliver written notice to the Trustee stating (A) the aggregate principal amount of Notes that were converted on such Conversion Date, (B) the aggregate amount of cash and the aggregate number of Shares that the Company is obligated to deliver to settle all of the Notes converted on such Conversion Date, and (C) the Daily Settlement Amounts for each VWAP Trading Day of the Observation Period for such Conversion Date.

Section 11.04. *Covenants Relating to Underlying Shares.*

(a) The Company shall, until all Notes cease to be outstanding and any consideration due upon conversion has been paid or delivered, as the case may be, reserve out of its authorized but unissued shares of Common Stock that have not been reserved for other purposes a number of shares of Common Stock, in the aggregate, equal to (i) 3,000,000 shares, at all times prior to the Company's receipt of Authorized Share Approval, or (ii) the product of the Maximum Conversion Rate and the aggregate principal amount of Notes then outstanding (expressed in thousands of dollars), at all times following the Company's receipt of Authorized Share Approval, in each case, to permit the conversion of the Notes.

(b) The Company covenants that any shares of Common Stock delivered upon conversion of the Notes shall be duly and validly issued and fully paid and nonassessable, and shall be free from preemptive rights and shall be free of any lien or adverse claim or from any taxes or charges with respect to the issue thereof.

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

(d) In addition, the Company will cause any such shares of Common Stock to be listed on any stock exchange on which the Common Stock is then listed and will comply with any stock exchange rules applicable to the Notes and/or the Common Stock issuable upon conversion of the Notes.

Section 11.05. *Adjustments to the Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as described in this Section 11.05, except that the Company shall not make any adjustments to the Conversion Rate for any Holder that participates (as a result of holding the Notes, and at the same time as the holders of the Common Stock participate) in any of the transactions described below as if such Holder held, for each $1,000 principal amount of Notes held, a number of shares of the Common Stock equal to the applicable Conversion Rate, without having to convert its Notes.

(a) *Dividends, Distributions, Splits and Combinations*. If the Ex-Dividend Date occurs for any issuance by the Company of solely shares of the Common Stock as a dividend or distribution on all or substantially all of the shares of the Common Stock, or if the Company effects a share split or a share combination of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where:

CR_0 = 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 combination, as the case may be;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such dividend or distribution or the effective date of such share split or combination, as the case may be;

OS_0 = the number of shares of the Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date or effective date, as the case may be; and

OS_1 = the number of shares of the Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as the case may be.

Any adjustment made under this Section 11.05(a) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution or the effective date for such share split or combination, as the case may be. If any dividend or distribution of the type described in this Section 11.05(a) is declared but not so paid or made, then the Conversion Rate shall immediately be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution to the Conversion Rate that would then be in effect had such dividend or distribution not been declared or announced. The "effective date," with respect to a share split or combination, means the first date on which the shares of the Common Stock trade in the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

(b) *Adjustment for Rights Issue*. If the Ex-Dividend Date occurs for any issuance by the Company to all or substantially all holders of the Common Stock of any rights, options or warrants entitling the holders of such rights, options or warrants for a period of not more than 60 calendar days after the announcement date of such issuance to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such issuance;

OS_0 = the number of shares of the Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date;

X = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants;

Y = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants divided by the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any adjustment made under this Section 11.05(b) shall 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, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustment made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall immediately be readjusted to equal the Conversion Rate that would then be in effect had the relevant adjustment pursuant to this Section 11.05(b) not occurred.

For purposes of this Section 11.05(b) and Section 11.01(b)(iii)(A), in determining whether any issued rights, options or warrants entitle the holders of the Common Stock to subscribe for or purchase shares of the Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for each Trading Day in the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration that the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) *Other Distributions*.

(i) If the Ex-Dividend Date occurs for a distribution by the Company of shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities to all or substantially all holders of the Common Stock, excluding (A) dividends or distributions (including subdivisions) and rights, options or warrants, in each case, for which an adjustment is made pursuant to Sections 11.05(a) or 11.05(b); (B) dividends or distributions paid exclusively in cash for which an adjustment is made pursuant to Section 11.05(d); and (C) Spin-Offs for which an adjustment is made pursuant to Section 11.05(c)(ii) (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the "**Distributed Property**"), then the Conversion Rate shall be adjusted based on the following formula:

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

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value, as determined by the Board of Directors, of the Distributed Property with respect to each outstanding share of the Common Stock as of the Open of Business on the Ex-Dividend Date for such distribution.

Notwithstanding the foregoing, if "SP_0" (as defined above) minus "FMV" (as defined above) is less than $1.00, in lieu of the foregoing adjustment, each Holder shall receive, for each $1,000 principal amount of Notes held, at the same time and upon the same terms as holders of the Common Stock, the kind and amount of Distributed Property that such Holder would have received as if such Holder had owned a number of shares of the Common Stock equal to the Conversion Rate in effect on the record date for such distribution.

Any adjustment made under this Section 11.05(c)(i) shall 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, or if any rights, options or warrants are not exercised before their expiration date, the Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect had such distribution not been declared or to the extent such rights or warrants are not exercised, as applicable.

(ii) With respect to an adjustment pursuant to this Section 11.05(c), if the relevant dividend or other distribution consists 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 that are listed for trading or quoted (or will be listed or quoted upon consummation of the spin-off) on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall 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 Open of Business on the Ex-Dividend Date for the Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to a holder of one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first ten consecutive Trading Day period immediately following, and including, the effective date for the Spin-Off (such period, the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

Notwithstanding the foregoing, (A) if the last VWAP Trading Day of the Observation Period for any conversion occurs on or after the effective date for the Spin-Off, but less than ten Trading Days immediately following, and including, the effective date for the Spin-Off, references within this Section 11.05(c)(ii) to ten Trading Days shall be deemed replaced, for purposes of calculating the affected Daily Settlement Amounts in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the effective date for the Spin-Off to, and including, the last VWAP Trading Day of such Observation Period, and (B) for purposes of determining the Conversion Rate applicable to any conversion for which the Conversion Date occurs during the ten Trading Days commencing on the effective date for any Spin-Off, references within the portion of this Section 11.05(c)(ii) related to "Spin-Offs" to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-Off to, but excluding, the relevant Conversion Date.

Any adjustment made pursuant to this Section 11.05(c)(ii) shall become effective as of the Open of Business on the Ex-Dividend Date for the Spin-Off. If such Spin-Off is subsequently cancelled and does not become effective, the Conversion Rate shall be readjusted to be the Conversion Rate that would have been in effect if such Spin-Off had not been declared.

For purposes of this Section 11.05(c) (and subject in all respect to Section 11.05(i)), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (A) are deemed to be transferred with such shares of the Common Stock; (B) are not exercisable; and (C) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 11.05(c) (and no adjustment to the Conversion Rate under this Section 11.05(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 11.05(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different

securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to

terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 11.05(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 11.05(a), Section 11.05(b) and this Section 11.05(c), if any dividend or distribution to which this Section 11.05(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 11.05(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 11.05(b) is applicable (the "**Clause B Distribution**"),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 11.05(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 11.05(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 11.05(a) and Section 11.05(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or effective date" within the meaning of Section 11.05(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 11.05(b).

(d) *Adjustment for Cash Distributions*. If the Ex-Dividend Date occurs for any cash dividend or distribution by the Company to all or substantially all holders of the outstanding Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where:

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

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

If "SP_0" (as defined above) minus "C" (as defined above) is less than $1.00, in lieu of the foregoing adjustment, each Holder shall receive, for each $1,000 principal amount of Notes held, at the same time and upon the same terms as holders of the Common Stock, the amount of cash such Holder would have received if such Holder had owned a number of shares of the Common Stock equal to the Conversion Rate in effect on the record date for such distribution.

Any adjustment made under this Section 11.05(d) shall 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 shall be readjusted to be the Conversion Rate that would then be in effect had the related Ex-Dividend Date not occurred.

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

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Expiration Date;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on 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 the shares purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "**Consummation Time**") such tender or exchange offer is consummated (prior to giving effect to the purchase of shares of Common Stock pursuant to such tender offer or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Consummation Time (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender offer or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate under this Section 11.05(e) shall be given effect at the Close of Business on the Expiration Date. If the Expiration Date is less than ten Trading Days prior to, and including, the last VWAP Trading Day of the Observation Period in respect of any conversion, references within this Section 11.05(e) to ten Trading Days shall be deemed replaced, for purposes of calculating the affected Daily Settlement Amounts in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, and including, the last VWAP Trading Day of such Observation Period. For purposes of determining the Conversion Rate applicable to any conversion during the ten Trading Day period commencing on the Trading Day next succeeding the Expiration Date, references within this Section 11.05(e) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the relevant Conversion Date.

(f) *Holder Participation in Adjustment Events*. Notwithstanding the provisions set forth in clauses (a) through (e) above, if any adjustment to the Conversion Rate pursuant to such provisions becomes effective on any Ex-Dividend Date or effective date and a Holder that has converted its Notes would (i) receive shares of Common Stock based on an adjusted Conversion Rate and (ii) be a record holder of such shares of Common Stock on the record date for the dividend, distribution or event giving rise to such adjustment, then, in lieu of receiving shares of Common Stock at such an adjusted Conversion Rate, such Holder shall receive a number of shares of Common Stock, if any, upon conversion based on an unadjusted Conversion Rate and shall participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) *Adjustments Not Yet Effective*. If any Holder converts its Note and, on any VWAP Trading Day during the Observation Period corresponding to the Conversion Date for such Note,

shares of Common Stock are deliverable as part of the Daily Settlement Amount for such VWAP Trading Day, and

(i) the record date for any dividend or distribution, the effective date for any share split or combination or the Expiration Date for any tender or exchange offer by the Company that, in each case, would require an adjustment to the Conversion Rate pursuant to Section 11.05(a), (b), (c), (d) or (e) occurs prior to the Company's delivery of such shares of Common Stock to the converting Holder;

(ii) the applicable Conversion Rate for such VWAP Trading Day will not reflect such adjustment; and

(iii) the shares of Common Stock that the Company shall deliver to such Holder with respect to such VWAP Trading Day are not entitled to participate in the relevant event (because such shares were not held by such Holder on the related record date, effective date, expiration date or otherwise),

then the Company shall adjust the number of shares of Common Stock deliverable to such Holder as part of the Daily Settlement Amount for such VWAP Trading Day in a manner that appropriately reflects the relevant distribution, transaction or event.

(h) *Other Adjustments*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Company shall make appropriate adjustments to such prices to account for any adjustment to the Conversion Rate that becomes effective, or any event that would require 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 over which such Last Reported Sale Prices are to be calculated.

(i) *Rights Plans*. To the extent that the Company has a shareholder rights plan in effect upon conversion of any Note, each share of Common Stock issued upon such conversion (x) shall be entitled to receive the number of rights, if any, associated with one share of Common Stock under such shareholder rights plan, and (y) shall, if issued in certificated form, bear such legends, if any, as may be required under such shareholder rights plan; *provided*, *however*, that if prior to the Conversion Date for such Note, the rights have separated from the Common Stock in accordance with the provisions of the applicable shareholder rights plan, the converting Holder shall not be entitled to receive such rights upon conversion, and at the time of such separation, the Conversion Rate shall be adjusted in accordance with Section 11.05(c) as if the Company made a distribution of Distributed Property to the holders of the Common Stock; *provided*, *further*, that such adjustment shall be subject to readjustment upon the expiration, termination or redemption of such separated rights in accordance with Section 11.05(c).

(j) *Deferral of Adjustments*. The Company shall not be required to make any adjustment to the Conversion Rate unless such adjustment would require an increase or decrease in the Conversion Rate by at least 1%; *provided* that any adjustment of less than 1% that would have been made to the Conversion Rate but for this Section 11.05(j) shall be carried forward, and (i) all such carried forward adjustments, regardless of whether the aggregate adjustment is less

than 1% of the Conversion Rate, and (ii) any other adjustment that would have been made but for this Section 11.05(j), in each case, shall be made, with respect to any Note (x) on the first VWAP Trading Day of the relevant Observation Period for such Note and (y) on each subsequent VWAP Trading Day of such Observation Period.

(k) *Voluntary Increases*. In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 11.05, and to the extent permitted by applicable law and any applicable stock exchange rules, from time to time, (i) the Company may increase the Conversion Rate of the Notes by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase is in the best interest of the Company and (ii) the Company may (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of the Common Stock or rights to purchase shares of the Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or a similar event; *provided* that the Company shall not take any action that would result in adjustment of the Conversion Rate, pursuant to this Section 11.05(k), that would result in a reduction of the Conversion Price to less than the par value per share of the Common Stock.

(l) *Covenant Not to Cause Adjustments*. The Company shall not make any distribution of cash or other property on the Common Stock or take any other action that would result in an adjustment to the Conversion Rate pursuant to clauses (b) through (e) above if, following such adjustment, the Conversion Rate would be greater than 27.8980 shares per $1,000 principal amount of Notes (as adjusted in connection with share splits, share combinations and share dividends, at the same time and in the same manner as the Conversion Rate, pursuant to clause (a) above), unless the Company has received the Required NASDAQ Stockholder Approval.

(m) *No Other Adjustments*. Except as expressly stated herein, the Conversion Rate shall not be subject to adjustment as a result of any issuance of shares of Common Stock or securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities.

(n) *No Decreases in the Conversion Rate*. Notwithstanding anything to the contrary in clauses (a) through (e) above, if the application of the formulas set forth therein would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate shall be made, other than (i) as a result of a reverse share split or share combination or (ii) in the case of an increase in the Conversion Rate in connection with any Spin-Off, distribution on the Common Stock or issuance of rights, options or warrants to holders of Common Stock, such increase may be reversed, to the extent expressly set forth herein, on account of the cancellation of such Spin-Off, such distribution not being paid or made or the expiration of such rights, options or warrants.

(o) *Notice of Potential Adjustment Events*. Whenever an event occurs that will require an adjustment to the Conversion Rate pursuant to this Section 11.05 (unless notice of such event is otherwise required pursuant to another provision of this Indenture, excluding, for the avoidance of doubt, clause (p) below), the Company shall, at least 25 Scheduled Trading Days prior to the anticipated effective date of such adjustment, mail to the Holders a notice of such event describing the event requiring adjustment to the Conversion Rate pursuant to this Section 11.05, the anticipated effective date of the adjustment and the methodology for determining the relevant adjustment to the Conversion Rate; *provided*, *however*, that if on such date, the

Company does not have knowledge of such event, the Company shall deliver such notice as promptly as practicable upon obtaining knowledge of such event and in no event later than the effective date of such adjustment. Failure to deliver any such notice or any defect therein shall not affect the legality or validity of the relevant event. For the avoidance of doubt, any Default resulting from the failure to deliver notice in accordance with this Section 11.05(o) shall be cured by the delivery of such notice.

(p) *Notice of Adjustments*. Whenever the Conversion Rate is adjusted as herein provided, the Company shall as promptly as practicable file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Trust Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Register. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

Section 11.06. *Effect of Reclassification, Consolidation, Merger or Sale.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than a change resulting from a subdivision or combination for which an adjustment is provided pursuant to Section 11.05);

(ii) any consolidation, merger, combination or similar transaction involving the Company;

(iii) any sale, lease or other transfer to a third party of substantially all of the consolidated assets of the Company and its Subsidiaries; or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock will be converted into, or exchanged for, stock, other securities or other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**" and any such stock, other securities or other property or assets, "**Reference Property**," and the amount of Reference Property that a holder of one share of the Common Stock immediately prior to such Share Exchange Event would have been entitled to receive upon the occurrence of such Share Exchange Event, a "**Unit of Reference Property**"), then, prior to the effective time of such Share Exchange Event, the Company or the successor or purchasing company, as the case may be, shall execute a supplemental indenture providing that, at and after the effective time of such Share Exchange Event, a Holder's right to convert its Note into cash and shares of Common Stock, if any, shall be changed into the right to convert such Note into cash and Units of Reference Property, if any; *provided* that, at and after the effective time of such Share Exchange

Event, the amount of cash

and the number of Units of Reference Property that the Company shall deliver upon conversion of a Note shall be determined pursuant to Section 11.03 (and the definitions referenced therein), except that for any VWAP Trading Day during the relevant Observation Period (x) the Daily VWAP for such VWAP Trading Day shall be calculated based on the value of a Unit of Reference Property on such VWAP Trading Day and (y) in lieu of each share of Common Stock that the Company would otherwise be obligated to deliver on such VWAP Trading Day, the Company shall deliver a Unit of Reference Property.

If a Share Exchange 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 stockholder election), then (i) the Reference Property 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, and (ii) the Unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that are as nearly equivalent as possible to the adjustments provided for in this Article 11. If the Reference Property in respect of any Share Exchange Event includes shares of stock, securities or other property or assets of a Person other than the Company or, in the case of a transaction described in Article 6, the Successor Company, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes, including the right of Holders to require the Company to purchase their Notes upon a Fundamental Change pursuant to Article 3, as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) If the Company executes a supplemental indenture pursuant to this Section 11.06, as promptly as practicable, the Company shall file with the Trustee an Officer's Certificate briefly describing such Share Exchange Event, the composition of a Unit of Reference Property for such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent to such Share Exchange Event under this Indenture have been complied with. Any failure to deliver such Officer's Certificate shall not affect the legality or validity of such supplemental indenture. The Company shall also issue a press release containing such information and shall make such press release available on its website.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 11.06. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash and shares of Common Stock, if any, as set forth in Section 11.02 and Section 11.01 prior to the effective date of such Share Exchange Event.

(d) The provisions of this Section 11.06 shall apply successively to successive Share Exchange Events.

Section 11.07. *Adjustment to Conversion Rate Upon Certain Transactions.*

(a) If a Make-Whole Fundamental Change occurs and a Holder elects to convert its Note in connection with such Make-Whole Fundamental Change, the Company shall, in the circumstances described in this Section 11.07, increase the Conversion Rate for such Note by the number of additional shares of Common Stock (the "**Additional Shares**") described in this Section 11.07. For the purposes of this Section 11.07, a conversion of Notes shall be deemed to be "in connection with" a Make-Whole Fundamental Change if the Conversion Date occurs during the period beginning on, and including, the date on which such Make-Whole Fundamental Change occurs or becomes effective (such date, the "**Make-Whole Fundamental Change Effective Date**") and ending on, and including, the Business Day immediately preceding the earliest of (i) the 35th Scheduled Trading Day immediately following the Make-Whole Fundamental Change Effective Date, (ii) if such Make-Whole Fundamental Change is also a Fundamental Change, the related Fundamental Change Purchase Date, and (iii) the Business Day immediately preceding the Maturity Date. The Company shall notify Holders within one Business Day after the first public announcement by the Company or a third party of an event or transaction that the Company reasonably determines would, if consummated, constitute a Make-Whole Fundamental Change. Upon receiving notice or otherwise becoming aware of a potential Make-Whole Fundamental Change, the Company shall use commercially reasonable efforts to announce or cause the announcement of such potential Make-Whole Fundamental Change in time to deliver such notice at least 30 Scheduled Trading Days prior to the anticipated Make-Whole Fundamental Change Effective Date.

(b) The number of Additional Shares by which the Conversion Rate shall be increased for a Note converted in connection with a Make-Whole Fundamental Change shall be determined by reference to the table in clause (d) below, based on the relevant Make-Whole Fundamental Change Effective Date and the stock price paid (or deemed paid) in the Fundamental Change, as determined pursuant to clause (e) below (such stock price, the "**Stock Price**").

(c) The Stock Prices set forth in the column headings of the table in clause (d) below shall be adjusted as of any date on which the Conversion Rate is adjusted pursuant to Section 11.05. The adjusted Stock Prices shall equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment, and the denominator of which is the Conversion Rate in effect immediately after such adjustment. The number of Additional Shares set forth in the table in clause (d) below shall be adjusted at the same time and in the same manner as the Conversion Rate is adjusted pursuant to Section 11.05.

(d) The following table sets forth the number of Additional Shares by which the Conversion Rate will be increased for a Holder that converts its Note in connection with a Make-Whole Fundamental Change having any Make-Whole Fundamental Change Effective Date and Stock Price set forth therein:

	Stock Price

Effective Date	$31.98	$35.00	$43.17	$45.00	$51.81	$60.00	$70.00	$80.00	$90.00	$100.00	$110.00	$120.00
April 24, 2012	8.1069	6.6465	4.1275	3.7590	2.7350	1.9802	1.4791	1.1832	0.9910	0.8571	0.7549	0.6732
May 1, 2013	8.1069	6.3674	3.6255	3.2260	2.1737	1.4510	1.0293	0.8082	0.6756	0.5858	0.5178	0.4633
May 1, 2014	8.1069	6.1200	2.9946	2.5526	1.3855	0.7883	0.5104	0.4006	0.3412	0.2995	0.2666	0.2395
May 1, 2015	8.1069	6.1048	2.4620	1.8624	0.0008	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
May 1, 2016	8.1069	6.1367	2.4416	1.8307	0.0008	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
May 1, 2017	8.1069	6.0074	2.3143	1.7295	0.0008	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
May 1, 2018	8.1069	5.5487	1.9130	1.4041	0.0007	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
May 1, 2019	8.1069	5.4088	0.0016	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

In the event that the exact Stock Price or Make-Whole Fundamental Change Effective Date for a Make-Whole Fundamental Change is not set forth in the table above:

(i) if the Stock Price is between two prices listed in the table or the Make-Whole Fundamental Change Effective Date is between two Make-Whole Fundamental Change Effective Dates listed in the table, the applicable number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Make-Whole Fundamental Change Effective Dates based on a 365-day year, as applicable;

(ii) if the Stock Price is greater than $120.00 (subject to adjustment in the same manner and at the same time as the Stock Prices listed in the table), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $31.98 (subject to adjustment in the same manner and at the same time as the Stock Prices listed in the table), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Section 11.07, in no event shall the Conversion Rate exceed 31.2695 shares per $1,000 principal amount of Notes, subject to adjustment at the same time and in the same manner as the Conversion Rate pursuant to Section 11.05 (the "**Maximum Conversion Rate**").

(e) With respect to any Make-Whole Fundamental Change:

(i) that is described in clause (2) of the definition Fundamental Change and in which the holders of Common Stock receive only cash in consideration for their shares (a "**Cash Merger**"), notwithstanding anything to the contrary in Section 11.03, the Company shall satisfy its Conversion Obligation with respect to any Note converted at any time following such Cash Merger by delivering to the converting 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 (A) the Conversion Rate in effect on such Conversion Date (as increased by any Additional Shares pursuant to this Section 11.07) and (B) the "Stock Price" with respect to such Cash Merger, which shall be the cash amount per share paid to holders of Common Stock in such Cash Merger; or

(ii) that is not a Cash Merger, (A) the "Stock Price" with respect to such Make-Whole Fundamental Change shall equal the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the related Make-Whole Fundamental Change Effective Date, and (B) for the avoidance of doubt, the Company shall satisfy its Conversion Obligation with respect to any Note converted in connection with such Make-Whole Fundamental Change in accordance with Section 11.03, based on the Conversion Rate as increased by any Additional Shares pursuant to this Section 11.07.

Section 11.08. *Trustee's Disclaimer*. The Trustee has no duty to determine when an adjustment under this Article 11 should be made, how it should be made or what it should be. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Notes. The Trustee shall not be responsible for the Company's failure to comply with this Article 11. Each Conversion Agent and Bid Solicitation Agent (if other than the Company) shall have the same protection under this Section 11.08 as the Trustee.

ARTICLE 12
PAYMENT OF INTEREST

Section 12.01. *Payment of Interest.* The Company shall pay interest on the Notes at a rate of 3.75% per annum, payable semi-annually in arrears on May 1 and November 1 of each year (each, an "**Interest Payment Date**") or, if any such day is not a Business Day, the immediately following Business Day, commencing November 1, 2012. Interest on the Notes shall accrue from the most recent date to which interest has been paid or duly provided for, or, if no interest has been paid, the date of this Indenture. Interest on a Note shall be paid to the Holder of record of such Note at the Close of Business on the April 15 or October 15, whether or not a Business Day (each, a "**Record Date**"), immediately preceding the May 1 or November 1 Interest Payment Date, respectively, and shall be computed on the basis of a 360-day year composed of twelve 30-day months. In the event of the conversion of a Note or purchase of a Note by the Company at the option of the Holder pursuant to Article 3, interest shall cease to accrue on such Note; *provided* that if any such conversion or repurchase occurs following a Record Date and on or prior to the related Interest Payment Date, the Holder of record of such Note as of the Close of Business on such Record Date shall receive the full amount of the related interest payment on such Interest Payment Date.

Section 12.02. *Defaulted Interest.* Any installment of interest that is payable, but is not punctually paid or duly provided for on any Interest Payment Date ("**Defaulted Interest**"), shall forthwith cease to be payable to the Holders in whose names the Notes were registered on the Record Date applicable to such installment of interest. Defaulted Interest (including any interest on such Defaulted Interest) may be paid by the Company, at its election, as provided in Sections 12.02(a) or 12.02(b).

(a) The Company may elect to make payment of any Defaulted Interest (including any interest on such Defaulted Interest) to the Holders in whose names the Notes are registered at the Close of Business on a special record date for the payment of such Defaulted Interest (a "**Special**

Record Date"), which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest (including any interest on such Defaulted Interest) or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Holders entitled to such Defaulted Interest (including any interest on such Defaulted Interest) as provided in this Section 12.02(a). Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest (including any interest on such Defaulted Interest), which shall be not more than 15 calendar days and not less than ten calendar days prior to the date of the proposed payment and not less than ten calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest (including any interest on such Defaulted Interest) and the Special Record Date therefor to be sent by first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the registration books of the Registrar, not less than ten calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest (including any interest on such Defaulted Interest) and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest (including any interest on such Defaulted Interest) shall be paid to the Holders in whose names the Notes are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to Section 12.02(b).

(b) Alternatively, the Company may make payment of any Defaulted Interest (including any interest on such Defaulted Interest) in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Section 12.02(b), such manner of payment shall be deemed practicable by the Trustee.

Section 12.03. *Interest Rights Preserved.* Subject to the foregoing provisions of this Article 12 and, to the extent applicable, Sections 2.06 and 2.07, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

ARTICLE 13
MEETINGS OF HOLDERS

Section 13.01. *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 13 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of

Default hereunder or rescind any acceleration, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 7;

(b) to remove the Trustee and nominate a successor Trustee pursuant to the provisions of Article 8;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Article 10; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 13.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 13.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 1.04, shall be mailed to Holders of such Notes at their addresses as they shall appear on the Register. Such notice may also be mailed to the Company. Such notices shall be mailed not less than twenty nor more than sixty days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice (in the case of the Company, to the extent such notice was required hereunder).

Section 13.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 13.01, by mailing notice thereof as provided in Section 13.02.

Section 13.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 13.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in

regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 13.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 2.08, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 13.02 or Section 13.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 13.06. *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 13.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company, if appropriate, and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

Section 13.07. *No Delay of Rights by Meeting*. Nothing contained in this Article 13 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 14
MISCELLANEOUS

Section 14.01. *Notices*. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in Person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission or other similar means of unsecured electronic methods to the following:

if to the Company:

Titan Machinery Inc.
644 East Beaton Drive
West Fargo, ND 58078-2648
Facsimile: (701) 356-0130
Attn: Chief Financial Officer

if to the Trustee in any of its roles hereunder:

Wells Fargo Bank, National Association
45 Broadway, 14th Floor
New York, NY 10006
Attn: Corporate Trust Services

with a copy to:

Wells Fargo Bank, National Association
625 Marquette Ave., 11th Floor
MAC N9311-110
Minneapolis, MN 55479
Facsimile: (612) 667-9825
Attn: Titan Machinery Administrator

The Company or the Trustee, by notice given to the other in the manner provided above, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Holder shall be mailed to the Holder, by first-class mail, postage prepaid, at the Holder's address as it appears on the registration books of the Registrar and shall be deemed given on the date of such mailing.

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

If the Company mails a notice or communication to the Holders, including any notice to Holders pursuant to Article 11, it shall, at the same time, mail a copy to the Trustee and each of the Registrar, Paying Agent and Conversion Agent.

If the Company is required under this Indenture to give a notice to the Holders, in lieu of delivering such notice to the Holders, the Company may deliver such notice to the Trustee and cause the Trustee to have delivered such notice to the Holders on or prior to the date on which the Company would otherwise have been required to deliver such notice to the Holders. In such a case, the Company shall also cause the Trustee to mail a copy of the notice to each of the Registrar, Paying Agent and Conversion Agent at the same time it mails the notice to the Holders.

Section 14.02. *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 judgment of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) upon the reasonable request of the Trustee, an Opinion of Counsel stating that, in the judgment of such counsel, all such conditions precedent relating to the proposed action (to the extent of legal conclusions) have been complied with.

Section 14.03. *Statements Required in Certificate or Opinion.* Each Officer's Certificate or Opinion of Counsel with respect to compliance with a covenant or condition (except for such Officer's Certificate required to be delivered pursuant to Section 5.03) provided for in this Indenture shall include:

(a) a statement that each Person making such Officer's Certificate or Opinion of Counsel 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 judgments contained in such Officer's Certificate or Opinion of Counsel are based;

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

(d) a statement that, in the judgment of such Person, such covenant or condition has been complied with.

Section 14.04. *Severability Clause.* In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.05. *Rules by Trustee.* The Trustee may make reasonable rules for action by or a meeting of Holders.

Section 14.06. *Governing Law.* THIS INDENTURE AND EACH NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 14.07. *No Recourse Against Others.* A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or this 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 shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

Section 14.08. *Calculations.*

Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under this Indenture and under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Stock, Daily VWAPs, Daily Settlement Amounts, accrued interest payable on the Notes and the Conversion Rate in effect on any Conversion Date.

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

All calculations shall be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be.

Section 14.09. *Successors.* All agreements of the Company, the Trustee, the Registrar, the Paying Agent and the Conversion Agent in this Indenture and the Notes shall bind their respective successors.

Section 14.10. *Multiple Originals.* The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 14.11. *Table of Contents; Headings.* The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 14.12. *Force Majeure.* The Trustee, Registrar, Paying Agent, Bid Solicitation Agent and Conversion Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of such person (including but not limited to any act or provision of any present or future law or

regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 14.13. *Submission to Jurisdiction.* The Company (a) agrees that any suit, action or proceeding against it arising out of or relating to this Indenture or the Notes, as the case may be, may be instituted in any U.S. federal court with applicable subject matter jurisdiction sitting in The City of New York; (b) waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum; and (c) submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding.

Section 14.14. *Legal Holidays.* If any Interest Payment Date, the Maturity Date or any Fundamental Change Purchase Date occurs on a day that is not a Business Day, the payment required to be made on such day shall be postponed until the immediately following Business Day, and no interest on such payment shall accrue in respect of such delay.

Section 14.15. *No Security Interest Created.* Except as provided in Section 8.06, nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 14.16. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any Bid Solicitation Agent, any authenticating agent, any Registrar and their successors hereunder or the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture, other than (i) the right of a beneficial owner to exchange its beneficial interest in a Global Note for a Certificate Note during the continuance of an Event of Default pursuant to Section 2.12(a)(ii) and (ii) the right of a holder of Common Stock issued upon conversion to enforce the provisions of Section 2.06(j).

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

TITAN MACHINERY INC.

By: /s/ Ted Christianson
Name: Ted Christianson
Title: Vice President, Finance & Treasurer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Richard H. Prokosch
Name: Richard H. Prokosch
Title: Vice President

EXHIBIT A

[FORM OF FACE OF NOTE]

[*Include the following legend for Global Notes only (the "**Global Securities Legend**"):*]

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

[*Include the following legend on all Notes that are Restricted Notes (the "**Restricted Securities Legend**"):*]

THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), THIS NOTE AND ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO TITAN MACHINERY INC. (THE "COMPANY") OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT IS ONE YEAR AFTER THE DATE OF ORIGINAL ISSUANCE OF THE NOTES OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

PRIOR TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

TITAN MACHINERY INC.

3.75% Convertible Senior Note due 2019

No. [ ] [Initially](1) $[ ]

CUSIP No. 88830R AA9

Titan Machinery Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.](2) [ ](3), or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto](4) [of $[ ]](5), which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $150,000,000 in aggregate at any time, [in accordance with the rules and procedures of the Depositary,](6) on May 1, 2019, and interest thereon as set forth below.

This Note shall bear interest at the rate of 3.75% per year from April 24, 2012, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until May 1, 2019. Interest is payable semi-annually in arrears on each May 1 and November 1, commencing on November 1, 2012, to Holders of record at the close of business on the preceding April 15 and October 15 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 5.02(b), Section 5.02(c) and Section 7.01(c) of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 5.02(b), Section 5.02(c) or Section 7.01(c), as applicable and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Payments of the Redemption Price, the Fundamental Change Purchase Price, cash due upon conversion, principal and interest that are not made when due shall accrue interest per annum at the then-applicable interest rate *plus* one percent from the required payment date.

The Company shall pay the principal of and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has

(1) Include if a global note.
(2) Include if a global note.
(3) Include if a physical note.
(4) Include if a global note.
(5) Include if a physical note.
(6) Include if a global note.

initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in the Borough of Manhattan, The City of New York, as a place where Notes may be presented for payment or for registration of transfer.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash and shares of Common Stock, if any, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

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

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

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

[*Remainder of page intentionally left blank*]

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

TITAN MACHINERY INC.

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

TITAN MACHINERY INC.

This Note is one of a duly authorized issue of Notes of the Company, designated as its 3.75% Convertible Senior Notes due 2019 (the "**Notes**"), limited to the aggregate principal amount of $150,000,000 all issued or to be issued under and pursuant to an Indenture dated as of April 24, 2012 (the "**Indenture**"), between the Company and Wells Fargo Bank, National Association (the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Purchase Price and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Purchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture,

Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange. The Trustee (or, if applicable, such other entity appointed as Registrar in accordance with the terms of the Indenture) need not transfer or exchange any Notes in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn (except, in the case of a Note to be repurchased in part, the portion of the Note not to be repurchased).

The Notes shall be redeemable at the Company's option in accordance with the terms and conditions specified in the Indenture.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to purchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Purchase Date at a price equal to the Fundamental Change Purchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into cash and shares of Common Stock, if any, based on the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE A(7)

SCHEDULE OF EXCHANGES OF NOTES

TITAN MACHINERY INC.
3.75% Convertible Senior Notes due 2019

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

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

(7) Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: Titan Machinery Inc.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple thereof) below designated, into cash and shares of Common Stock, if any, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 11.02(h) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated: _____ _____

_____
Signature(s)

_____
Signature Guarantee

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

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

_____
(Name)

_____
(Street Address)

_____
(City, State and Zip Code)
Please print name and address

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

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

_____
Social Security or Other Taxpayer
Identification Number

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE]

To: Titan Machinery Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Titan Machinery Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Purchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Article 3 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Purchase Date does not fall during the period after a 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 Purchase Date.

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

Dated: _____

_____
Signature(s)

_____
Social Security or Other Taxpayer
Identification Number

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

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

ATTACHMENT 3

[FORM OF TRANSFER CERTIFICATE]

3.75% Convertible Senior Notes due 2019

Transfer Certificate

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

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

☐ To Titan Machinery Inc. or a subsidiary thereof; or

☐ Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

By its execution below, the undersigned hereby acknowledges and agrees that, prior to effecting the transfer requested hereby, the Company and/or the Trustee may reasonably require additional certifications, legal opinions and other documents and information to confirm that the applicable condition to transfer (as indicated in the preceding sentence) has been satisfied.

Dated: _____

_____

_____
Signature(s)

Signature Guarantee

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

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

EXHIBIT B

RESTRICTED STOCK LEGEND

THE SALE OF THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), THIS SECURITY MAY NOT BE OFFERED, RESOLD, OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO TITAN MACHINERY INC. (THE "COMPANY") OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT IS ONE YEAR AFTER THE DATE OF ORIGINAL ISSUANCE OF THE COMPANY'S 3.75% CONVERTIBLE SENIOR NOTES DUE 2019 OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

PRIOR TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), THE COMPANY AND THE COMPANY'S TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

TITAN MACHINERY INC.

(a Delaware corporation)

$135,000,000

3.75% Convertible Senior Notes due 2019

PURCHASE AGREEMENT

Dated: April 18, 2012

TITAN MACHINERY INC.

(a Delaware corporation)

$135,000,000

3.75% Convertible Senior Notes due 2019

PURCHASE AGREEMENT

April 18, 2012

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Wells Fargo Securities, LLC
375 Park Avenue
4th Floor
New York, New York 10152

as Representatives of the several Initial Purchasers

Ladies and Gentlemen:

Titan Machinery Inc., a Delaware corporation (the "Company"), confirms its agreement (this "Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Wells Fargo Securities, LLC ("Wells Fargo") and each of the other Initial Purchasers named in Schedule A hereto (collectively, the "Initial Purchasers," which term shall also include any initial purchaser substituted as hereinafter provided in Section 11 hereof), for whom Merrill Lynch and Wells Fargo are acting as representatives (in such capacity, the "Representatives"), with respect to (i) the sale by the Company and the purchase by the Initial Purchasers, acting severally and not jointly, of the respective principal amounts set forth in said Schedule A of $135,000,000 aggregate principal amount of the Company's 3.75% Convertible Senior Notes due 2019 (the "Initial Securities") and (ii) the grant by the Company to the Initial Purchasers, acting severally and not jointly, of the option to purchase all or any part of an additional $15,000,000 aggregate principal amount of its 3.75% Convertible Senior Notes due 2019 (the "Option Securities" and, together with the Initial Securities, the "Securities") to cover overallotments. The Securities are to be issued pursuant to an indenture dated as of April 24, 2012 (the "Indenture") between the Company and Wells Fargo Bank, National Association, as trustee (the "Trustee").

The Company understands that the Initial Purchasers propose to make an offering of the Securities on the terms and in the manner set forth herein and agrees that the Initial Purchasers may resell, subject to the conditions set forth herein, all or a portion of the Securities to purchasers ("Subsequent Purchasers") at any time after this Agreement has been executed and delivered. The Securities are to be offered and sold through the Initial Purchasers without being registered under the Securities Act of 1933, as amended (the "1933 Act"), in reliance upon exemptions therefrom. Pursuant to the terms of the Securities and the Indenture, investors that acquire Securities may only resell or otherwise transfer such Securities if such Securities are hereafter registered under the 1933 Act or if an exemption from the

registration requirements of the 1933 Act is available (including the exemption afforded by Rule 144A ("Rule 144A") of the rules and regulations promulgated under the 1933 Act (the "1933 Act Regulations") by the Securities and Exchange Commission (the "Commission")).

The Company has prepared and delivered to each Initial Purchaser copies of a preliminary offering memorandum dated April 18, 2012 prior to the Applicable Time (as defined below) (such document, as it may be amended or supplemented, the "Preliminary Offering Memorandum") and has prepared and will deliver to each Initial Purchaser, on the date hereof or the next succeeding business day, copies of a final offering memorandum April 18, 2012 (such

document, as it may be amended or supplemented, the "Final Offering Memorandum"), each for use by such Initial Purchaser in connection with its solicitation of purchases of, or offering of, the Securities. "Offering Memorandum" means, with respect to any date or time referred to in this Agreement, the most recent offering memorandum (whether the Preliminary Offering Memorandum or the Final Offering Memorandum, or any amendment or supplement to either such document), including exhibits thereto and any documents incorporated therein by reference, which has been prepared and delivered by the Company to the Initial Purchasers, in the case of the Preliminary Offering Memorandum prior to the Applicable Time, in connection with their solicitation of purchases of, or offering of, the Securities. The Company will prepare a final term sheet reflecting the final terms of the Securities, in the form set forth in Schedule B hereto (the "Final Term Sheet"), and will deliver such Final Term Sheet to the Initial Purchasers prior to the Applicable Time in connection with their solicitation of purchases of, or offering of, the Securities. The Company agrees that, unless it obtains the prior written consent of the Representatives, it will not make any offer relating to the Securities by any written materials other than the Offering Memorandum and the Issuer Written Information. "Issuer Written Information" means (i) any writing intended for general distribution to investors as evidenced by its being specified in Schedule C hereto, including the Final Term Sheet, and (ii) any "road show" that is a "written communication" within the meaning of the 1933 Act. "General Disclosure Package" means the Preliminary Offering Memorandum and any Issuer Written Information specified on Schedule C hereto and issued at or prior to 6:00 P.M., New York City time, on April 18, 2012 or such other time as agreed by the Company and Merrill Lynch (such date and time, the "Applicable Time").

All references in this Agreement to financial statements and schedules and other information that is "contained," "included" or "stated" in the Offering Memorandum (or other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that are incorporated by reference in the Offering Memorandum; and all references in this Agreement to amendments or supplements to the Offering Memorandum shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934 (the "1934 Act") that is incorporated by reference in the Offering Memorandum.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company*. The Company represents and warrants to each Initial Purchaser as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Initial Purchaser, as follows:

(i) General Disclosure Package; Rule 144A Eligibility. The Company hereby confirms that it has authorized the use of the General Disclosure Package, including the Preliminary Offering Memorandum and the Final Term Sheet, and the Final Offering Memorandum in connection with the offer and sale of the Securities by the Initial Purchasers. The Securities are eligible for resale pursuant to Rule 144A and will not be, at the Closing Time, of the same class as securities listed on a national securities exchange registered under Section 6 of the 1934 Act, or quoted in a U.S. automated interdealer quotation system.

(ii) No Registration Required; No General Solicitation. Subject to compliance by the Initial Purchasers with the representations and warranties of the Initial Purchasers and the procedures set forth in Section 6 hereof, it is not necessary in connection with the offer, sale and delivery of the offered Securities to the Initial Purchasers and to each Subsequent Purchaser in the manner contemplated by this Agreement, the General Disclosure Package and the Final Offering Memorandum to register the Securities under the 1933 Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended (the "1939 Act"). None of the Company, its Affiliates or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company makes no representation) has engaged, in connection with the offering of the offered Securities, in any form of general solicitation or general advertising within the meaning of Rule 502(c) under the 1933 Act Regulations. For purposes of this Agreement, the term "Affiliate" has the meaning set forth in Rule 501(b) under the 1933 Act Regulations.

(iii) Accurate Disclosure. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any Issuer Written Information, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Final Offering Memorandum, as of its date, at the Closing Time or at any Date of Delivery, did not, does not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The documents incorporated or deemed to be incorporated by reference in the General Disclosure Package and the Final Offering Memorandum, when such documents incorporated or deemed to be incorporated by reference were filed with the Commission, when read together with the other information in the General Disclosure Package or the Final Offering Memorandum, as the case may be, did not, does not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this subsection shall not apply to statements in or omissions from the General Disclosure Package or the Final Offering Memorandum made in reliance upon and in conformity with written information furnished to the Company by any Initial Purchaser expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading "Plan of Distribution—Commissions and Discounts, the third sentence under the heading "Plan of Distribution—New Issue of Notes" and the information in the first paragraph under the heading "Plan of Distribution—Price Stabilization and Short Positions" in the Offering Memorandum (collectively, the "Initial Purchaser Information").

(iv) Incorporation of Documents by Reference. The documents incorporated or deemed to be incorporated by reference in the Offering Memorandum, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the "1934 Act Regulations").

(v) Independent Accountants. To the Company's knowledge, the accountants who certified the financial statements and supporting schedules included, or incorporated by reference, in the Offering Memorandum are independent public accountants as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board. For purposes of this agreement, the term "knowledge" means, with

respect to the Company, the actual knowledge, after reasonable inquiry, of the Company's executive officers.

(vi) Financial Statements. The financial statements included or incorporated by reference in the General Disclosure Package and the Final Offering Memorandum, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Offering Memorandum present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Offering Memorandum under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the General Disclosure Package or the Final Offering Memorandum, or incorporated by reference therein, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable. The interactive data in eXtensible Business Reporting Language incorporated by reference in the General Disclosure Package and the Final Offering Memorandum fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(vii) No Material Adverse Change in Business. Except as otherwise stated therein, since the respective dates as of which information is given in the General Disclosure Package or the Final Offering Memorandum, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its Subsidiaries (as defined below) considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company or any of its Subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its Subsidiaries considered as one enterprise, and (C) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock (other than grants of stock options and other stock-based awards under the Company's 2005 Equity Incentive Plan).

(viii) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and the Final Offering Memorandum and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(ix) Good Standing of Subsidiaries. Each subsidiary of the Company identified on Schedule D to this Agreement (each, a "Subsidiary" and, collectively, the "Subsidiaries") has been duly organized and is validly existing in good standing under the laws of the jurisdiction of

its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and the Final Offering Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the General Disclosure Package and the Final Offering Memorandum and except for any directors' qualifying shares, all of the issued and outstanding capital stock of each Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock of any Subsidiary was issued in violation of the preemptive or similar rights of any security holder of such Subsidiary. Other than the Subsidiaries and the Company's one-third percentage interest in Rural Tower Network, LLC, a North Dakota limited liability company, and except for marketable securities held for investment purposes in amounts less than 5% of the outstanding equity of the issuer, the Company, directly or indirectly, owns no capital stock or other equity or ownership or proprietary interest in any corporation, partnership, association, trust or other entity. The Company has no "significant subsidiary" (as that term is defined in Rule 1-02(w) of Regulation S-X under the 1933 Act) other than the Subsidiaries.

(x) Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Offering Memorandum under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the General Disclosure Package and the Final Offering Memorandum or pursuant to the exercise of convertible securities or options referred to in the General Disclosure Package and the Final Offering Memorandum).

(xi) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xii) Authorization of the Indenture. The Indenture has been duly authorized by the Company and, when duly executed and delivered by the Company and the Trustee, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

(xiii) Authorization of the Securities and the Common Stock. The Securities have been duly authorized and, at the Closing Time, will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and will be in the form contemplated by, and entitled to the benefits of, the Indenture. The Company has duly authorized and reserved the issuance of

3,000,000 shares of the Company's Common Stock, par value $0.00001 per share (the

"Common Stock"), upon conversion of the Securities by all necessary corporate action, and, contingent upon the Company receiving the requisite approval from holders of its Common Stock to amend the Company's certificate of incorporation to increase the number of authorized shares of Common Stock so that the number of authorized and unissued shares of Common Stock that have not been reserved or committed for any other purpose is at least equal to the then-current "maximum number of underlying shares" as defined in the General Disclosure Package, the Company will have duly authorized and reserved the issuance of such "maximum number of underlying shares" upon conversion of the Securities by all necessary corporate action. Such shares of Common Stock, when issued upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued and will be fully paid and non-assessable; no holder of such shares will be subject to personal liability by reason of being such a holder; and the issuance of such shares upon such conversion will not be subject to the preemptive or other similar rights of any security holder of the Company.

(xiv) Description of the Securities, the Common Stock and the Indenture. The Securities and the Indenture will conform in all material respects to the respective statements relating thereto contained in the General Disclosure Package and the Final Offering Memorandum. The Common Stock conforms to all statements relating thereto contained or incorporated by reference in the General Disclosure Package and the Final Offering Memorandum and such description conforms to the rights set forth in the instruments defining the same.

(xv) Common Stock Registration and Listing Approval. The Common Stock is registered pursuant to Section 12(b) of the 1934 Act and is listed on The NASDAQ Global Select Market and neither the Company nor any of its Subsidiaries has taken any action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from The NASDAQ Global Select Market nor has the Company received any notification that the Commission or NASDAQ is contemplating terminating such registration or listing. The Company has complied in all material respects with the applicable requirements of The NASDAQ Global Select Market for maintenance of listing the Common Stock thereon.

(xvi) Registration Rights. There are no persons with registration rights or other similar rights to have any securities registered for sale or sold by the Company under the 1933 Act.

(xvii) Absence of Violations, Defaults and Conflicts. Neither the Company nor any of its Subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any Subsidiary is subject (collectively, "Agreements and Instruments"), except for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its Subsidiaries or any of their respective properties, assets or operations (each, a "Governmental Entity"), except for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the General Disclosure Package and the Final Offering Memorandum (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as

described therein under the caption "Use of Proceeds") and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any Subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not, singly or in the aggregate, result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter, by-laws or similar organizational document of the Company or any of its Subsidiaries or any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity. As used herein, a "Repayment Event" means any event or condition that gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Subsidiaries.

(xviii) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or any Subsidiary's principal suppliers, manufacturers, customers or contractors, which, in either case, would result in a Material Adverse Effect.

(xix) Absence of Proceedings. Except as disclosed in the General Disclosure Package and the Final Offering Memorandum, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or involving the Company or any of its Subsidiaries, which would be reasonably expected to result in a Material Adverse Effect, or which would be reasonably expected to materially and adversely affect their respective properties or assets or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any such Subsidiary is a party or of which any of their respective properties or assets is the subject which are not described in the General Disclosure Package and the Final Offering Memorandum, including ordinary routine litigation incidental to the business, would not reasonably be expected to result in a Material Adverse Effect.

(xx) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement or for the due

execution, delivery and performance of the Indenture, except such as have been already obtained and except for such filings, authorizations, approvals, consents, licenses, orders, registrations, qualifications or decrees as may be required under applicable state securities laws in connection with the purchase and resale of the Securities by the Initial Purchasers.

(xxi) Possession of Licenses and Permits. (A) The Company and each of its Subsidiaries holds, and is operating in compliance in all material respects with, all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders of any governmental or self-regulatory body required for the conduct of its business and all such franchises, grants, authorizations, licenses, permits, easements, consents, certifications and orders are valid and in full force and effect; (B) neither the Company nor any of its Subsidiaries has received notice of any revocation or modification of any such franchise, grant, authorization,

license, permit, easement, consent, certification or order or has reason to believe that any such franchise, grant, authorization, license, permit, easement, consent, certification or order will not be renewed in the ordinary course; and (C) the Company and each of its Subsidiaries is in compliance in all material respects with all applicable federal, state, local and foreign laws, regulations, orders and decrees; except, with respect to each of the foregoing, as such failures to hold or so operate, for such notices of revocation, modification and non-renewal and for such compliance with laws, regulations, orders and decrees that would not, singly or in the aggregate, result in a Material Adverse Effect.

(xxii) Title to Property. The Company and its Subsidiaries have good and marketable title to all real property owned by them and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, material liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the General Disclosure Package and the Final Offering Memorandum or (B) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its Subsidiaries; and all of the leases and subleases material to the business of the Company and its Subsidiaries, considered as one enterprise, and under which the Company or any of its Subsidiaries holds properties described in the General Disclosure Package and the Final Offering Memorandum, are in full force and effect, and neither the Company nor any such Subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such Subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

(xxiii) Possession of Intellectual Property. The Company and each of its Subsidiaries owns, possesses, licenses or can acquire or license on reasonable terms, all Intellectual Property (as defined below) necessary for the conduct of the Company's and its Subsidiaries' business as now conducted or, to the extent disclosed in the General Disclosure Package and the Final Offering Memorandum, to be conducted, except as such failure to own, possess, or acquire such rights would not reasonably be expected to result in a Material Adverse Effect. Furthermore, (A) to the knowledge of the Company, there is no infringement, misappropriation or violation by third parties of any such Intellectual Property, except as such infringement, misappropriation or violation would not reasonably be expected to result in a Material Adverse Effect; (B) there is no pending or, to the knowledge of the Company, threatened, action, suit, proceeding or claim by others challenging the Company's or any of its Subsidiaries' rights in or to any such Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (C) the Intellectual Property owned by the Company and its Subsidiaries, and to the knowledge of the Company, the Intellectual Property licensed to the Company and its Subsidiaries, has not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (D) there is no pending or, to the knowledge of the Company, threatened, action, suit, proceeding or claim by others that the Company or any of its Subsidiaries infringes, misappropriates or otherwise violates any Intellectual Property or other proprietary rights of others, neither the Company nor any of its Subsidiaries has received any written notice of such claim and the Company is unaware of any other fact which would form a reasonable basis for any such claim; and (E) to the Company's knowledge, no employee of the Company or any of its Subsidiaries is in or has ever been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure

agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company or any of its Subsidiaries or actions undertaken by the employee while employed with the Company or any of its Subsidiaries, except as such violation would not reasonably be expected to result in a Material Adverse Effect. "Intellectual Property" shall mean all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology, know-how and other intellectual property.

(xxiv) Environmental Laws. Except as described in the General Disclosure Package and the Final Offering Memorandum or would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its Subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its Subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its Subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its Subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxv) Accounting Controls and Disclosure Controls. The Company and each of its Subsidiaries maintain effective internal control over financial reporting (as defined under Rule 13-a15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (E) the interactive data in eXtensible Business Reporting Language incorporated by reference in the General Disclosure Package and the Final Offering Memorandum fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto. Except as described in the General Disclosure Package and the Final Offering Memorandum, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company and each of its Subsidiaries maintain an effective system of disclosure controls and procedures (as defined in Rule 13a-15 and Rule 15d-15 under the 1934 Act Regulations) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under

the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, and is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure. The Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder. The Company has not, directly or indirectly, extended or maintained credit, or arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any of its directors or executive officers in violation of applicable laws, including Section 402 of the Sarbanes-Oxley Act.

(xxvi) Payment of Taxes. All United States federal income tax returns of the Company and its Subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The United States federal income tax returns of the Company through the fiscal year ended January 31, 2012 have been settled and no assessment in connection therewith has been made against the Company. The Company and its Subsidiaries have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not result in a Material Adverse Effect, and has paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company and its Subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not result in a Material Adverse Effect.

(xxvii) Insurance. The Company and each of its Subsidiaries carries, or is covered by, insurance in such amounts and covering such risks as the Company reasonably believes is adequate for the conduct of their businesses and the value of their properties and as is customary for companies engaged in similar businesses in similar industries; all policies of insurance and any fidelity or surety bonds insuring the Company or any of its Subsidiaries or its business, assets, employees, officers and directors are in full force and effect; the Company and its Subsidiaries are in compliance with the terms of such policies and instruments in all material respects; there are no material claims by the Company or any of its Subsidiaries under any such policy or instrument as to which any insurance company has notified the Company that it is denying liability or defending under a reservation of rights clause; neither the Company nor any of its Subsidiaries has, in the last three years, been denied any insurance coverage sought or applied for; and neither the Company nor any of its Subsidiaries has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(xxviii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the General Disclosure Package and the Final Offering Memorandum will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act").

(xxix) Absence of Manipulation. Neither the Company nor, to the Company's knowledge, any Affiliate of the Company has taken, nor will the Company take, or cause any

Affiliate to take, directly or indirectly, any action that is designed, or would be expected, to cause or result in, or that constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities or to result in a violation of Regulation M under the 1934 Act.

(xxx) Finder's Fee. Other than as contemplated by this Agreement or as disclosed in the General Disclosure Package and the Final Offering Memorandum, the Company has not incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(xxxi) Foreign Corrupt Practices Act. None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or other person acting on behalf of the Company or any of its Subsidiaries, has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any

candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxii) Money Laundering Laws. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxiii) OFAC. None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or representative of the Company or any of its Subsidiaries is an individual or entity ("Person") currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the United Nations Security Council ("UNSC"), the European Union, Her Majesty's Treasury ("HMT"), or other relevant sanctions authority (collectively, "Sanctions"), nor is the Company located, organized or resident in a country or territory that is the subject of Sanctions; and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any Subsidiaries, joint venture partners or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that would reasonably be expected to result in a violation by any Person (including any Person participating in the offering contemplated by this Agreement, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(xxxiv) Lending Relationship. Except as disclosed in the General Disclosure Package and the Final Offering Memorandum, the Company (i) does not have any material lending or other relationship with any bank or lending affiliate of any Initial Purchaser and (ii) does not intend to use any of the proceeds from the sale of the Securities to repay any outstanding debt owed to any Affiliate of any Initial Purchaser.

(xxxv) Statistical and Market-Related Data. Any statistical and market-related data included in the General Disclosure Package or the Final Offering Memorandum are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(xxxvi) OSHA. Each of the Company and its Subsidiaries (A) is in compliance, in all material respects, with any and all applicable foreign, federal, state and local laws, rules, regulations, treaties, statutes and codes promulgated by any and all governmental authorities (including pursuant to the Occupational Health and Safety Act) relating to the protection of human health and safety in the workplace ("Occupational Laws"); (B) has received all material permits, licenses or other approvals required of it under applicable Occupational Laws to conduct its business as currently conducted; and (C) is in compliance, in all material respects, with all terms and conditions of such permit, license or approval. No action, proceeding, revocation proceeding, writ, injunction or claim is pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries relating to Occupational Laws, and the Company does not have knowledge of any facts, circumstances or developments relating to its operations or cost accounting practices that could reasonably be expected to form the basis for or give rise to such actions, suits, investigations or proceedings and would reasonably be expected to result in a Material Adverse Effect.

(xxxvii) ERISA. Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is maintained, administered or contributed to by the Company or any of its Affiliates for employees or former employees of the Company and its Affiliates has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to, ERISA and the Internal Revenue Code of 1986, as amended (the "Code"). No material prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any such plan, excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency," as defined in Section 412 of the Code, has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

(b) *Officer's Certificates*. Any certificate signed by any officer of the Company or any of its Subsidiaries delivered to the Representatives or to counsel for the Initial Purchasers shall be deemed a representation and warranty by the Company to each Initial Purchaser as to the matters covered thereby.

SECTION 2. Sale and Delivery to Initial Purchasers; Closing.

(a) *Initial Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Initial Purchaser, severally and not jointly, and each Initial Purchaser, severally and not jointly, agrees to purchase from the

Company, at the price set forth in Schedule A, the aggregate principal amount of Initial Securities set forth in Schedule A, plus any additional principal amount of Initial Securities that such Initial Purchaser may become obligated to purchase pursuant to the provisions of Section 11 hereof, subject to such adjustments as Merrill Lynch in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(b) *Option Securities*. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Initial Purchasers, severally and not jointly, to purchase the Option Securities, at the price set forth in Schedule A. The option hereby granted may be exercised for 30 calendar days after the date hereof and may be exercised in whole or in part from time to

time only for the purpose of covering overallotments made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives to the Company setting forth the amount of Option Securities as to which the several Initial Purchasers are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor, except for an exercise of said option prior to the Closing Time, earlier than two business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Initial Purchasers, acting severally and not jointly, will purchase that proportion of the total principal amount of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Initial Purchaser bears to the total principal amount of Initial Securities, subject in each case to such adjustments as Merrill Lynch in its discretion shall make to ensure that any sales or purchases are in authorized denominations.

(c) *Payment*. Payment of the purchase price for, and delivery of certificates for, the Initial Securities shall be made at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on the third (fourth, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 11), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Initial Purchasers, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from Merrill Lynch to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Representatives for the respective accounts of the Initial Purchasers of certificates for the Securities to be purchased by them. It is understood that each Initial Purchaser has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, that it has agreed to purchase. Merrill Lynch, individually and not as representative of the Initial Purchasers, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Initial Purchaser whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Initial Purchaser from its obligations hereunder.

SECTION 3. Covenants of the Company. The Company covenants with each Initial Purchaser as follows:

(a) *Delivery of Offering Memorandum.* The Company has delivered to each Initial Purchaser, without charge, as many copies of the Preliminary Offering Memorandum (as amended or supplemented) thereto and documents incorporated by reference therein as such Initial Purchaser reasonably requested, and the Company hereby consents to the use of such copies. The Company will furnish to each Initial Purchaser, without charge, such number of copies of the Final Offering Memorandum thereto and documents incorporated by reference therein as such Initial Purchaser may reasonably request.

(b) *Notice and Effect of Material Events*. If at any time prior to the completion of resales of the Securities by the Initial Purchasers, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Initial Purchasers or for the Company, to amend or supplement the General Disclosure Package or the Final Offering Memorandum in order that the General Disclosure Package or the Final Offering Memorandum, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a Subsequent Purchaser, the Company will promptly (A) give the Representatives notice of such event and (B) prepare any amendment or supplement as may be necessary to correct such statement or omission and, a reasonable amount of time prior to any proposed use or distribution, furnish the Representatives with copies of any such amendment or supplement; *provided* that the Company shall not use or distribute any such amendment or supplement to which the Representatives or counsel for the Initial Purchasers shall object. The Company will furnish to the Initial Purchasers such number of copies of such amendment or supplement as the Initial Purchasers may reasonably request.

(c) *Reporting Requirements*. Until the completion of resales of the Securities by the Initial Purchasers, the Company will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representatives notice of its intention to make any such filing from the Applicable Time to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Initial Purchasers shall reasonably object.

(d) *Blue Sky Qualifications*. The Company will use its best efforts, in cooperation with the Initial Purchasers, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; *provided*, *however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(e) *Use of Proceeds*. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the General Disclosure Package and the Final Offering Memorandum under "Use of Proceeds."

(f) *DTCC*. The Company will cooperate with the Initial Purchasers and use its best efforts to permit the offered Securities to be eligible for clearance and settlement through the facilities of The Depository Trust & Clearing Corporation ("DTCC").

(g) *Listing*. The Company will use its best efforts to effect and maintain the listing of the Common Stock issuable upon conversion of the

Securities on the NASDAQ Global Select Market.

(h) *Restriction on Sale of Securities*. During a period of 90 calendar days from the date of the Final Offering Memorandum, the Company will not, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of Common Stock issued by the Company upon conversion of the Securities, (C) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the General Disclosure Package and the Final Offering Memorandum, (D) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company referred to in the General Disclosure Package and the Final Offering Memorandum, and (E) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the General Disclosure Package and the Final Offering Memorandum.

SECTION 4. Payment of Expenses.

(a) *Expenses*. The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) preparation, issuance and delivery of the Securities to the Initial Purchasers and the Common Stock issuable upon conversion thereof and any charges of DTCC in connection therewith, (ii) the fees and disbursements of the Company's counsel, accountants and other advisors, (iii) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(d) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Initial Purchasers in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (iv) the preparation, printing and delivery to the Initial Purchasers of copies of each Preliminary Offering Memorandum, any Issuer Written Information, the Final Term Sheet and the Final Offering Memorandum and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Initial Purchasers to investors, (v) all fees and expenses of the Trustee and any expenses of any transfer agent or registrar for the Securities or the Common Stock issuable upon conversion of the Securities, (vi) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (vii) the fees and expenses incurred in connection with the listing of the Common Stock issuable upon conversion of the Securities on the NASDAQ Global Select Market and (viii) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by

the Initial Purchasers caused by a breach of the representation contained in the first sentence of Section 1(a)(iii).

(b) *Termination of Agreement*. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5(k), Section 10(a)(i) or (iii) or Section 11 hereof, the Company shall reimburse the Initial Purchasers for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Initial Purchasers.

SECTION 5. Conditions of Initial Purchasers' Obligations. The obligations of the several Initial Purchasers hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company or any of its Subsidiaries, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Opinion of Counsel for Company*. At the Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Fredrikson & Byron, P.A., counsel for the Company, in form and substance satisfactory to counsel for the Initial Purchasers, together with signed or reproduced copies of such letter for each of the other Initial Purchasers to the effect set forth in Exhibit A hereto and to such further effect as counsel to the Initial Purchasers may reasonably request.

(b) *Opinion of Counsel for Initial Purchasers*. At the Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Davis Polk & Wardwell LLP, counsel for the Initial Purchasers, together with signed or reproduced copies of such letter for each of the other Initial Purchasers in form and substance satisfactory to the Representatives. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Representatives. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its Subsidiaries and certificates of public officials.

(c) *Officers' Certificate*. At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the General Disclosure Package or the Final Offering Memorandum, any change that would constitute a Material Adverse Effect, and the Representatives shall have received a certificate executed by the Chief Executive Officer or the President of the Company and the Chief Financial Officer or Treasurer of the Company, dated the Closing Time, to the effect that (i) no changes have occurred that would constitute a Material Adverse Effect, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time and (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time.

(d) *Accountant's Comfort Letter*. At the time of the execution of this Agreement, the Representatives shall have received from Eide Bailly LLP a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Initial Purchasers containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Offering Memorandum.

(e) *Bring-down Comfort Letter*. At the Closing Time, the Representatives shall have received from Eide Bailly LLP a letter, dated as of the

Closing Time, to the effect that they reaffirm the

statements made in the letter furnished pursuant to subsection (d) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(f) *Approval of Listing*. At the Closing Time, the Common Stock issuable upon conversion of the Securities shall have been approved for listing on the NASDAQ Global Select Market, subject only to official notice of issuance.

(g) *Lock-up Agreements*. At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit B hereto signed by the persons listed on Schedule E hereto.

(h) *Maintenance of Rating*. Since the execution of this Agreement, there shall not have been any decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" (within the meaning of Section 15E of the 1934 Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(i) *Conditions to Purchase of Option Securities*. In the event that the Initial Purchasers exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company and any of its Subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the Chief Executive Officer or President of the Company and of the Chief Financial Officer or Treasurer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(c) hereof remains true and correct as of such Date of Delivery.

(ii) Opinion of Counsel for Company. If requested by the Representatives, the favorable opinion of Fredrikson & Byron, PA, counsel for the Company, in form and substance satisfactory to counsel for the Initial Purchasers, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(a) hereof.

(iii) Opinion of Counsel for Initial Purchasers. If requested by the Representatives, the favorable opinion of Davis Polk & Wardwell LLP, counsel for the Initial Purchasers, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iv) Bring-down Comfort Letter. If requested by the Representatives, a letter from Eide Bailly LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(d) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(j) *Additional Documents*. At the Closing Time and at each Date of Delivery (if any), counsel for the Initial Purchasers shall have been furnished with such documents and opinions as they may require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in

connection with the issuance and sale of the Securities as herein contemplated shall be satisfactory in form and substance to the Representatives and counsel for the Initial Purchasers.

(k) *Termination of Agreement*. If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery that is after the Closing Time, the obligations of the several Initial Purchasers to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 7, 8, 9, 14, 15, 16 and 17 shall survive any such termination and remain in full force and effect.

SECTION 6. Subsequent Offers and Resales of the Securities.

(a) *Offer and Sale Procedures*. Each of the Initial Purchasers and the Company hereby establishes and agrees to observe the following procedures in connection with the offer and sale of the Securities:

(i) Offers and Sales. Offers and sales of the Securities shall be made to such persons and in such manner as is contemplated by the Offering Memorandum. Each Initial Purchaser severally agrees that it will not offer, sell or deliver any of the Securities in any jurisdiction outside the United States except under circumstances that will result in compliance with the applicable laws thereof, and that it will take at its own expense whatever action is required to permit its purchase and resale of the Securities in such jurisdictions. The Company has not entered into any contractual arrangement, other than this Agreement, with respect to the distribution of the Securities or the Common Stock issuable upon conversion of the Securities and the Company will not enter into any such arrangement except as contemplated thereby.

(ii) No General Solicitation. No general solicitation or general advertising (within the meaning of Rule 502(c) under the 1933 Act Regulations) will be used in the United States in connection with the offering or sale of the Securities.

(iii) Legends. Each of the Securities will bear, to the extent applicable, the legend contained in "Notice to Investors" in the General Disclosure Package and the Final Offering Memorandum for the time period and upon the other terms stated therein.

(iv) Minimum Principal Amount. No sale of the Securities to any one Subsequent Purchaser will be for less than U.S. $1,000 principal amount and no Security will be issued in a smaller principal amount.

(b) *Covenants of the Company*. The Company covenants with each Initial Purchaser as follows:

(i) Integration. The Company agrees that it will not and will cause its Affiliates not to, directly or indirectly, solicit any offer to buy, sell or make any offer or sale of, or otherwise negotiate in respect of, securities of the Company of any class if, as a result of the doctrine of "integration" referred to in Rule 502 under the 1933 Act Regulations, such offer or sale would render invalid (for the purpose of (i) the sale of the offered Securities by the Company to the Initial Purchasers, (ii) the resale of the offered Securities by the Initial Purchasers to Subsequent Purchasers or (iii) the resale of the offered Securities by such Subsequent Purchasers to others) the exemption from the registration requirements of the 1933 Act provided by Section 4(2) thereof or by Rule 144A thereunder or otherwise.

(ii) Rule 144A Information. The Company agrees that, in order to render the offered Securities eligible for resale pursuant to Rule 144A, while any of the offered Securities remain outstanding, it will make available, upon request, to any holder of offered Securities or prospective purchasers of Securities the information specified in Rule 144A(d)(4), unless the Company furnishes information to the Commission pursuant to Section 13 or 15(d) of the 1934 Act.

(iii) Restriction on Resales. Until the expiration of one year after the original issuance of the offered Securities, the Company will not, and will cause its Affiliates not to, resell any offered Securities that are "restricted securities" (as such term is defined under Rule 144(a)(3)), whether as beneficial owner or otherwise (except as agent acting as a securities broker on behalf of and for the account of customers in the ordinary course of business in unsolicited broker's transactions).

(c) *Representations, Warranties and Agreements of the Initial Purchasers*. Each Initial Purchaser severally and not jointly represents and warrants to, and agrees with, the Company that it is a Qualified Institutional Buyer and an "accredited investor" within the meaning of Rule 501(a) under the 1933 Act Regulations. Each Initial Purchaser understands that the offered Securities have not been and will not be registered under the 1933 Act and may not be offered or sold within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the 1933 Act. Each Initial Purchaser severally represents and agrees that it has not offered or sold, and will not offer or sell, any offered Securities constituting part of its allotment within the United States except in accordance with Rule 144A or another applicable exemption from the registration requirements of the 1933 Act. Accordingly, neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D) in the United States. Each Initial Purchaser will take reasonable steps to inform, and cause each of its affiliates (as such term is defined in Rule 501(b) under the 1933 Act Regulations (each, an "Affiliate")) to take reasonable steps to inform, persons acquiring Securities from such Initial Purchaser or Affiliate, as the case may be, in the United States that the Securities (A) have not been and will not be registered under the 1933 Act, (B) are being sold to them without registration under the 1933 Act in reliance on Rule 144A or in accordance with another exemption from registration under the 1933 Act, as the case may be, and (C) may not be offered, sold or otherwise transferred except (1) to the Company, (2) outside the United States in accordance with Regulation S or (3) inside the United States in accordance with (x) Rule 144A to a person whom the seller reasonably believes is a Qualified Institutional Buyer that is purchasing such Securities for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the offer, sale or transfer is being made in reliance on Rule 144A or (y) pursuant to another available exemption from registration under the 1933 Act.

SECTION 7. Indemnification.

(a) *Indemnification of Initial Purchasers*. The Company agrees to indemnify and hold harmless each Initial Purchaser, its Affiliates, its selling agents and each person, if any, who controls any Initial Purchaser within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact included in any Preliminary Offering Memorandum, the Final Offering Memorandum, the information contained in the Final Term Sheet, any Issuer Written Information or any other information used by or on behalf of the Company in connection with the offer or sale of the

Securities (or any amendment or supplement to the foregoing) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 7(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, *however*, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in any Preliminary Offering Memorandum, the Final Offering Memorandum or the information contained in the Final Term Sheet (or any amendment or supplement to the foregoing) in reliance upon and in conformity with the Initial Purchaser Information.

(b) *Indemnification of Company, Directors and Officers*. Each Initial Purchaser severally agrees to indemnify and hold harmless the Company, its directors, its officers and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in any Preliminary Offering Memorandum or the Final Offering Memorandum or the information contained in the Final Term Sheet (or any amendment or supplement to the foregoing) in reliance upon and in conformity with the Initial Purchaser Information.

(c) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 7(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 7(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 7 or

Section 8 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse*. If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 7(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

SECTION 8. Contribution. If the indemnification provided for in Section 7 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Initial Purchasers, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Initial Purchasers, on the other hand, in connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Initial Purchasers, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Initial Purchasers, on the other hand, bear to the aggregate initial offering price of the Securities as set forth on the cover of the Final Offering Memorandum.

The relative fault of the Company, on the one hand, and the Initial Purchasers, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to above in this Section 8. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 8 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 8, no Initial Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Securities purchased by it and distributed to the public were offered to the public exceeds the amount of any damages that such Initial Purchaser has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 8, each person, if any, who controls an Initial Purchaser within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Initial Purchaser's Affiliates and selling agents shall have the same rights to contribution as such Initial Purchaser, and each director of the Company, each officer of the Company, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Initial Purchasers' respective obligations to contribute pursuant to this Section 8 are several in proportion to the aggregate principal amount of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

SECTION 9. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its Subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Initial Purchaser or its Affiliates or selling agents, any person controlling any Initial Purchaser, its officers or directors or any person controlling the Company and (ii) delivery of and payment for the Securities.

SECTION 10. Termination of Agreement.

(a) *Termination*. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the General Disclosure Package or the Final Offering Memorandum, any change that constitutes a Material Adverse Effect, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the NASDAQ Global Select Market, or (iv) if trading generally on the New York Stock Exchange or in the NASDAQ Global Select Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 7, 8, 9, 14, 15, 16 and 17 shall survive such termination and remain in full force and effect.

SECTION 11. Default by One or More of the Initial Purchasers. If one or more of the Initial Purchasers shall fail at the Closing Time or a Date of Delivery to purchase the Securities that it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Initial Purchasers, or any other initial purchasers, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the aggregate principal amount of the Securities to be purchased on such date, each of the non-defaulting Initial Purchasers shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Initial Purchasers, or

(ii) if the number of Defaulted Securities exceeds 10% of the aggregate principal amount of the Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery that occurs after the Closing Time, the obligation of the Initial Purchasers to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery, shall terminate without liability on the part of any non-defaulting Initial Purchaser.

No action taken pursuant to this Section shall relieve any defaulting Initial Purchaser from liability in respect of its default.

In the event of any such default that does not result in a termination of this Agreement or, in the case of a Date of Delivery that is after the Closing Time, that does not result in a termination of the obligation of the Initial Purchasers to purchase and the Company to sell the relevant Option Securities, as the case may be, either the (i) Representatives or (ii) the Company shall have the right to postpone Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven business days in order to effect any required changes in the General Disclosure Package or the Final Offering Memorandum or in any other documents or arrangements. As used herein, the term "Initial Purchaser" includes any person substituted for an Initial Purchaser under this Section 11.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Initial Purchasers shall be directed to Merrill Lynch at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730), and Wells Fargo at 375 Park Avenue, New York, New York 10152, Attention: Equity Syndicate Department (facsimile: (212) 214-5918); notices to the Company shall be directed to it at 644 East Beaton Drive, West Fargo, North Dakota 58078-2648, Attention: Chief Executive Officer, with a copy to Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402, Attention: Melodie R. Rose.

SECTION 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Initial Purchasers, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Initial Purchaser is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its Subsidiaries or their respective stockholders, creditors, employees or any other party, (c) no Initial Purchaser has assumed or will assume

an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of

whether such Initial Purchaser has advised or is currently advising the Company or any of its Subsidiaries on other matters) and no Initial Purchaser has any obligation to the Company with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Initial Purchasers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and (e) the Initial Purchasers have not provided any legal, accounting, regulatory or tax advice with respect to the offering of the Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

SECTION 14. Parties. This Agreement shall each inure to the benefit of and be binding upon the Initial Purchasers and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Initial Purchasers and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 7 and 8 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Initial Purchasers and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Initial Purchaser shall be deemed to be a successor by reason merely of such purchase.

SECTION 15. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and Affiliates) and each of the Initial Purchasers 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 Agreement or the transactions contemplated hereby.

SECTION 16. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

SECTION 17. Consent to Jurisdiction; Waiver of Immunity. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the "Specified Courts"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 18. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 20. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Initial Purchasers and the Company in accordance with its terms.

Very truly yours,

TITAN MACHINERY INC.

By /s/ Ted O. Christianson
Name: Ted O. Christianson
Title: Vice President, Finance & Treasurer

CONFIRMED AND ACCEPTED,
as of the date first above written:

MERRILL LYNCH, PIERCE, FENNER & SMITH

INCORPORATED

By /s/ Mark Carano
Authorized Signatory

WELLS FARGO SECURITIES, LLC

By /s/ David Herman
Authorized Signatory

For themselves and as Representatives of the other Initial Purchasers named in Schedule A hereto.

SCHEDULE A

The purchase price to be paid by the Initial Purchasers for the Securities shall be 97.075% of the principal amount thereof.

Name of Initial Purchaser	Principal Amount of Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$ 68,538,000
Wells Fargo Securities, LLC	$ 56,078,000
U.S. Bancorp Investments, Inc.	$ 4,673,000
BNP Paribas Securities Corp.	$ 3,115,000
Comerica Securities, Inc.	$ 2,596,000
Total	$ 135,000,000

SCHEDULE B

PRICING TERM SHEET
Dated April 18, 2012

Strictly Confidential

SCHEDULE C

Issuer Written Information

Final Term Sheet in the form set forth on Schedule B

SCHEDULE D

List of Subsidiaries of Titan Machinery Inc.

Name	Ownership	Jurisdiction of Incorporation/ Organization
Transportation Solutions, LLC	100%	North Dakota
NW Property Solutions LLC	100%	North Dakota
Titan European Holdings S.a.r.l.	100%	Luxembourg

Titan Machinery Austria GmbH*	70%	Austria
Titan Machinery Romania S.R.L.*	70%	Romania
Titan Machinery Bulgaria EAD*	70%	Bulgaria

* Majority-owned subsidiaries of Titan European Holdings S.a.r.l.

SCHEDULE E

List of Persons and Entities Subject to Lock-up

Name	Title
David Meyer	Chairman and Chief Executive Officer
Peter Christianson(1)	President, Chief Operating Officer, Director
Mark Kalvoda	Chief Financial Officer
Ted Christianson	Treasurer
Gordon Paul Anderson(2)	Director
Tony Christianson(3)	Director
James Williams	Director
James Irwin(4)	Director
John Bode	Director
Theodore Wright	Director
Stanley Dardis	Director

(1) In addition to shares held directly, lock-up to apply to shares beneficially owned by C.I. Farm Power, Inc.

(2) Mr. Anderson is permitted to sell up to 15,000 shares of Common Stock on or after June 8, 2012.

(3) In addition to shares held directly, lock-up to apply to shares beneficially owned by Adam Smith Growth Partners, LP, Adam Smith Fund, LLC, Adam Smith Companies, LLC, and Cherry Tree Companies, LLC; *provided* that Mr. Christianson and such entities are permitted to sell up to an aggregate of 90,000 shares of Common Stock on or after June 8, 2012.

(4) In addition to shares held directly, lock-up to apply to shares beneficially owned by the James Irwin Revocable Trust. Mr. Irwin is permitted to sell up to 7,000 shares of Common Stock on or after June 8, 2012.

Exhibit A

FORM OF OPINION OF COMPANY'S COUNSEL
TO BE DELIVERED PURSUANT TO SECTION 5(b)

1. Based solely upon the Certificate of Good Standing issued by the Secretary of State of the State of Delaware on April 24, 2012, the Company is duly incorporated and in good standing under the laws of the State of Delaware.

2. The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Memorandum.

3. Based solely upon Certificates of Good Standing issued by the Secretaries of State of the respective states listed in this Paragraph 3, each issued on or about April 24, 2012, the Company is registered or qualified as a foreign corporation to transact business and is in good standing in the States of Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin and Wyoming.

4. The authorized and, to the knowledge of Company counsel, based solely upon a certificate from officers of the Company dated April 24, 2012, and without further investigation, inquiry or verification by such counsel, the issued and outstanding capital stock of the Company is as set forth in the Offering Memorandum in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to the Agreement or pursuant to reservations, agreements, employee benefit plans or the exercise of convertible securities, options or warrants referred to in the Offering Memorandum).

5. Except as otherwise stated in the Offering Memorandum and the General Disclosure Package, no stockholder of the Company or any other person has any preemptive right, right of first refusal or other similar right to subscribe for or purchase securities of the Company arising (A) by operation of the Certificate of Incorporation or Bylaws of the Company or the General Corporation Law of the State of Delaware or (B) to Company's counsel's knowledge, by any agreement or other instrument listed as an exhibit to the Company's Form 10-K for the fiscal year ended January 31, 2012 or in any reports filed subsequent thereto by the Company with the SEC.

6. The Company has corporate power and authority to enter into the Indenture, the Notes and the Agreement.

7. The Indenture has been duly authorized, executed and delivered by the Company and, assuming due execution and delivery of the Indenture by the Trustee, is a valid and binding agreement of the Company enforceable against the Company in accordance with its terms.

8. The Agreement has been duly authorized, executed and delivered by the Company, and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

9. The Notes have been duly authorized, executed and delivered by the Company and, when duly authenticated as provided in the Indenture and paid for as provided in the Agreement, will be duly and validly issued and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Indenture.

10. The Company has duly authorized by all necessary corporate action the issuance of 3,000,000 shares of Common Stock upon conversion of the Notes and adopted a resolution of the board of directors specifying that at least such number shall be reserved for such issuance, and, contingent upon

the Company receiving the requisite approval from holders of its Common Stock to amend the Company's certificate of incorporation to increase the number of authorized shares of Common Stock so that the number of authorized and unissued shares of Common Stock that have not been reserved or committed for any other purpose is at least equal to the then-current "maximum number of underlying shares" (as defined in the Offering Memorandum), the Company will have duly authorized by all necessary corporate action the issuance of such "maximum number of underlying shares" upon conversion of the Notes and adopted a resolution of the board of directors specifying that such maximum number shall be reserved for such issuance, and, when issued upon conversion in accordance with the terms of the Notes and the Indenture, such shares of Common Stock will be validly issued, fully paid and non-assessable.

11. The Notes and the Indenture conform in all material respects as to legal matters to the summary descriptions thereof contained in the Offering Memorandum under the caption "Description of Notes".

12. Assuming (i) the representations and warranties of the Initial Purchasers and the Company contained in the Agreement are true, correct and complete, (ii) compliance by the Initial Purchasers and the Company with their respective agreements and covenants set forth in the Agreement, and (iii) the accuracy and completeness of the representations and warranties deemed to be made in accordance with the Offering Memorandum by purchasers to whom the Initial Purchasers initially resell the Notes, it is not necessary in connection with the offer, sale and delivery of the Notes to the Initial Purchasers or in connection with the initial resale of such Notes by the Initial Purchasers to a Subsequent Purchaser in the manner contemplated by the Agreement and the Offering Memorandum to register the Notes under the 1933 Act or to qualify the Indenture under the Trust Indenture Act, it being understood that no opinion is expressed as to any subsequent resale of Notes.

13. Company counsel is not representing the Company in any pending litigation in which the Company is a named defendant.

14. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign (other than such as may be required under the applicable securities laws of the various jurisdictions in which the Notes will be offered or sold, as to which Company counsel expresses no opinion) is required in connection with the due authorization, execution and delivery of the Agreement, the Indenture or the Notes by the Company, or for the performance by the Company as of the Closing of its obligations set forth therein, or for the offering, issuance, sale or delivery of the Notes to the Initial Purchasers or the initial resale of the Notes by the Initial Purchasers in accordance with the terms of the Agreement and Offering Memorandum.

15. Neither the execution and delivery of any of the Agreement, the Indenture or the Notes, the issuance and sale of the Notes, nor the performance by the Company as of the Closing of its obligations set forth therein will result in a breach or violation of (i) the Certificate of Incorporation or Bylaws of the Company; (ii) any United States federal law, Minnesota law, or the General Corporation Law of the State of Delaware; or (iii) to the knowledge of Company counsel, any order of any United States federal or Minnesota state court or governmental agency or body having jurisdiction over the Company specifically naming the Company.

16. The information in the Offering Memorandum and the General Disclosure Package under "Material United States Federal Income Tax Considerations", subject to the limitations and qualifications described therein, to the extent that it constitutes matters of tax law, summaries of tax matters, or legal

conclusions relating to tax law, has been reviewed by us and is correct in all material respects. We express no opinion concerning any tax consequences other than those specifically set forth therein.

Such opinion letter will also include a statement substantially to the effect that Company counsel does not believe that the Offering Memorandum contains or incorporates any untrue statement of a material fact or omits to state or incorporate a material fact required to be stated or incorporated therein or necessary to make the statements stated or incorporated therein, in the light of the circumstances under which they were made, not misleading.

Such opinions and statements will be limited to United States federal law, Minnesota law and the General Corporation Law of the State of Delaware, and will be subject to the definitions, assumptions, qualifications and exceptions as are listed or referenced in the full text of the opinion letter therefor and those that, as a matter of customary practice, are understood to be applicable thereto.

FORM OF LOCK-UP TO BE DELIVERED PURSUANT TO SECTION 5(g)

April [ ], 2012

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Wells Fargo Securities, LLC
375 Park Avenue
4th Floor
New York, New York 10152

as Representatives of the several
Initial Purchasers to be named in the
within-mentioned Purchase Agreement

Re: Proposed Public Offering by Titan Machinery Inc.

Dear Sirs:

The undersigned, [a stockholder/officer/director](1) of Titan Machinery Inc., a Delaware corporation (the "Company"), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Wells Fargo Securities, LLC ("Wells Fargo"), propose to enter into a Purchase Agreement (the "Purchase Agreement") with the Company providing for the offering of $135,000,000 aggregate principal amount of the Company's 3.75% Convertible Senior Notes due 2019 (the "Securities"). In recognition of the benefit that such an offering will confer upon the undersigned as [a stockholder/officer/director](2) of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with each initial purchaser to be named in the Purchase Agreement that, during the period beginning on the date hereof and ending on the date that is 90 days from the date of the Purchase Agreement (the "Lock-Up Period"), the undersigned will not[, and will cause C.I. Farm Power, Inc. (the "Lock-up Entity") not to](3) [, and will cause Adam Smith Growth Partners, LP, Adam Smith Fund, LLC, Adam Smith Companies, LLC, and Cherry Tree Companies, LLC (collectively, the "Lock-up Entities"), not to](4) [, and will cause the James Irwin Revocable Trust (the "Lock-up Entity") not to](5), without the prior written consent of Merrill Lynch and Wells Fargo, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of the Company's common stock, par value $0.00001 per

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(1) Revise as appropriate.

(2) Revise as appropriate.

(3) **Include for Peter Christianson.**

(4) **Include for Tony Christianson.**

(5) **Include for James Irwin.**

share (the "Common Stock"), or any securities convertible into or exchangeable or exercisable for Common Stock, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the "Lock-Up Securities"), or exercise any right with respect to the registration of any of the Lock-Up Securities, or file or cause to be filed any registration statement in connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

The restrictions on transfer described in this Agreement shall not apply to and no consent of Merrill Lynch and Wells Fargo shall be required for (1) a transfer of Common Stock to a family member or trust so long as the transfer is not for value; (2) if the undersigned is signing on behalf of a partnership, limited liability company or corporation, transfers of Common Stock from such entity to a partner, member or shareholder, as applicable, of such entity, provided the transfer is not for value; (3) exercises of any stock option or warrant held by the undersigned that expire during the Lock-Up Period, provided that no Lock-Up Securities are sold in association with such exercise; (4) transfers of Common Stock by will or intestate succession; [and] (5) transfers of Common Stock pursuant to any order of, or settlement agreement not involving any public sale of Lock-Up Securities approved by, any court of competent jurisdiction; [and (6) one or more sales by the undersigned [and the Lock-up Entity](6) [and the Lock-up Entities](7) of up to an aggregate of [ ](8) shares of Common Stock so long as such sales occur on or after June 8, 2012]; *provided*, *however*, that in any case referred to in clauses (1) and (2) above, it shall be a condition to the transfer that (A) the transferee executes and delivers to Merrill Lynch and Wells Fargo, not later than one business day prior to such transfer, an executed agreement in substantially the form of this agreement, and (B) the undersigned shall not be required to, and shall not voluntarily, file a report under Section 16(a) of the Securities Exchange Act of 1934, as amended, reporting a reduction in beneficial ownership of shares of Common Stock during the Lock-Up Period and the undersigned and such transferee shall not, except to the extent required by law, otherwise disclose such transfer (other than a filing on a Form 4 or Form 5 made after the expiration of the Lock-Up Period).

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the

transfer of the Lock-Up Securities except in compliance with the foregoing restrictions.

Very truly yours,

Signature: _____

Print Name: _____

(6) **Include for James Irwin.**

(7) **Include for Tony Christianson.**

(8) **Insert 90,000 for Tony Christianson, 15,000 for Gordon Paul Anderson and 7,000 for James Irwin.**

Exhibit 99.1

Titan Machinery Inc. Prices $135 Million of
3.75% Convertible Senior Notes Due 2019

West Fargo, ND — April 18, 2012 — Titan Machinery Inc. (NASDAQ: TITN), a leading network of full-service agricultural and construction equipment stores, today announced the pricing of $135.0 million aggregate principal amount of its 3.75% convertible senior notes due 2019 in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Act"). The offering includes an option granted to the initial purchasers of the notes to purchase up to an additional $15.0 million aggregate principal amount of notes to cover overallotments. The offering is scheduled to close on April 24, 2012 and is subject to satisfaction of customary closing conditions.

Titan Machinery estimates that the net proceeds from the offering will be approximately $130.7 million (or $145.2 million if the initial purchasers exercise their option in full to purchase additional notes) after deducting the initial purchasers' discounts and commissions and estimated expenses payable by Titan Machinery. Titan Machinery expects to use the net proceeds from the offering of the notes for working capital and general corporate purposes, which could include repaying portions of its floorplan financing facilities and the acquisition of, or investment in, companies or assets that complement its business.

The notes will be general unsecured and unsubordinated obligations of Titan Machinery, and interest will be payable semiannually at a rate of 3.75% per annum. The notes will be convertible into cash up to the aggregate principal amount of converted notes and cash, shares of Titan Machinery common stock or a combination thereof, at Titan Machinery's election, for any conversion value in excess thereof. The initial conversion rate will be 23.1626 shares of common stock per $1,000 principal amount of notes, which is equal to an initial conversion price of approximately $43.17 per share, representing a conversion premium of approximately 35.0% above the NASDAQ last reported sale price for Titan Machinery common stock of $31.98 per share on April 18, 2012. Prior to February 1, 2019, the notes will only be convertible upon the occurrence of certain events; thereafter until maturity the notes will be convertible at any time. In addition, on and after May 6, 2015, Titan Machinery may redeem for cash all or a portion of the notes if the last reported sale price of Titan Machinery common stock has been at least 120% of the conversion price for at least 20 trading days during the 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date Titan Machinery provides notice of redemption. Upon the occurrence of certain fundamental changes, holders of the notes will have the right to require Titan Machinery to purchase all or a portion of their notes for cash at a price equal to 100% of the principal amount of such notes, plus accrued but unpaid interest.

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation, or sale in any jurisdiction in which such offer, solicitation, or sale is unlawful. The notes and the shares of common stock issuable upon conversion of the notes, if any, will not be registered under the Act or any state securities laws, and unless so registered, may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Act and applicable state laws.

About Titan Machinery Inc.

Titan Machinery Inc., founded in 1980 and headquartered in West Fargo, North Dakota, is a multi-unit business with mature locations and newly-acquired locations. The Company owns and operates a network of full service agricultural and construction equipment stores in the United States and Europe. The Titan Machinery network consists of 96 North American dealerships in North Dakota, South Dakota, Iowa, Minnesota, Montana, Nebraska, Wyoming, Wisconsin, and Colorado, including two outlet stores, as well as 10 European dealerships in Romania and Bulgaria. The Titan Machinery dealerships represent one or more of the CNH Brands (NYSE: CNH), a majority-owned subsidiary of Fiat Industrial (Milan: FI.MI), including Case IH, New Holland Agriculture, Case Construction, New Holland Construction, Kobelco and CNH Capital.

Investor Relations Contact:

ICR, Inc.
John Mills, jmills@icrinc.com
Senior Managing Director
310-954-1105

Exhibit 99.2

Titan Machinery Inc. Announces Closing of $150 Million Offering of its 3.75% Convertible Senior Notes Due 2019

West Fargo, ND — April 24, 2012 — Titan Machinery Inc. (NASDAQ: TITN), a leading network of full-service agricultural and construction equipment stores, today announced the closing of its previously announced private offering of $150.0 million aggregate principal amount of its 3.75% convertible senior notes due 2019, which includes $15.0 million aggregate principal amount of notes issued pursuant to the initial purchasers' exercise in full of their over-allotment option. The notes were offered and sold in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Act").

The net proceeds from the offering were approximately $145.2 million after deducting the initial purchasers' discounts and commissions and estimated expenses payable by Titan Machinery. Titan Machinery expects to use the net proceeds from the offering of the notes for working capital and general corporate purposes, which could include repaying portions of its floorplan financing facilities and the acquisition of, or investment in, companies or assets that complement its business.

The notes are general unsecured and unsubordinated obligations of Titan Machinery, and interest will be payable semiannually at a rate of 3.75% per annum. The notes are convertible into cash up to the aggregate principal amount of converted notes and cash, shares of Titan Machinery common stock or a combination thereof, at Titan Machinery's election, for any conversion value in excess thereof. The initial conversion rate is 23.1626 shares of common stock per $1,000 principal amount of notes, which is equal to an initial conversion price of approximately $43.17 per share, representing a conversion premium of approximately 35.0% above the NASDAQ last reported sale price for Titan Machinery common stock of $31.98 per share on April 18, 2012. Prior to February 1, 2019, the notes are only convertible upon the occurrence of certain events; thereafter until maturity the notes will be convertible at any time. In addition, on and after May 6, 2015, Titan Machinery may redeem for cash all or a portion of the notes if the last reported sale price of Titan Machinery common stock has been at least 120% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during the 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date Titan Machinery provides notice of redemption. Upon the occurrence of certain fundamental changes, holders of the notes have the right to require Titan Machinery to purchase all or a portion of their notes for cash at a price equal to 100% of the principal amount of such notes, plus accrued but unpaid interest.

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation, or sale in any jurisdiction in which such offer, solicitation, or sale is unlawful. The notes and the shares of common stock issuable upon conversion of the notes, if any, have not been registered under the Act or any state securities laws, and unless so registered, may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Act and applicable state laws.

About Titan Machinery Inc.

Titan Machinery Inc., founded in 1980 and headquartered in West Fargo, North Dakota, is a multi-unit business with mature locations and newly-acquired locations. The Company owns and operates a network of full service agricultural and construction equipment stores in the United States and Europe. The Titan Machinery network consists of 96 North American dealerships in North Dakota, South Dakota, Iowa, Minnesota, Montana, Nebraska, Wyoming, Wisconsin, and Colorado, including two outlet stores, as well as 10 European dealerships in Romania and Bulgaria. The Titan Machinery dealerships represent one or more of the CNH Brands (NYSE: CNH), a majority-owned subsidiary of Fiat Industrial (Milan: FI.MI), including Case IH, New Holland Agriculture, Case Construction, New Holland Construction, Kobelco and CNH Capital.

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