

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

FORM 8-K

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

Date of report (Date of earliest event reported): June 16, 2008

INSULET CORPORATION

(Exact Name of Registrant as Specified in Charter)

**Delaware
(State or Other Jurisdiction
of Incorporation)**

**001-33462
(Commission File Number)**

**04-3523891
(IRS Employer
Identification No.)**

**9 Oak Park Drive
Bedford, Massachusetts 01730
(Address of Principal Executive Offices, including Zip Code)**

Registrant's telephone number, including area code: (781) 457-5000

**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 (see General Instruction A.2. below):

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

Item 1.01. Entry Into a Material Definitive Agreement.

On June 16, 2008, Insulet Corporation (the "Company") completed its previously announced offering of \$75,000,000 aggregate principal amount of its 5.375% Convertible Senior Notes due 2013 (the "original notes") in a private placement to qualified institutional buyers in the United States in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). On June 16, 2008, the initial purchasers in the offering, J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Initial Purchasers"), exercised their option to purchase an additional \$10,000,000 aggregate principal amount of the Company's 5.375% Convertible Senior Notes due 2013 (the "additional notes" and, together with the original notes, the "notes"). On June 19, 2008, the Company completed the sale of the additional notes to the Initial Purchasers. The notes have not been registered under the Securities Act or any state securities laws and may not be sold except in a transaction registered under, or exempt from, the registration provisions of the Securities Act and applicable state securities laws.

The notes were issued pursuant to an indenture, dated as of June 16, 2008 (the "Indenture"), between the Company and Wells Fargo Bank, N.A., as trustee. The notes will bear interest at the rate of 5.375% per year, payable semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2008. The notes will mature on June 15, 2013 unless previously repurchased by the Company or converted in accordance with their terms prior to such date. The notes will not be redeemable at the Company's option prior to the stated maturity date. If a fundamental change, as described in the Indenture, occurs at any time prior to maturity, holders of the notes may require the Company to repurchase their notes in whole or in part for cash equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, including any additional interest, to, but excluding, the date of repurchase.

Holders of the notes may convert their notes at their option prior to the close of business on the business day immediately preceding the stated maturity date at any time beginning on March 15, 2013 and, subject to compliance with procedures described in the Indenture, also under any of the following circumstances:

- during any fiscal quarter after the fiscal quarter ending September 30, 2008 (and only during such fiscal quarter), if the last reported sale price of the Company's common stock for each of at least 20 trading days during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is equal to or greater than 120% of the conversion price of the notes on the last day of such preceding fiscal quarter;
- during the five business-day period after any five consecutive trading-day period in which the trading price per \$1,000 principal amount of the notes for each trading day of such five consecutive trading-day period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate of the notes on each such day; or
- during a specified period and upon the occurrence of specified corporate transactions, including the distribution to all or substantially all holders of the Company's common stock of certain rights, options or warrants to purchase the Company's common stock or certain assets, debt securities or rights to purchase the Company's securities, as well as a fundamental change or a make-whole fundamental change, as described in the Indenture.

The notes have an initial conversion rate of 46.8467 shares of the Company's common stock per \$1,000 principal amount of the notes, representing an initial conversion price of approximately \$21.35 per share of the Company's common stock. If a make-whole fundamental change, as described in the Indenture, occurs and a holder elects to convert the notes in connection with such make-whole fundamental change, holders of the notes may be entitled to an increase in the conversion rate by a number of additional shares of the Company's common stock as described in the Indenture. The conversion rate may also be adjusted under certain other circumstances, as described in the Indenture, including, but not limited to, the issuance of stock dividends and payment of cash dividends.

The notes will be convertible for cash up to their principal amount and shares of the Company's common stock for the remainder of the conversion value in excess of the principal amount.

In connection with the sale of the notes, the Company entered into a registration rights agreement, dated June 16, 2008 (the "Registration Rights Agreement"), with the Initial Purchasers, pursuant to which the Company has agreed, in certain circumstances, if any of the notes or shares of common stock of the Company, if any, issued upon conversion of the notes constitute registrable securities under the Registration Rights Agreement (the "Registrable Securities"), to file and use commercially reasonable efforts to cause to become effective, a shelf registration statement with the Securities and Exchange Commission with respect to the resale of the Registrable Securities. The Company has also agreed to use commercially reasonable efforts to keep the shelf registration statement, if one is required to be filed, continuously effective, under the Securities Act, until the earliest of: (1) June 19, 2009; (2) the date by which all Registrable Securities have been sold pursuant to the shelf registration statement; and (3) such date as each of the Registrable Securities covered by the shelf registration statement ceases to be a Registrable Security. In addition, pursuant to the Registration Rights Agreement, the Company has agreed to use its commercially reasonable efforts to remove restrictive transfer legends from the notes and shares of common stock of the Company, if any, issuable upon conversion of the notes. If the Company fails to keep such required shelf registration statement effective or remove such restrictive transfer legends, as required under the Registration Rights Agreement, the Company will be obligated to pay additional interest on the notes. The description of the Indenture and the Registration Rights Agreement in this report is a summary and is qualified in its entirety by the respective terms of each agreement, which are filed as Exhibit 4.1 and Exhibit 10.1 hereto, respectively.

The Initial Purchasers and their affiliates have in the past provided and may from time to time in the future provide commercial banking, financial advisory, investment banking and other services to the Company.

Wells Fargo Bank, N.A. may from time to time in the future provide trustee, registrar, exchange agent, conversion agent, paying agent and other services to the Company

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

On June 16, 2008, the Company issued \$75,000,000 aggregate principal amount of its 5.375% Convertible Senior Notes due 2013 in a private placement to qualified institutional buyers in the United States in reliance on Rule 144A under the Securities Act. On June 16, 2008, the Initial Purchasers exercised their option to purchase an additional \$10,000,000 aggregate principal amount of the Company's 5.375% Convertible Senior Notes due 2013. On June 19, 2008, the Company issued such additional notes to the Initial Purchasers. The information set forth in Item 1.01, with respect to the terms and other conditions of the notes, is hereby incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 with respect to the notes and the conversion thereof for cash and shares of the Company's common stock, if any, is hereby incorporated herein by reference. The notes and the shares of the Company's common stock, if any, issuable in certain circumstances upon conversion of the notes have not been registered under the Securities Act. The Company offered and sold the notes to the Initial Purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the notes to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Indenture, dated as of June 16, 2008, between Insulet Corporation and Wells Fargo Bank, N.A.
10.1	Registration Rights Agreement, dated as of June 16, 2008, among Insulet Corporation, J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

SIGNATURES

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

June 20, 2008

INSULET CORPORATION

By: /s/ Lars Boesgaard

Lars Boesgaard

Vice President of Finance

INSULET CORPORATION
AND
WELLS FARGO BANK, N.A.,
as Trustee
INDENTURE
Dated as of June 16, 2008
5.375% Convertible Senior Notes due 2013

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS	1
Section 1.01. <i>Definitions</i>	1
ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES	11
Section 2.01. <i>Designation and Amount</i>	11
Section 2.02. <i>Form of Notes</i>	11
Section 2.03. <i>Date and Denomination of Notes; Payments of Interest</i>	12
Section 2.04. <i>Payments of Additional Interest</i>	14
Section 2.05. <i>Execution, Authentication and Delivery of Notes</i>	14
Section 2.06. <i>Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depository</i>	14
Section 2.07. <i>Mutilated, Destroyed, Lost or Stolen Notes</i>	21
Section 2.08. <i>Temporary Notes</i>	22
Section 2.09. <i>Cancellation of Notes Paid, Etc.</i>	22
Section 2.10. <i>CUSIP Numbers</i>	22
Section 2.11. <i>Additional Notes; Repurchases</i>	22
Section 2.12. <i>Automatic Exchange From Restricted Global Note to Unrestricted Global Note</i>	23
ARTICLE 3 [INTENTIONALLY OMITTED]	24
ARTICLE 4 SATISFACTION AND DISCHARGE	24
Section 4.01. <i>Satisfaction and Discharge</i>	24
ARTICLE 5 PARTICULAR COVENANTS OF THE COMPANY	24
Section 5.01. <i>Payment of Principal, Interest and Additional Interest</i>	24
Section 5.02. <i>Maintenance of Office or Agency</i>	25
Section 5.03. <i>Appointments to Fill Vacancies in Trustee's Office</i>	25
Section 5.04. <i>Provisions as to Paying Agent</i>	25
Section 5.05. <i>Existence</i>	26
Section 5.06. <i>Rule 144A Information Requirement and Annual Reports</i>	26
Section 5.07. <i>Stay, Extension and Usury Laws</i>	27
Section 5.08. <i>Compliance Certificate; Statements as to Defaults</i>	27
Section 5.09. <i>Additional Interest and Supplementary Interest</i>	28
Section 5.10. <i>Further Instruments and Acts</i>	28

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE 6 LISTS OF NOTEHOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE	28
Section 6.01. <i>Lists of Noteholders</i>	28
Section 6.02. <i>Preservation and Disclosure of Lists</i>	28
Section 6.03. <i>Reports by Trustee</i>	29
ARTICLE 7 DEFAULTS AND REMEDIES	29
Section 7.01. <i>Events of Default</i>	29
Section 7.02. <i>Payments of Notes on Default; Suit Therefor</i>	32
Section 7.03. <i>Application of Monies Collected by Trustee</i>	34
Section 7.04. <i>Proceedings by Noteholders</i>	34
Section 7.05. <i>Proceedings by Trustee</i>	35
Section 7.06. <i>Remedies Cumulative and Continuing</i>	35
Section 7.07. <i>Direction of Proceedings and Waiver of Defaults by Majority of Noteholders</i>	36
Section 7.08. <i>Notice of Defaults</i>	36
Section 7.09. <i>Undertaking to Pay Costs</i>	36
ARTICLE 8 CONCERNING THE TRUSTEE	37
Section 8.01. <i>Duties and Responsibilities of Trustee</i>	37
Section 8.02. <i>Reliance on Documents, Opinions, Etc.</i>	38
Section 8.03. <i>No Responsibility for Recitals, Etc.</i>	39
Section 8.04. <i>Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes</i>	40
Section 8.05. <i>Monies to Be Held in Trust</i>	40
Section 8.06. <i>Compensation and Expenses of Trustee</i>	40
Section 8.07. <i>Officers' Certificate as Evidence</i>	41
Section 8.08. <i>Conflicting Interests of Trustee</i>	41
Section 8.09. <i>Eligibility of Trustee</i>	41
Section 8.10. <i>Resignation or Removal of Trustee</i>	41
Section 8.11. <i>Acceptance by Successor Trustee</i>	43
Section 8.12. <i>Succession by Merger, Etc.</i>	43
Section 8.13. <i>Limitation on Rights of Trustee as Creditor</i>	44

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE 9 CONCERNING THE NOTEHOLDERS	44
Section 9.01. <i>Action by Noteholders</i>	44
Section 9.02. <i>Proof of Execution by Noteholders</i>	44
Section 9.03. <i>Who Are Deemed Absolute Owners</i>	44
Section 9.04. <i>Company-Owned Notes Disregarded</i>	45
Section 9.05. <i>Revocation of Consents; Future Holders Bound</i>	45
ARTICLE 10 NOTEHOLDERS' MEETINGS	45
Section 10.01. <i>Purpose of Meetings</i>	46
Section 10.02. <i>Call of Meetings by Trustee</i>	46
Section 10.03. <i>Call of Meetings by Company or Noteholders</i>	46
Section 10.04. <i>Qualifications for Voting</i>	46
Section 10.05. <i>Regulations</i>	47
Section 10.06. <i>Voting</i>	47
Section 10.07. <i>No Delay of Rights by Meeting</i>	47
ARTICLE 11 SUPPLEMENTAL INDENTURES	48
Section 11.01. <i>Supplemental Indentures Without Consent of Noteholders</i>	48
Section 11.02. <i>Supplemental Indentures With Consent of Noteholders</i>	48
Section 11.03. <i>Effect of Supplemental Indentures</i>	50
Section 11.04. <i>Notation on Notes</i>	50
Section 11.05. <i>Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee</i>	50
ARTICLE 12 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE	50
Section 12.01. <i>Company May Consolidate, Etc.</i>	50
Section 12.02. <i>Successor Corporation to Be Substituted</i>	51
Section 12.03. <i>Opinion of Counsel to Be Given Trustee</i>	52
ARTICLE 13 IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS	52
Section 13.01. <i>Indenture and Notes Solely Corporate Obligations</i>	52
ARTICLE 14 [INTENTIONALLY OMITTED]	52
ARTICLE 15 CONVERSION OF NOTES	52
Section 15.01. <i>Conversion Privilege</i>	52

TABLE OF CONTENTS
(continued)

	<u>Page</u>
Section 15.02. <i>Conversion Procedure</i>	54
Section 15.03. <i>Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes</i>	57
Section 15.04. <i>Adjustment of Conversion Rate</i>	59
Section 15.05. <i>Shares to Be Fully Paid</i>	68
Section 15.06. <i>Effect of Reclassification, Consolidation, Merger or Sale</i>	68
Section 15.07. <i>Certain Covenants</i>	71
Section 15.08. <i>Responsibility of Trustee</i>	71
Section 15.09. <i>Notice to Holders Prior to Certain Actions</i>	72
Section 15.10. <i>Stockholder Rights Plans</i>	72
Section 15.11. <i>Exchange in Lieu of Conversion</i>	73
Section 15.12. <i>Limit on Issuance of Shares of Common Stock upon Conversion</i>	73
ARTICLE 16 REPURCHASE OF NOTES AT OPTION OF HOLDERS	73
Section 16.01. <i>Repurchase at Option of Holders upon a Fundamental Change</i>	74
Section 16.02. <i>Withdrawal of Fundamental Change Repurchase Notice</i>	76
Section 16.03. <i>Deposit of Fundamental Change Repurchase Price</i>	77
ARTICLE 17 MISCELLANEOUS PROVISIONS	77
Section 17.01. <i>Provisions Binding on Company's Successors</i>	77
Section 17.02. <i>Official Acts by Successor Corporation</i>	78
Section 17.03. <i>Addresses for Notices, Etc.</i>	78
Section 17.04. <i>Governing Law</i>	78
Section 17.05. <i>Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee</i>	79
Section 17.06. <i>Legal Holidays</i>	79
Section 17.07. <i>No Security Interest Created</i>	79
Section 17.08. <i>Trust Indenture Act</i>	79
Section 17.09. <i>Benefits of Indenture</i>	79
Section 17.10. <i>Table of Contents, Headings, Etc.</i>	80
Section 17.11. <i>Authenticating Agent</i>	80

TABLE OF CONTENTS
(continued)

	<u>Page</u>
Section 17.12. <i>Execution in Counterparts</i>	81
Section 17.13. <i>Severability</i>	81
Section 17.14. <i>Waiver of Jury Trial</i>	81
Section 17.15. <i>Force Majeure</i>	81
EXHIBITS	
Exhibit A Form of Note	A-1
Exhibit B Form of Notice of Conversion	B-1
Exhibit C Form of Fundamental Change Repurchase Notice	C-1
Exhibit D Form of Assignment and Transfer	D-1

CROSS-REFERENCE TABLE

TIA Section	Indenture Section
310(a)(1)	8.09
(a)(2)	8.09
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	8.09
(b)	8.08
(c)	N.A.
311(a)	8.13
(b)	8.13
(c)	N.A.
312(a)	6.01
(b)	6.02(b)
(c)	6.02(c)
313(a)	6.03
(b)(1)	N.A.
(b)(2)	6.03
(c)	6.03; 17.03
(d)	6.03(b)
314(a)	5.06; 5.08
(b)	N.A.
(c)(1)	17.05
(c)(2)	17.05
(c)(3)	N.A.
(d)	N.A.
(e)	17.05
(f)	N.A.
315(a)	8.01; 8.02
(b)	7.08; 17.03
(c)	8.01
(d)	8.01
(e)	7.09
316(a)(last sentence)	9.04
(a)(1)(A)	7.07
(a)(1)(B)	7.07
(a)(2)	N.A.
(b)	7.04
(c)	9.01
317(a)(1)	7.02; 7.05
(a)(2)	7.02
(b)	5.04
318(a)	17.08

N.A. means not applicable

Note: This Cross-Reference table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE dated as of June 16, 2008 between Insulet Corporation, a Delaware corporation, as issuer (the “**Company**”) and Wells Fargo Bank, N.A., a national banking association, as trustee (the “**Trustee**”).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 5.375% Convertible Senior Notes due 2013 (hereinafter sometimes called the “**Notes**”), initially in an aggregate principal amount not to exceed \$75,000,000 (or \$85,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

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

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act or that are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this Indenture. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” has the meaning specified for Additional Interest in

Section 2(d) of the Registration Rights Agreement.

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

“**Automatic Exchange**” shall have the meaning specified in Section 2.12.

“**Automatic Exchange Notice**” shall have the meaning specified in Section 2.12.

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

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

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

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

“**Cash Settlement Averaging Period**” means, with respect to any Note surrendered for conversion, the 25 consecutive Trading Day period beginning on, and including, the third Trading Day immediately following the Conversion Date for such Note; *provided* that with respect to any Conversion Date occurring during the period beginning on, and including, March 15, 2013, and ending at close of business on the Business Day immediately prior to the Maturity Date, the “**Cash Settlement Averaging Period**” means the 25 consecutive Trading Days beginning on and including the 27th Scheduled Trading Day prior to the Maturity Date.

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

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

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

“**Common Stock**” means, subject to Section 15.06, shares of common stock of

the Company, par value \$0.001 per share, at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and that are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“**Company**” means Insulet Corporation, a Delaware corporation, and subject to the provisions of Article 12, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by (a) an Officer of the Company and (b) another Officer of the Company, other than the Officer designated in clause (a) of this definition, or the Company’s Assistant Treasurer or any Assistant Secretary, and delivered to the Trustee.

“**Continuing Director**” means a director who either was a member of the Board of Directors on June 10, 2008 or who becomes a member of the Board of Directors subsequent to that date and whose election, appointment or nomination for election by the stockholders of the Company, is duly approved by a majority of the continuing directors on the Board of Directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the entire Board of Directors in which such individual is named as nominee for director.

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

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

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

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

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

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

“**Corporate Trust Office**” means the office of the Trustee at which at any time its corporate trust business shall be administered, which office at the dated hereof is located at Wells Fargo Bank, N.A., Corporate Trust Services, MAC N9311-110, 625 Marquette Ave. South, Minneapolis, MN 55479, Attention: Insulet Corporation Account Manager, or such other address as the Trustee may designate from time to time by notice to the Noteholders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Noteholders and the Company).

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

“**Daily Conversion Value**” means, for each of the 25 consecutive Trading Days during the Cash Settlement Averaging Period, one-twenty-fifth (1/25th) of the product of (a) the then-applicable Conversion Rate on such Trading Day and (b) the Daily VWAP of the Common Stock on such Trading Day.

“**Daily Settlement Amount**,” for each of the 25 consecutive Trading Days during the Cash Settlement Averaging Period, shall consist of:

(a) cash equal to the lesser of (i) \$40 and (ii) the Daily Conversion Value for such Trading Day; and

(b) to the extent the Daily Conversion Value for such Trading Day exceeds \$40, a number of shares of Common Stock equal to the Daily Share Amount.

“**Daily Share Amount**” means, to the extent the Daily Conversion Value exceeds \$40, (i) the difference between the Daily Conversion Value and \$40, divided by (ii) the Daily VWAP of the Common Stock for such Trading Day.

“**Daily VWAP**” for the Common Stock means the per share volume-weighted average price on The NASDAQ Global Market as displayed under the heading “Bloomberg VWAP” on Bloomberg page “PODD.UQ <equity> AQR” (or its equivalent successor if such page is 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 Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day as determined in a commercially reasonable manner by the Board of Directors using a volume-weighted method) and will be determined without regard to after hours trading or any other trading outside of the regular trading session trading hours.

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

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

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

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

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

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

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

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

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

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

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

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

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

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

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

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

(b) consummation of any share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which all or substantially all of the Common Stock is converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s Subsidiaries; *provided, however*, that any such transaction where the holders of more than 50% of shares of Common Stock immediately prior to such transaction that is a share exchange, consolidation or merger own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such event shall not be a Fundamental Change;

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

(d) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(e) the Common Stock (or other common stock into which the Notes are then convertible) ceases to be quoted or listed for trading on a United States national securities exchange,

provided, however, in the case of a transaction or event described in clause (a) or (b) above, if at least 90% of the consideration received or to be received by the holders of Common Stock, excluding cash payments for fractional shares or pursuant to statutory appraisal rights, in connection with the transaction or transactions constituting the Fundamental Change consists of shares of Publicly Traded Securities, and as a result of such transaction or transactions, the Notes become convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 15.02(a)), such event shall not be a Fundamental Change.

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

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

“**Fundamental Change Expiration Time**” shall have the meaning specified in Section 16.01(b)(ix).

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

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

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

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

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

“**Initial Purchasers**” means J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“**Interest Payment Date**” means each June 15 and December 15 of each year, beginning on December 15, 2008; *provided, however*, that if any Interest Payment Date falls on a date that is not a Business Day, such payment of interest (or principal in the case of the Maturity Date) will be postponed until the next succeeding Business Day, and no interest or other amount will be paid as a result of such postponement.

“Interest Record Date,” with respect to any Interest Payment Date, shall mean the June 1 or December 1 (whether or not such day is a Business Day) immediately preceding the relevant Interest Payment Date, respectively.

“Last Reported Sale Price” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, then the **“Last Reported Sale Price”** will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the Pink Sheets LLC or similar organization. If the Common Stock is not so quoted, the **“Last Reported Sale Price”** will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

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

“Make-Whole Fundamental Change” means any transaction or event that constitutes a Fundamental Change as described in clause (a) or (b) of the definition thereof (in the case of any Fundamental Change described in clause (b) of the definition thereof, determined without regarding to the *proviso* in such clause (b)), and subject to the *proviso* to such definition.

“Make-Whole Fundamental Change Period” shall have the meaning specified in Section 15.03(a).

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

“Maturity Date” means June 15, 2013.

“Measurement Period” shall have the meaning specified in Section 15.01(b)(i).

“Merger Event” shall have the meaning specified in Section 15.06.

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

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

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

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

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

“**Offering Memorandum**” means the final offering memorandum dated June 10, 2008 relating to the offering and sale of the Notes.

“**Officer**” means, with respect to the Company, the Chairman of the Board of Directors, President, the Chief Executive Officer, the Treasurer, the Secretary, any Executive or Senior Vice President, Managing Director or any Vice President (whether or not designated by a number or numbers or word added before or after the title “Vice President”).

“**Officers’ Certificate**,” when used with respect to the Company, means a certificate signed by (a) one Officer of the Company and (b) another Officer of the Company or any Assistant Treasurer, any Assistant Secretary or Controller of the Company that is delivered to the Trustee. Each such certificate shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section. One of the officers giving an Officers’ Certificate pursuant to Section 5.08 shall be the principal executive, financial or accounting officer of the Company.

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

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section.

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

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

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

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

course; and

(d) Notes that have been discharged in accordance with Section 4.01;

(e) Notes converted pursuant to Article 15.

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

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

“**Portal Market**” means The Portal Market operated by FINRA or any successor thereto.

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

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

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of June 10, 2008, among the Company and the Initial Purchasers.

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

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

“**Registration Rights Agreement**” means that certain Registration Rights Agreement, dated as of June 16, 2008, among the Company and the Initial Purchasers, as amended from time to time.

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

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

“**Restricted Global Note**” shall have the meaning specified in Section 2.12.

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

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

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

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

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

“**Stock Price**” means (a) in the case of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change in which holders of Common Stock receive solely cash consideration in connection with such Make-Whole Fundamental Change, the amount of cash paid per share of the Common Stock and (b) in the case of all other Make-Whole Fundamental Changes, the average of the Last Reported Sale Prices per share of Common Stock over the period of five consecutive Trading Days ending on, and including, the Trading Day immediately preceding the Effective Date of such Make-Whole Fundamental Change. The Board of Directors will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, during such five consecutive Trading Day period.

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

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

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

“**Trading Day**” means a day on which (i) trading in securities generally occurs on The NASDAQ Global Market or, if the Common Stock is not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, in the principal other market on which the Common Stock is then traded and (ii) there is no Market Disruption Event. If the Common Stock (or other security for which a last reported sale price or Daily VWAP must be determined) is not so listed or traded, “**Trading Day**” means a “**Business Day**.”

“**Trading Price**” per \$1,000 principal amount of Notes on any date of determination means the average of the secondary market bid quotations obtained by the Trustee

for \$1.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for \$1.0 million principal amount of Notes from any such nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate on such Trading Day.

“**transfer**” shall have the meaning specified in Section 2.06(c).

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

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture, except as provided in Section 11.03 and Section 15.06; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “**Trust Indenture Act**” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**Unrestricted Global Note**” shall have the meaning specified in Section 2.12.

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

ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount* . The Notes shall be designated as the “5.375% Convertible Senior Notes due 2013.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$75,000,000 (or \$85,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement), subject to Section 2.11 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.06, Section 2.07, Section 2.12, Section 11.04, Section 15.02, and Section 16.03 hereof.

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

Any Global Note may be endorsed with or have incorporated in the text thereof

such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian, the Depository or by FINRA in order for the Notes to be tradable on The Portal Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

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

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

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

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

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Interest Record Date with respect to any Interest

Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest (including Additional Interest, if any, and Supplementary Interest, if any) shall be payable at the office or agency of the Company maintained by the Company for such purposes, which shall initially be the office of the Paying Agent at Corporate Trust Office of the Trustee. The Company shall pay interest (including Additional Interest, if any, and Supplementary Interest, if any) (a) (1) to holders holding Notes in certificated form and having an aggregate principal amount of \$2,000,000 or less, by check mailed to the holders of such Notes and (2) to holders holding Notes in certificated form and having an aggregate principal amount of more than \$2,000,000, either by check mailed to such holder or, upon application by a holder to the Note Registrar not later than on the relevant Interest Record Date, by wire transfer in immediately available funds to that holder's account within the United States, which application shall remain in effect until the holder notifies, in writing, the Note Registrar to the contrary or (b) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

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

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

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system.

Section 2.04. *Payments of Additional Interest.* If required by the Registration Rights Agreement, the Company shall pay Additional Interest in the manner and to the Persons set forth in the Registration Rights Agreement. Whenever in this Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of “**Additional Interest**” provided for in the Registration Rights Agreement to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of the Registration Rights Agreement and express mention of the payment of Additional Interest (if applicable) in any provisions hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

Section 2.05. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.

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

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually by an authorized officer of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

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

Section 2.06. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the office of the Note Registrar and the Note Registrar agrees to keep a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 5.02 being herein sometimes collectively referred to as the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being

converted into written form within a reasonable period of time. The Trustee is hereby appointed “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.06, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

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

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

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

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

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

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depositary or the nominee of the Depositary. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a definitive Note, shall be effected through the Depositary

(but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor.

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

Until the date (the “**Resale Restriction Termination Date**”) the later of (1) the date that is one year after the last date of original issuance of the Notes (or such later date as permitted by Rule 144 under the Securities Act or any successor provision thereto), and (2) such later date, if any, as may be required by applicable laws, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof which shall bear the legend set forth in Section 2.06(d), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice in writing thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR

PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

- (A) TO INSULET CORPORATION (THE "COMPANY") OR ANY SUBSIDIARY THEREOF, OR
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.06(c), be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.06(c). The Company shall notify the Trustee in writing upon the occurrence of the Resale Restriction Termination Date and promptly after a Registration Statement with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.06(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Depositary (for itself or on behalf of a beneficial owner) by written notice given to the

Trustee by or on behalf of the Depositary in accordance with customary procedures of the Depositary and in compliance with this Section.

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

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

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

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

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

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of this Indenture, and to examine the same to determine substantial compliance as to the form with the express requirements hereof.

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

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO INSULET CORPORATION (THE “COMPANY”) OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(C) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

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

(f) Notwithstanding any provision of Section 2.06 to the contrary, in the event Rule 144 as promulgated under the Securities Act (or any successor rule) is amended to change the one-year holding period thereunder (or the corresponding period under any successor rule), from and after receipt by the Trustee of the Officers’ Certificate and Opinion of Counsel provided for in this Section 2.06(f), (i) each reference in Section 2.06(c) to “one year” and in the restrictive legend set forth in such paragraph to “ONE YEAR” shall be deemed for all purposes hereof to be references to such changed period, (ii) each reference in Section 2.06(d) to “one year” and in the restrictive legend set forth in such paragraph to “ONE YEAR” shall be deemed for all purposes hereof to be references to such changed period and (iii) all corresponding references in the Notes (including the definition of Resale Restriction Termination Date) and the restrictive legends thereon shall be deemed for all purposes hereof to be references to such changed period, *provided* that such changes shall not become effective

if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws. The provisions of this Section 2.06(f) will not be effective until such time as the Opinion of Counsel and Officers' Certificate have been received by the Trustee hereunder. This Section 2.06(f) shall apply to successive amendments to Rule 144 (or any successor rule) changing the holding period thereunder.

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

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, and, if applicable, such authenticating agent may require. Upon the issuance of any substitute Note, the Company or the Trustee may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note that has matured or is about to mature or has been tendered for repurchase upon a Fundamental Change or is about to be converted into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or

hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender.

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

Section 2.09. *Cancellation of Notes Paid, Etc.* All Notes surrendered for the purpose of payment, repurchase, conversion, exchange or registration of transfer, shall, if surrendered to the Company or any Paying Agent or any Note Registrar or any Conversion Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall 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. If the Company shall acquire any of the Notes, such acquisition shall not operate as satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

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

Section 2.11. *Additional Notes; Repurchases.* The Company may, without the consent of the Noteholders and notwithstanding Section 2.01, reopen this Indenture and increase the principal amount of the Notes by issuing additional Notes in the future pursuant to this Indenture with the same terms and with the same CUSIP number 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 no such additional Notes may be issued unless they will be fungible with the original Notes for U.S. federal income tax and securities law purposes. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officers' Certificate and an Opinion of Counsel, such Officers' Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.05, as the Trustee shall reasonably request. The Company may also from time to time repurchase the Notes in open market purchases or negotiated transactions without prior notice to Noteholders.

Section 2.12. *Automatic Exchange From Restricted Global Note to Unrestricted Global Note.* Beneficial interests in a Global Note that is subject to restrictions set out in Section 2.06(c) (including the legend set forth in Section 2.06(c)) (the "**Restricted Global Note**") will be automatically exchanged into beneficial interests in an unrestricted Global Note that is no longer subject to the restrictions set out in Section 2.06(c) (including removal of the legend set forth in Section 2.06(c)) (the "**Unrestricted Global Note**") without any action required by or on behalf of the Noteholder (the "**Automatic Exchange**"). In order to effect such exchange, the Company shall at least 15 days but not more than 30 days prior to the automatic exchange date, deliver a notice of Automatic Exchange (an "**Automatic Exchange Notice**") to each Noteholder at such Noteholder's address appearing in the Note Register, with a copy to the Trustee. The Automatic Exchange Notice shall identify the Notes subject to the Automatic Exchange and shall state: (1) the date of the Automatic Exchange; (2) the section of this Indenture pursuant to which the Automatic Exchange shall occur; (3) the "CUSIP" number of the Restricted Global Note from which such Noteholders' beneficial interests will be transferred and (4) the "CUSIP" number of the Unrestricted Global Note into which such Holders' beneficial interests will be transferred. At the Company's request on no less than 5 days' prior notice, the Trustee shall deliver, in the Company's name and at its expense, the Automatic Exchange Notice to each Noteholder at such Noteholder's address appearing in the Note Register; *provided, however*, that the Company shall have delivered to the Trustee an Officers' Certificate requesting that the Trustee give the Automatic Exchange Notice (in the name and at the expense of the Company) and setting forth the information to be stated in the Automatic Exchange Notice as provided in the preceding sentence. As a condition to any such exchange pursuant to this Section 2.12, the Trustee shall be entitled to receive from the Company, and rely conclusively without any liability, upon an Officer's Certificate and an Opinion of Counsel to the Company, in form and in substance reasonably satisfactory to the Trustee, to the effect that such transfer of beneficial interests to the Unrestricted Global Note shall be effected in compliance with the Securities Act. Upon such exchange of beneficial interests pursuant to this Section 2.12, the Registrar shall endorse the Schedule of Increases and Decreases in Global Note to the relevant Notes and reflect on its books and records the date of such transfer and a decrease and increase, respectively, in the principal amount of the applicable Restricted Global Note(s) and the Unrestricted Global Note, respectively, equal to the principal amount of beneficial interests transferred. If an Unrestricted Global Note is not then outstanding at the time of the Automatic Exchange, the Company shall execute and the Trustee shall authenticate and deliver an Unrestricted Global Note to the Depository. Following any such transfer pursuant to this Section 2.12, the relevant Restricted Global Note shall be cancelled.

ARTICLE 3
[INTENTIONALLY OMITTED]

ARTICLE 4
SATISFACTION AND DISCHARGE

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

ARTICLE 5
PARTICULAR COVENANTS OF THE COMPANY

Section 5.01. *Payment of Principal, Interest and Additional Interest.* The Company covenants and agrees that it will cause to be paid the principal of (including the Fundamental Change Repurchase Price), and accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Each installment of accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on the Notes due on any Additional Interest Payment Date (as defined in the Registration Rights Agreement), may be paid by mailing checks for the amount payable to Noteholders entitled thereto as they shall appear on the Note Register; *provided* that, (1) with respect to any Noteholder holding Notes in certificated form and having an aggregate principal amount of \$2,000,000 or less, by check mailed to the holders of such Notes and (2) with respect to any Noteholder holding Notes in certificated form and having an aggregate principal amount of more than \$2,000,000, either by check mailed to such holder or, upon application by a holder to the Note Registrar not later than on the relevant Interest Record Date, by wire transfer in immediately available funds to that holder's account within the United States, which application shall remain in effect until the holder notifies, in writing, the Note Registrar to the contrary; *provided further* that payment of accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, made to the Depository shall be paid by wire transfer in immediately available funds in accordance with such wire transfer instructions and other procedures provided by the Depository from time

to time.

Section 5.02. *Maintenance of Office or Agency.* The Company will maintain in the United States an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (“**Paying Agent**”) or for conversion (“**Conversion Agent**”) and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee.

The Company may also from time to time designate co-registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “Paying Agent” and “Conversion Agent” include any such additional or other offices or agencies, as applicable.

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

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

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

- (i) that it will hold all sums held by it as such agent for the payment of the principal of and accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on the Notes in trust for the benefit of the holders of the Notes;
- (ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal of and accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on the Notes when the same shall be due and payable; and
- (iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

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

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

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

(d) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (including the Fundamental Change Repurchase Price) accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price), interest, Additional Interest, if any, or Supplementary Interest, if any, has become due and payable shall be paid to the Company on request of the Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from such trust; and the holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

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

Section 5.06. *Rule 144A Information Requirement and Annual Reports.* (a) At any time the Company is not subject to Sections 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3)

under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to the Trustee, any holder, or prospective purchaser of such Notes or any shares of Common Stock issued upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A under the Securities Act. The Company shall take such further action as any holder of such Notes or such Common Stock may reasonably request to the extent required from time to time to enable such holder or beneficial holder to sell such Notes or shares of Common Stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

(b) The Company shall deliver to the Trustee within three Business Days after the same is required to be filed with the Commission, copies of the quarterly and annual reports and of the information, documents and other reports, if any, that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, and, to the extent required by Section 17.08, the Company shall otherwise comply with the requirements of Trust Indenture Act section 314(a). Any such report, information or document that the Company files with the Commission through the Commission's EDGAR database shall be deemed delivered to the Trustee for purposes of this Section 5.06(b) at the time of such filing through the EDGAR database.

(c) Delivery of the reports, information and documents described in clause (b) above to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on an Officers' Certificate).

Section 5.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2008) an Officers' Certificate stating whether or not the signer thereof has knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within ten days after the Company becomes aware of the occurrence of any Event of

Default or Default, an Officers' Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company proposes to take with respect thereto.

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

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

Section 5.10. *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.

ARTICLE 6 LISTS OF NOTEHOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.01. *Lists of Noteholders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than five days after each June 1 and December 1 in each year beginning with December 1, 2008, and at such other times as the Trustee may request in writing, within ten days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Noteholders as of a date not more than fifteen days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 6.02. *Preservation and Disclosure of Lists.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Noteholders contained in the most recent list furnished to it as provided in Section 6.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other Noteholders with

respect to their rights under this Indenture or under the Notes and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

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

Section 6.03. *Reports by Trustee.* (a) The Trustee shall transmit to holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each May 15, beginning with May 15, 2009, deliver to holders a brief report, dated as of such May 15, that complies with the provisions of such Section 313(a).

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

ARTICLE 7 DEFAULTS AND REMEDIES

Section 7.01. *Events of Default.* The following events shall be “**Events of Default**” with respect to the Notes:

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

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

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

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

(e) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 16.01(b);

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

(g) default by the Company or any Subsidiary of the Company in the payment of the principal or interest on any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any debt for money borrowed in excess of \$10 million in the aggregate of the Company and/or any such Subsidiary, whether such debt now exists or shall hereafter be created, resulting in such debt becoming or being declared due and payable, and such acceleration shall not have been rescinded or annulled within thirty days after written notice 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;

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

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

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

In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 7.01(i) or Section 7.01(j) with respect to the Company (and not solely with respect to a “significant subsidiary” (as defined in Regulation S-X under the Exchange Act) of the Company, or a group of Subsidiaries of the Company that in aggregate would constitute a “significant subsidiary” of the Company), unless

the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 9.04, by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare 100% of the principal of and accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, on all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding (other than the succeeding paragraph). If an Event of Default specified in Section 7.01(i) or Section 7.01(j) with respect to the Company (and not solely with respect to a "significant subsidiary" (as defined in Regulation S-X under the Exchange Act) of the Company, or a group of Subsidiaries of the Company that in aggregate would constitute a "significant subsidiary" of the Company) occurs and is continuing, the principal of all the Notes and accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, shall be immediately due and payable. This provision, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, upon all Notes and the principal of on any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, (to the extent that payment of such interest is enforceable under applicable law) and on such principal, at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 8.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all Events of Defaults under this Indenture, other than the nonpayment of principal of and accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 7.07, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes (other than a Default or an Event of Default resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash or a combination of cash and shares of Common Stock, as applicable, due upon conversion) and rescind and annul such declaration and its consequences (other than a declaration or consequences, as the case may be, resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash or a combination of cash and shares of Common Stock, as applicable, due upon conversion) and such Default (other than a Default resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash or a combination of cash and shares of Common Stock, as applicable, due upon conversion) shall cease to exist, and any Event of Default arising therefrom (other than a Default resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash or a combination of cash and shares of Common Stock, as applicable, due upon conversion) shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right

consequent thereon.

Notwithstanding anything in this Indenture or in the Notes to the contrary, for the first 180 days immediately following any violation of any obligations the Company may be deemed to have pursuant to (1) Section 314(a)(1) of the Trust Indenture Act, or (2) Section 5.06(b), and the continuation thereof, the sole remedy for any such violation shall be the accrual of additional interest on the Notes at a rate per year equal to 0.50% of the outstanding principal amount of the Notes (“**Supplementary Interest**”), payable semi-annually at the same time and in the same manner as regular interest on the Notes pursuant to Section 2.03 and Section 5.01. In no event shall Supplementary Interest accrue at a rate per year in excess of 0.50%, regardless of the number of events or circumstances giving rise to the requirement to pay Supplementary Interest. In addition to the accrual of Supplementary Interest, on and after the 180th day, any violation of any obligations the Company may be deemed to have pursuant to (1) Section 314(a)(1) of the Trust Indenture Act or (2) Section 5.06(b), either the Trustee or the Noteholders of not less than 25% in aggregate principal amount of the Notes then outstanding may declare the principal amount of the Notes and any accrued and unpaid interest, including any Additional Interest, through the date of such declaration, to be immediately due and payable. Whenever in this Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of “Supplementary Interest” provided for in this paragraph to the extent that, in such context, Supplementary Interest is, was or would be payable in respect thereof pursuant to the provisions of this paragraph, and express mention of the payment of Supplementary Interest (if applicable) in any provisions hereof shall not be construed as excluding Supplementary Interest in those provisions hereof where such express mention is not made.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Noteholders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Noteholders, and the Trustee shall continue as though no such proceeding had been instituted.

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

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 8.06 hereof, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

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

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

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

Section 7.03. *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 7 with respect to the Notes shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee under Section 8.06;

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

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

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

Section 7.04. *Proceedings by Noteholders.* No holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity satisfactory to it against any loss, liability or expense to be incurred therein or thereby, and the Trustee for sixty days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction that, in the

opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the Notes outstanding within such sixty-day period pursuant to Section 7.07; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee that no one or more Noteholders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholder, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Noteholders (except as otherwise provided herein). For the protection and enforcement of this Section 7.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

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

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

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

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

Section 7.07. *Direction of Proceedings and Waiver of Defaults by Majority of Noteholders.* The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 may on behalf of the holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of principal, accrued and unpaid interest or accrued and unpaid Additional Interest and Supplementary Interest, if any, on, or the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 7.01, (ii) a failure by the Company to deliver cash or a combination of cash and shares of Common Stock, as applicable, upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 11 cannot be modified or amended without the consent of each holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 7.07, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

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

Section 7.09. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section

7.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 9.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of, accrued and unpaid interest or accrued and unpaid Additional Interest and Supplementary Interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 15.

ARTICLE 8
CONCERNING THE TRUSTEE

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

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

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and, after it has been qualified thereunder (if ever), the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee;

(b) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(c) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(d) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 9.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(e) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 8.01;

(f) the Trustee (in its capacity as Trustee but not Paying Agent) shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent nor shall the Trustee be liable for any records maintained by any co-registrar with respect to the Notes;

(g) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless such Responsible Officer of the Trustee had actual knowledge of such event;

(h) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction; and

(i) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 8 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

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

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

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent,

order, bond, Note or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

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

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

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby;

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

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

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

In no event shall the Trustee be liable for any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than any such loss or damage caused by the Trustee's willful misconduct or gross negligence. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any holder of the Notes.

Section 8.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the

same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

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

Section 8.05. *Monies to Be Held in Trust.* All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

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

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

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

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

Section 8.09. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, 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 hereinafter specified in this Article.

Section 8.10. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof to the Noteholders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within sixty days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten Business Days' notice to the Company and the Noteholders, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 7.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it

may deem proper and prescribe, appoint a successor trustee.

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

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

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

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

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

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 9.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Noteholder, upon the terms and conditions and otherwise as in Section 8.10(a) provided, may 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 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11.

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

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

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

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

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

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

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

ARTICLE 9 CONCERNING THE NOTEHOLDERS

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

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

Section 9.03. *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.03) accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the

contrary. All such payments so made to any holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

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

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

ARTICLE 10 NOTEHOLDERS' MEETINGS

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

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

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

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 10.03. *Call of Meetings by Company or Noteholders.* In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Notes then outstanding (excluding those Notes identified in Section 9.04), shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

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

vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 10.05. *Regulations.* The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.03, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

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

Section 10.06. *Voting.* The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the Noteholders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

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

or to the Noteholders under any of the provisions of this Indenture or of the Notes.

ARTICLE 11
SUPPLEMENTAL INDENTURES

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

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture in a manner that does not individually or in the aggregate adversely affect the rights of any holder of the Notes in any material respect;
- (b) to conform the terms of the Indenture or the Notes to the description thereof in the Offering Memorandum;
- (c) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 12;
- (d) to add guarantees with respect to the Notes;
- (e) to secure the Notes;
- (f) to add to the covenants of the Company such further covenants, restrictions or conditions for the benefit of the Noteholders or surrender any right or power conferred upon the Company;
- (g) to make any other change that does not adversely affect the rights of any holder;
- (h) to appoint a successor Trustee with respect to the Notes; or
- (i) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act.

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

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

Section 11.02. *Supplemental Indentures With Consent of Noteholders.* With the consent (evidenced as provided in Article 9) of the holders of at least a majority in aggregate

principal amount of the Notes at the time outstanding (determined in accordance with Article 9 and including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; *provided, however*, that no such supplemental indenture shall:

(a) reduce the percentage in aggregate principal amount of Notes outstanding necessary to modify or amend this Indenture or to waive any past Default or Event of Default;

(b) reduce the rate or extend the stated time for payment of interest, including Additional Interest or Supplementary Interest, on any Note;

(c) reduce the principal of, or extend the Maturity Date of, any Note;

(d) make any change that impairs or adversely affects the conversion rights of any Notes;

(e) reduce the Fundamental Change Repurchase Price of any Note, or amend or modify in any manner adverse to the holders of the Notes the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

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

(g) change the ranking of the Notes;

(h) impair the right of any holder to receive payment of principal of and interest, including Additional Interest and Supplementary Interest, if any, on such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Note; or

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

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

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

It shall not be necessary for the consent of the Noteholders under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be

sufficient if such consent shall approve the substance thereof. After an amendment under this Indenture becomes effective, the Company shall mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

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

Section 11.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 11 may, at the Company's expense, bear a notation as to any matter provided for in such supplemental indenture. If the Company determines, new Notes so modified as to conform, in the opinion of the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.05, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 11 and is permitted or authorized by the Indenture.

ARTICLE 12 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

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

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

(a) the resulting, surviving or transferee Person (the “**Successor Company**”), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture and, to the extent that it is otherwise still operative, the Registration Rights Agreement; and

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

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

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

Section 12.02. *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee, of the due and punctual payment of the principal of, accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary 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. In the event of any such consolidation, merger, conveyance or transfer (but not in the case of a lease), the Person named as the “Company” in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 12 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

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

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

ARTICLE 13
IMMUNITY OF INCORPORATORS, STOCKHOLDERS,
OFFICERS AND DIRECTORS

Section 13.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest and accrued and unpaid Additional Interest and Supplementary Interest, if any, on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation or entity, either directly or through the Company or any successor corporation or entity, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Notes.

ARTICLE 14
[INTENTIONALLY OMITTED]

ARTICLE 15
CONVERSION OF NOTES

Section 15.01. *Conversion Privilege.* (a) Upon compliance with the provisions of this Article 15, a Noteholder shall have the right, at such holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 15.01(b) below, at any time prior to March 15, 2013 under the circumstances and during the periods set forth in Section 15.01(b) below, and (ii) irrespective of the conditions described in Section 15.01(b) below, on or after March 15, 2013 and prior to the close of business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate (the "**Conversion Rate**") of 46.8467 shares of Common Stock (subject to adjustment as provided in Section 15.04 of this Indenture) per \$1,000 principal amount of Notes (subject to the settlement provisions of Section 15.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding the Maturity Date, the Notes may be surrendered for conversion during the five Business Day period immediately after any five consecutive Trading Day period (the “**Measurement Period**”) in which the Trading Price per \$1,000 principal amount of Notes for each Trading Day of such Measurement Period was less than 98% of the product of the then-applicable Conversion Rate on such Trading Day and the Last Reported Sale Price of the Common Stock on such Trading Day. The Trading Prices shall be determined by the Trustee pursuant to this clause and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Trustee of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Trustee shall have no obligation to determine the Trading Price of the Notes unless requested by the Company in writing, and the Company shall have no obligation to make such request unless a Noteholder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Notes would be less than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock at such time, at which time the Company shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day, which will be the day the Measurement Period begins, and on each successive Trading Day until the Trading Price per Note is greater than or equal to 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on such Trading Day. If the Company does not, when obligated to, instruct the Trustee to determine the Trading Price of the Notes as provided in the preceding sentence, or if the Company gives such instruction to the Trustee, and the Trustee fails to make such determination, then the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the then-applicable Conversion Rate for each Trading Day that the either the Company fails to instruct the Trustee to determine the Trading Price or the Trustee fails to determine the Trading Price after it has been instructed by the Company to determine the Trading Price. If the Trading Price condition set forth above has been met, the Company shall so notify the Noteholders, the Trustee and the Conversion Agent. If, after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on such Trading Day, the Company shall so notify the holders of the Notes, the Trustee and the Conversion Agent. In either case, the Company shall promptly publish a notice indicating that the Trading Price condition set forth above has been met or, at any time after the Trading Price condition set forth above has been met, that the Trading Price per \$1,000 principal amount of Notes is greater than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on the relevant Trading Day, as the case may be, in a newspaper of general circulation in The City of New York or publish such information on its website or through such other public medium as the Company may use at that time.

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

(A) distribute to all or substantially all holders of its Common Stock rights, options or warrants entitling them, for a period of not more than sixty calendar days from the declaration date of such distribution, to subscribe for or purchase its Common Stock,

at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution; or

(B) distribute to all or substantially all holders of its Common Stock the Company's assets, debt securities, or rights to purchase securities of the Company, which distribution has a per share value (as determined by the Board of Directors) exceeding 10% of the average of the Last Reported Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of declaration for such distribution, then, in each case, the Company shall notify all holders of the Notes, the Trustee and the Conversion Agent in writing not less than thirty-five Business Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, the Notes may be surrendered for conversion at any time until the earlier of (1) the close of business on the Business Day immediately prior to such Ex-Dividend Date and (2) the Company's announcement that such distribution will not take place, even if the Notes are not otherwise convertible at such time.

(iii) In the event of a Fundamental Change or a Make-Whole Fundamental Change, a Noteholder may surrender Notes for conversion at any time from and after the thirty-fifth Business Day prior to the anticipated effective date of such Fundamental Change or Make-Whole Fundamental Change, as the case may be, until the Business Day immediately preceding the Fundamental Change Repurchase Date corresponding to such Fundamental Change (or, in the case of a Make-Whole Fundamental Change that does not constitute a Fundamental Change by virtue of the parenthetical in the definition of Make-Whole Fundamental Change, the 35th Trading Day immediately following such effective date). The Company shall give notice in writing of the anticipated effective date of any Fundamental Change or Make-Whole Fundamental Change, as the case may be, as soon as practicable after the Company first determines the anticipated effective date of such Fundamental Change or such Make-Whole Fundamental Change, as the case may be; *provided* that the Company shall not be required to give such notice more than 35 Business Days in advance of such anticipated effective date.

(iv) Prior to the close of business on the Business Day immediately preceding the Maturity Date, the Notes may be surrendered for conversion in any Fiscal Quarter after the Fiscal Quarter ending September 30, 2008, but only during such Fiscal Quarter, if the Last Reported Sale Price of the Common Stock for each of at least twenty Trading Days during the period of thirty consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding Fiscal Quarter is equal to or more than 120% of the then-applicable Conversion Price on the last day of such preceding Fiscal Quarter (such price, the "**Conversion Trigger Price**"). The Conversion Agent, on behalf of the Company, shall determine at the beginning of each Fiscal Quarter commencing after September 30, 2008 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Company and the Trustee.

Section 15.02. *Conversion Procedure.* (a) Subject to this Section 15.02, upon any conversion of any Note, the Company shall pay or deliver, as the case may be, to converting Noteholders, in respect of each \$1,000 principal amount of Notes 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 25 consecutive Trading Days during the Cash Settlement Averaging Period corresponding to such conversion. The Company shall also deliver to each converting Noteholder cash in lieu of fractional shares of Common Stock as set forth pursuant to clause (j) below. The Daily Settlement Amounts and the Daily Conversion Values for each conversion shall be determined by the Company promptly following the last day of the relevant Cash Settlement Averaging Period. Promptly after such determination of the Daily Settlement Amounts and the Daily Conversion Values and the amount of cash deliverable in lieu of fractional shares (if any), the Company shall notify the Trustee and the Conversion Agent in writing of the Daily Settlement Amounts and the Daily Conversion Values and the amount of cash deliverable in lieu of fractional shares of Common Stock. The Trustee and the Conversion Agents shall have no responsibility for any such determination.

(b) Before any holder of a Note shall be entitled to convert the same as set forth above, such holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 15.02(h) and, if required, all transfer or similar taxes, if any, and (ii) in the case of a Note issued in certificated form, (1) complete and manually sign and deliver an irrevocable notice to the Conversion Agent in the form on the reverse of such certificated Note (or a facsimile thereof) (Exhibit B hereto) (a “**Notice of Conversion**”) at the office of the Conversion Agent and shall state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, pay funds equal to interest payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 15.02(h), (4) if required, furnish appropriate endorsements and transfer documents, and (5) if required, pay all transfer or similar taxes, if any as set forth in Section 15.02(e). The Trustee (and if different, the relevant Conversion Agent) shall notify the Company of any conversion pursuant to this Article 15 on the date of such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a holder thereof if such holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 16.02, unless the Company defaults in the payment of the Fundamental Change Repurchase Price.

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

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the holder has complied with the requirements set forth in clause (b) of this Section 15.02. The Company shall pay and deliver, as the case may be, the cash and shares of Common Stock, if any, due upon conversion on the third Trading Day immediately following the last Trading Day of the relevant Cash Settlement

Averaging Period. However, notwithstanding the foregoing, with respect to any conversion for which the relevant Conversion Date occurs on or after the Effective Date of a Fundamental Change in which the Reference Property into which the Common Stock is converted consists entirely of cash, the Company shall deliver the amount due upon conversion on the third Trading Day immediately following the relevant Conversion Date. If any shares of Common Stock are due to converting Noteholders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Noteholder, or such Noteholder's nominee or nominees, certificates or a book-entry transfer through the Depositary for the number of full shares of Common Stock to which such Noteholder shall be entitled in satisfaction of such Conversion Obligation.

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

(e) If a holder submits a Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the holder shall pay any such tax that is due because the holder requests any shares of Common Stock to be issued in a name other than the holder's name. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the holder's name until the Trustee receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

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

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

(h) Upon conversion, a Noteholder shall not receive any separate cash payment for accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, except as set forth below. The Company's settlement of the Conversion Obligations as described above shall be deemed to satisfy its obligation to pay the principal amount of the Note and accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest, Additional Interest and Supplementary Interest, if any, to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the preceding sentence, if Notes are converted after the close of business on an Interest Record Date and prior to the open of business on the related Interest Payment Date,

holders of such Notes as of the close of business on such Interest Record Date will receive the interest, Additional Interest, if any, and Supplementary Interest, if any, payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Interest Record Date to the opening of business on the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest, Additional Interest, if any, and Supplementary Interest, if any, payable on the Notes so converted; *provided, however*, that no such payment shall be required (1) if the Company has specified a Fundamental Change Repurchase Date that is after a Interest Record Date and on or prior to the corresponding Interest Payment Date, (2) to the extent of any Defaulted Interest, if any, existing at the time of conversion with respect to such Note or (3) if the Notes are surrendered for conversion after the close of business on the Interest Record Date immediately preceding the Maturity Date. Except as described above, no payment or adjustment will be made for accrued and unpaid interest and Additional Interest, if any, on converted Notes.

(i) The Person in whose name the certificate for any shares of Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the last Trading Day of the related Cash Settlement Averaging Period; *provided, however*, if such last Trading Day of the Cash Settlement Averaging Period occurs on any date when the stock transfer books of the Company shall be closed, such occurrence shall not be effective to constitute the Person or Persons entitled to receive any such shares of Common Stock due upon conversion as the record holder or holders of such shares of Common Stock on such date, but such occurrence shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open. Upon conversion of Notes, such Person shall no longer be a Noteholder.

(j) For each Note surrendered for conversion the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the applicable Cash Settlement Averaging Period and any fractional shares remaining after such computation shall be paid in cash. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. The Company shall not issue fractional shares of Common Stock upon conversion of Notes. Instead, the Company shall pay cash in lieu of fractional shares based on the Daily VWAP on the last Trading Day of the relevant Cash Settlement Averaging Period.

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

(a) Notwithstanding anything herein to the contrary, the Conversion Rate applicable to each Note that is surrendered for conversion, in accordance with this Article 15, at any time from, and including, the Effective Date of a Make-Whole Fundamental Change to, and including, the close of business on the Business Day immediately preceding the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change or the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change (in the case of a Make-Whole Fundamental Change that does not constitute a Fundamental Change by virtue of the

parenthetical in the definition of Make-Whole Fundamental Change) (such period, the “**Make-Whole Fundamental Change Period**”), shall be increased to an amount equal to the Conversion Rate that would, but for this Section 15.03, otherwise apply to such Note pursuant to this Article 15, *plus* an amount equal to the Make-Whole Conversion Rate Adjustment.

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

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

Effective Date	Stock Price													
	\$15.93	\$20.00	\$25.00	\$30.00	\$35.00	\$40.00	\$45.00	\$50.00	\$55.00	\$60.00	\$70.00	\$80.00	\$90.00	\$100.00
June 16, 2008	15.9279	12.1358	8.4996	6.3551	4.9719	4.0188	3.3282	2.8077	2.4027	2.0794	1.5976	1.2573	1.0056	0.8131
June 15, 2009	15.9279	11.4622	7.7715	5.6718	4.3609	3.4825	2.8604	2.4000	2.0467	1.7678	1.3561	1.0675	0.8545	0.6916
June 15, 2010	15.9279	10.6984	6.8697	4.8053	3.5819	2.7996	2.2671	1.8853	1.5995	1.3778	1.0561	0.8330	0.6687	0.5425
June 15, 2011	15.9279	9.5282	5.5348	3.5646	2.5015	1.8790	1.4861	1.2208	1.0307	0.8876	0.6843	0.5444	0.4405	0.3597
June 15, 2012	15.9279	7.5971	3.4045	1.7147	1.0023	0.6787	0.5150	0.4206	0.3586	0.3132	0.2479	0.2011	0.1650	0.1363
June 15, 2013	15.9279	3.1533	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

provided, however, that:

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

(ii) if the actual Stock Price of such Make-Whole Fundamental Change is greater than \$100.00 per share (subject to adjustment in the same manner as the Stock Price as provided in clause (iii) below), or if the actual Stock Price of such Make-Whole Fundamental Change is less than \$15.93 per share (subject to adjustment in the same manner as the Stock Price as provided in clause (iii) below), then the Make-Whole Conversion Rate Adjustment shall be equal to zero and this Section 15.03 shall not require the Company to increase the Conversion Rate with respect to such Make-Whole Fundamental Change;

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

before such adjustment to such Stock Price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to be in effect, in accordance with this Article 15, immediately after such adjustment to the Conversion Rate;

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

(v) in no event will the total number of shares of Common Stock issuable upon conversion of the Notes exceed 62.7746 per \$1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 15.04.

(b) As soon as practicable after the Company determines the anticipated Effective Date of any proposed Make-Whole Fundamental Change the Company shall mail to each Noteholder, the Trustee and the Conversion Agent written notice of, and shall issue a press release indicating, and publicly announce, through a public medium that is customary for such announcements, and publish on the Company's website, the anticipated effective date of such proposed Make-Whole Fundamental Change; *provided* that the Company shall not be required to give such written notice or issue such press release more than 35 Business Days in advance of such anticipated Effective Date. Each such press release notice, announcement and publication shall also state that in connection with such Make-Whole Fundamental Change, the Company shall increase, in accordance herewith, the Conversion Rate applicable to Notes entitled as provided herein to such increase (along with a description of how such increase shall be calculated and the time periods during which Notes must be surrendered in order to be entitled to such increase). No later than five Business Days after the actual Effective Date of each Make-Whole Fundamental Change, the Company shall mail to each Noteholder, the Trustee and the Conversion Agent written notice of, and shall issue a press release indicating, and publicly announce, through a public medium that is customary for such announcements, and publish on the Company's website, such Effective Date and the amount by which the Conversion Rate has been so increased.

Nothing in this Section 15.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 15.04 in respect of a Make-Whole Fundamental Change.

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

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

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;
- CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be; and
- OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the effective date of such share split or share combination, as the case may be.

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

(b) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than sixty days after the declaration date of such distribution 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 declaration date for such distribution, the Conversion Rate shall be increased based on the following formula:

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

where

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

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

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

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

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

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

where

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

Such adjustment shall become effective immediately prior to the opening of business on the Ex-Dividend Date for such distribution; *provided* that if “FMV” as set forth above is equal to or greater than “SP₀” as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall receive on the date on which the Distributed Property is distributed to holders of Common Stock, for each \$1,000 principal amount of Notes the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines “FMV” for purposes of this Section 15.04(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 15.04(c) where there has been a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, which Capital Stock or similar equity interest will be quoted or listed for trading on a U.S. national securities exchange or other established automated over-the-counter trading market in the United States after its distribution (a “**Spin-Off**”), the Conversion Rate in effect immediately before the close of business on the tenth Trading Day immediately following, and including, the Ex-Dividend Date for the Spin-Off will be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the tenth Trading Day immediately following, and including, the Ex-Dividend Date for the Spin-Off;
- CR' = the Conversion Rate in effect immediately after the close of business on the tenth Trading Day immediately following, and including, the Ex-Dividend Date for the Spin-Off;
- FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for the Spin-Off; and
- MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the first ten consecutive Trading Day period immediately following and including the Ex-Dividend Date for the Spin-Off.

The adjustment to the Conversion Rate under the preceding paragraph shall become effective at the close of business on the tenth Trading Day immediately following, and including, the Ex-Dividend Date for the Spin-Off; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten Trading Days immediately following, and including, the Ex-Dividend Date for any Spin-Off, references in the portion of this Section 15.04(c) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date for such Spin-Off and the Conversion Date for such conversion.

Subject in all respect to Section 15.10, rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.04 (and no adjustment to the Conversion Rate under this Section 15.04 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 15.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of

calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 15.04 was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 15.04(c), Section 15.04(a), and Section 15.04(b), any dividend or distribution to which this Section 15.04(c) is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 15.04(b) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants to which Section 15.04(c) applies (and any Conversion Rate adjustment required by this Section 15.04(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 15.04(a) and Section 15.04(b) with respect to such dividend or distribution shall then be made), except (A) the Ex-Dividend Date of such dividend or distribution shall be substituted as “the Ex-Dividend Date,” “the Ex-Dividend Date relating to such distribution of such rights, options or warrants” and “the Ex-Dividend Date for such distribution” within the meaning of Section 15.04(a) and Section 15.04(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be” within the meaning of Section 15.04(a) or “outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution” within the meaning of Section 15.04(b).

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(c).

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

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

where

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

CR' = the Conversion Rate in effect immediately after the open of business

on the Ex-Dividend Date for such dividend or distribution;

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

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

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

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

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(d).

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

$$CR' = CR_0 \times \frac{FMV + (SP' \times OS')}{OS_0 \times SP'}$$

where

- CR₀ = the Conversion Rate in effect at the close of business on the last Trading Day of the period of ten consecutive Trading Days commencing on, and including, the Trading Day next succeeding the Expiration Date;
- CR' = the Conversion Rate in effect at the open of business on first day following the last Trading Day of the period of ten consecutive Trading Days commencing on, and including, the Trading Day next succeeding the Expiration Date;
- FMV = the fair market value (as determined by the Board of Directors), on the Expiration Date, of the aggregate value of all cash and any other consideration paid or payable for shares validly tendered or exchanged as of the Expiration Date;
- OS' = the number of shares of Common Stock outstanding immediately after the time (the “**Expiration Time**”) tender or exchange offer expires (after giving effect to such tender offer or exchange offer);
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the Expiration Time (prior to giving effect to such tender offer or exchange offer); and
- SP' = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

Such adjustment shall become effective at the close of business on the tenth Trading Day immediately following the Expiration Date; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten Trading Days following, and including, the Trading Day next succeeding the Expiration Date, references in this Section 15.04(e) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Trading Day next succeeding the date that such tender or exchange offer expires and the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(e).

(f) The term “**Record Date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is

fixed by the Board of Directors or by statute, contract or otherwise).

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of its Common Stock or any securities convertible into or exchangeable for shares of its Common Stock or the right, option or warrant to purchase shares of its Common Stock or such convertible or exchangeable securities.

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

(i) In addition to those required by clauses (a), (b), (c), (d) and (e) of this Section 15.04, and to the extent permitted by applicable law and subject to the applicable rules of The NASDAQ Global Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, the Company may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the holder of each Note at its last address appearing on the Note Register provided for in Section 2.06 a notice of the increase at least fifteen days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

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

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

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

(iii) upon the issuance of any shares of the Common Stock pursuant to any

option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

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

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

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

(k) All calculations and other determinations under this Article 15 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share. The Trustee shall not be responsible for confirming the accuracy of any such calculation.

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

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

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

Section 15.06. *Effect of Reclassification, Consolidation, Merger or Sale.* Upon the occurrence of (i) any reclassification or change of the outstanding shares of Common Stock,

(ii) any consolidation, merger or combination involving the Company, or (iii) any sale or conveyance of all or substantially all of the property and assets of the Company to any other Person, in each case as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock (any such event a “**Merger Event**”), then:

(a) the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) permitted under Section 11.01(g) providing for the conversion and settlement of the Notes as set forth in this Indenture. Such supplemental indenture shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 15. If, in the case of any Merger Event, the Reference Property includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent required by the Board of Directors and practicable the provisions providing for the repurchase rights set forth in Article 16 herein.

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

(b) Notwithstanding the provisions of Section 15.02(a), and subject to the provisions of Section 15.01 and Section 15.03, at and after the effective time of such Merger Event, (i) the right to convert each \$1,000 principal amount of Notes into cash or a combination of cash and shares of Common Stock, if any, will be changed to a right to convert each \$1,000 principal amount of such Note into cash, the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the applicable Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the “**Reference Property**”) and (ii) the related Conversion Obligation shall be settled as set forth under clause (c) below, it being understood and agreed that for purposes of Section 15.01(b), references therein to “the Last Reported Sale Price of the Common Stock” shall be deemed at and after the effective time of such Merger Event to be references to “the Last Reported Sale Price of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled

to receive based on the Weighted Average Consideration” and references therein to “the Daily VWAP of the Common Stock” shall be deemed at and after the effective time of such Merger Event to be references to “the Daily VWAP of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration.” The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 15.06. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash or a combination of cash and shares of Common Stock, if any, as set forth in Section 15.01 and Section 15.02 prior to the effective date of such Merger Event.

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

(i) (A) the portion of each Daily Settlement Amount payable in cash shall continue to be payable in cash; (B) the portion, if any, of each Daily Settlement Amount payable in shares of Common Stock shall be payable in units of Reference Property; (C) the Daily Conversion Value shall be calculated based on the value of a unit of Reference Property corresponding to the amount of Reference Property that a holder of one share of Common Stock would have received in such Merger Event based on the Weighted Average Consideration; and (D) the Daily VWAP and the Last Reported Sale Price shall be calculated with respect to a unit of Reference Property corresponding to the amount of Reference Property that a holder of one share of Common Stock would have received in such Merger Event based on the Weighted Average Consideration.

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

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

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

(v) The Company shall notify the holders in writing of the Weighted Average

Consideration as soon as practicable after the Weighted Average Consideration is determined.

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

Section 15.07. *Certain Covenants.* (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

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

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 15.08. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Noteholder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 15.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 15.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 15.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in

Section 15.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 15.01(b).

Section 15.09. *Notice to Holders Prior to Certain Actions.* In case: (a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 15.04; or

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

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

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

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

Section 15.10. *Stockholder Rights Plans.* To the extent that the Company has a stockholder rights plan or other “poison pill” in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time to time. If, however, prior to the time of conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the holders of the Notes would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of the Notes, the Conversion Rate will be adjusted at the

time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or assets as provided in Section 15.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

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

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

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

Section 15.12. *Limit on Issuance of Shares of Common Stock upon Conversion.* Notwithstanding anything contained elsewhere in this Indenture, if and to the extent required by the shareholder approval rules or listing standards of any national or regional securities exchange that are applicable to the Company at the time any Notes are converted hereunder, in no event will the aggregate number of shares of Common Stock issuable upon conversion of the Notes exceed 19.99% of the Common Stock outstanding immediately before the issuance of the Notes and if an event (including an increase in the Daily VWAP of the Common Stock) occurs that would otherwise result in the delivery of a number of shares of Common Stock in excess of such threshold, the Company will either obtain stockholder approval of any such issuance of Common Stock or deliver cash in lieu of any shares of Common Stock otherwise deliverable upon conversions in excess of such limitations (based on the Daily VWAP of the Company’s Common Stock for the Trading Day of the relevant Cash Settlement Averaging Period in respect of which shares of Common Stock were to be delivered).

ARTICLE 16
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 16.01. *Repurchase at Option of Holders upon a Fundamental Change.* (a) If there shall occur a Fundamental Change at any time prior to the Maturity Date, then each Noteholder shall have the right, at such holder's option, to require the Company to repurchase for cash all of such holder's Notes, or any portion thereof that is an integral multiple of \$1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than twenty calendar days and not more than thirty five calendar days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, including unpaid Additional Interest and Supplementary Interest, if any, thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date is after an Interest Record Date and on or prior to the related Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to holders of the Notes as of the immediately preceding Interest Record Date and the Fundamental Change Repurchase Price payable to the holder surrendering the Note for repurchase pursuant to this Article 16 shall be equal to the principal amount of Notes subject to repurchase. Repurchases of Notes under this Section 16.01 shall be made, at the option of the holder thereof, upon:

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

(ii) delivery or book-entry transfer of the Notes to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Paying Agent, such delivery being a condition to receipt by the holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 16.01 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

(A) if certificated, the certificate numbers of Notes to be delivered for repurchase;

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

(C) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

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

Any repurchase by the Company contemplated pursuant to the provisions of this Section 16.01 shall be consummated by the payment of the Fundamental Change Repurchase Price on the later of the Fundamental Change Repurchase Date and the time of the book-entry

transfer or delivery of the Note as described in Section 16.03(a)

Notwithstanding anything herein to the contrary, any holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 16.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 16.02 below.

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

(b) On or before the twentieth calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall mail or cause to be mailed to all holders of record of the Notes a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the holders arising as a result thereof. Such mailing shall be by first class mail. The Company shall also deliver a copy of the Fundamental Change Company Notice to the Trustee, the Paying Agent and the Conversion Agent within five Business Days after the effective date of the Fundamental Change. Simultaneously with the providing of such notice, the Company will also publish a notice containing the information set forth in the Fundamental Change Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the date the Fundamental Change occurred, and whether the Fundamental Change is a Make-Whole Fundamental Change, in which case the Effective Date of the Make-Whole Fundamental Change shall be given;

(iii) the last date on which a holder may exercise the repurchase right pursuant to this Article 16;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

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

(vii) if applicable, the applicable Conversion Rate, any adjustments to the applicable Conversion Rate made or to be made on account of such Fundamental Change;

(viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a holder may be converted only if the holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of the Indenture;

(ix) that the holder must exercise the repurchase right on or prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date (the “**Fundamental Change Expiration Time**”);

(x) that the holder shall have the right to withdraw any Notes surrendered prior to the Fundamental Change Expiration Time; and

(xi) the procedures that holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Noteholders’ repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 16.01.

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

(d) In connection with any purchase offer pursuant to a Fundamental Change Purchase Notice, the Company will, to the extent required:

(i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, if required under the Exchange Act,

(ii) file a Schedule TO or any successor or similar schedule under the Exchange Act, and

(iii) otherwise comply with all federal and state securities laws in connection with any offer by the Company to purchase the Notes.

Notwithstanding anything to the contrary provided in this Indenture, compliance by the Company with Rule 13e-4, Rule 14e-1 and any other tender offer rule under the Exchange Act in accordance with clause (i) above, to the extent inconsistent with any other provision of this Indenture, will not, standing alone, constitute an Event of Default solely as a result of compliance by the Company with such rules.

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

(i) the certificate number, if any, of the Note in respect of which such notice of withdrawal is being submitted,

(ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, which must be \$1,000 or an integral multiple thereof, and

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

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

Section 16.03. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of cash sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) will be made on the later of (i) the Fundamental Change Repurchase Date with respect to such Note (*provided* the holder has satisfied the conditions in Section 16.01) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the holder thereof in the manner required by Section 16.01 by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear in the Note Register, *provided, however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

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

(c) Upon surrender of a Note that is to be repurchased in part pursuant to 16.02, the Company shall execute and the Trustee shall authenticate and deliver to the holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Noteholders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Insulet Corporation, 9 Oak Park Drive, Bedford, Massachusetts 01730, Attention: R. Anthony Diehl, Esq., with a copy to Raymond C. Zemlin, Esq., Goodwin Procter LLP, Exchange Place, Boston, Massachusetts 02109 (Fax: (617) 523-12131). Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office.

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

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

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

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

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event to a holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to customary procedures of such Depositary.

Section 17.04. *Governing Law.* THIS INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

Section 17.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent to such action have been satisfied and such action is permitted by the terms of this Indenture.

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

Notwithstanding anything to the contrary in this Section 17.05, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.06. *Legal Holidays.* In any case where any Interest Payment Date, Fundamental Change Repurchase Date, Conversion Date or Maturity Date is not be a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue for the period from and after such date.

Section 17.07. *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08. *Trust Indenture Act.* This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act upon such qualification; *provided* that this Section 17.08 shall not require that this Indenture or the Trustee be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party hereto that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof that is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 17.09. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors

hereunder or the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 11.04 and Section 16.03 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 8.09.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

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

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

The provisions of Section 8.02, Section 8.03, Section 8.04, Section 9.03 and this Section 17.11 shall be applicable to any authenticating agent.

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

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

By: _____
Authorized Officer

Section 17.12. *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.13. *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.14. *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 17.15. *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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

INSULET CORPORATION

By: /s/ R. Anthony Diehl
Name: R. Anthony Diehl
Title: General Counsel and Secretary

WELLS FARGO BANK, N.A., as Trustee

By: /s/ Lynn M. Steiner
Name: Lynn M. Steiner
Title: Vice President

[FORM OF FACE OF NOTE]

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

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO INSULET CORPORATION (THE “COMPANY”) OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE

SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

INSULET CORPORATION
5.375% Convertible Senior Note due 2013

No. [_____]

\$[_____]

CUSIP No. [_____]

Insulet Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO., or its registered assigns,]¹ the principal sum of [_____] Dollars, [as revised by the Schedule of Increases and Decreases in Global Note attached hereto,]² on June 15, 2013, and interest thereon as set forth below, Additional Interest in the manner, at the rates and to the Persons set forth in the Registration Rights Agreement and Supplementary Interest in the manner, at the rates and to the Persons set forth in Section 7.01 of the Indenture.

The Company promises to pay interest on the principal amount of this Note at the rate of 5.375% per annum (subject to increase pursuant to Section 7.01 of the Indenture). The Company will pay interest semi-annually on June 15 and December 15 of each year commencing on December 15, 2008, to holders of record at the close of business on the preceding June 1 and December 1 (whether or not such day is a Business Day), respectively. Interest on the Note will accrue from the most recent date to which interest has been paid, or, if no interest has been paid on the Note, from [____], 20[____].

Payment of the principal of and accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on this Note shall be made at the office or agency of the Company maintained for that purpose, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts; *provided* that, interest, including Additional Interest and Supplementary Interest, if any, may be paid (1) with respect to any Noteholder holding Notes in certificated form and having an aggregate principal amount of \$2,000,000 or less, by check mailed to the holders of such Notes and (2) with respect to any Noteholder holding Notes in certificated form and having an aggregate principal amount of more than \$2,000,000, either by check mailed to such holder or, upon application by a holder to the Note Registrar not later than on the relevant Interest Record Date, by wire transfer in immediately available funds to that holder’s account within the United States, which application shall remain in effect until the holder notifies, in writing, the Note Registrar to the contrary; and *provided further*, that any payment of interest, including Additional Interest and Supplementary Interest, if any, to the Depository or its nominee shall be paid by wire transfer in immediately available funds in accordance with the wire transfer instruction supplied by the Depository or its nominee from time to time to the Trustee and Paying Agent (if different from Trustee).

¹ Use bracketed language for a Global Note.

² Use bracketed language for a Global Note.

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 or a combination of 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 deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State (without regard to the conflicts of laws provisions thereof).

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

[Remainder of page intentionally left blank]

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

INSULET CORPORATION

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION
WELLS FARGO BANK, N.A.
as Trustee, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Officer

[FORM OF REVERSE OF NOTE]

INSULET CORPORATION
5.375% Convertible Senior Note due 2013

This Note is one of a duly authorized issue of Notes of the Company, designated as its 5.375% Convertible Senior Notes due 2013 (herein called the “Notes”), limited to the aggregate principal amount of \$75,000,000 (or \$85,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement) all issued or to be issued under and pursuant to an Indenture dated as of June 16, 2008 (herein called the “Indenture”), between the Company and Wells Fargo Bank, N.A. (herein called 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, including Additional Interest and Supplementary Interest, if any, on all Notes may be declared, by either the Trustee or Noteholders of not less than 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 Repurchase 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 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 the principal of and accrued and unpaid interest, Additional Interest, if any, and Supplementary Interest, if any, on 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 tax, assessments or other governmental charges that may be imposed in connection therewith as a result of the name of the Noteholder of the new Notes issued upon such exchange of Notes being different from the name of the Noteholder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change and subject to certain exceptions, the holder has the right, at such holder's option, to require the Company to repurchase for cash all of such holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase 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, or a combination of cash and shares of Common Stock, if any, at a 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

_____ Custodian
(Cust)

TEN ENT — as tenants by the entireties

(Minor)

JT TEN — as joint tenants with right of survivorship and not as tenants in common Uniform Gifts to Minors Act _____ (State)

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

[FORM OF NOTICE OF CONVERSION]

To: INSULET CORPORATION

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

Dated: _____

Signature(s)

Signature Guarantee

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

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

(Name)

(Street Address)

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

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

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

Social Security or Other Taxpayer Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: INSULET CORPORATION

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

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

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number

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

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

[FORM OF ASSIGNMENT AND TRANSFER]

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

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

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

Dated: _____

Signature(s)

Signature Guarantee

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

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

\$75,000,000

Insulet Corporation

5.375% Convertible Senior Notes Due 2013

Registration Rights Agreement

June 16, 2008

J.P. Morgan Securities Inc.
277 Park Avenue
New York, New York 10172

Merrill Lynch & Co.,
Merrill Lynch, Pierce, Fenner & Smith Incorporated
4 World Financial Center
New York, New York 10080

Ladies and Gentlemen:

Insulet Corporation, a Delaware corporation (the “**Company**”), proposes to issue and sell to J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “**Initial Purchasers**”), pursuant to the purchase agreement dated June 10, 2008, between the Company and the Initial Purchasers (the “**Purchase Agreement**”), \$75,000,000 aggregate principal amount of its 5.375% Convertible Senior Notes due 2013 (the “**Firm Notes**”), and at the election of the Initial Purchasers, up to an additional \$10,000,000 aggregate principal amount of the Company’s 5.375% Convertible Senior Notes due 2013 solely to cover over-allotments (the “**Additional Notes**” and, together with the Firm Notes, the “**Notes**”), in each case, upon the terms and subject to the conditions set forth in the Purchase Agreement.

As an inducement to the Initial Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Initial Purchasers thereunder, the Company agrees with the Initial Purchasers, for the benefit of the Holders (as defined below), as follows:

1. *Certain Definitions.*

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase Agreement. For purposes of this Registration Rights Agreement, the following terms shall have the following meanings:

- (a) “**Additional Notes**” has the meaning specified in the first paragraph of this Agreement.
-

- (b) “**Additional Interest**” has the meaning assigned thereto in Section 2(d).
- (c) “**Additional Interest Payment Date**” has the meaning assigned thereto in Section 2(d)(v).
- (d) “**Affiliate**” has the meaning set forth in Rule 405 under the Securities Act, except as otherwise expressly provided herein.
- (e) “**Agreement**” means this Registration Rights Agreement, as the same may be amended from time to time pursuant to the terms hereof.
- (f) “**Automatic Shelf Registration Statement**” has the meaning set forth in Rule 405 under the Securities Act.
- (g) “**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.
- (h) “**Commission**” means the Securities and Exchange Commission, or any other federal agency at the time administering the Exchange Act or the Securities Act, whichever is the relevant statute for the particular purpose.
- (i) “**Company**” has the meaning assigned thereto in the first paragraph of this Agreement.
- (j) “**Deferral Notice**” has the meaning assigned thereto in Section 3(b).
- (k) “**Deferral Period**” has the meaning assigned thereto in Section 3(b).
- (l) “**Effective Period**” has the meaning assigned thereto in Section 2(a).
- (m) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- (n) “**FINRA**” means the Financial Industry Regulatory Authority, Inc.
- (o) “**Holder**” means each holder, from time to time, of Registrable Securities (including the Initial Purchasers).
- (p) “**Indemnified Holder**” has the meaning assigned thereto in Section 6(a).
- (q) “**Indenture**” means the Indenture dated as of June 16, 2008 between the Company and the Trustee, pursuant to which the Notes are being issued.
- (r) “**Initial Purchasers**” has the meaning assigned thereto in the first paragraph of this Agreement.

(s) “**Last Reported Sale Price**” has the meaning assigned to it in the Indenture.

(t) “**Material Event**” has the meaning assigned thereto in Section 3(a)(iv).

(u) “**Majority Holders**” means, on any date, the holders of the majority in aggregate amount of the Registrable Securities; provided that such aggregate amount, with respect to Notes that are Registrable Securities will be based on the aggregate principal amount of Notes that are Registrable Securities, and with respect to Shares that are Registrable Securities, will be based on the average of the Last Reported Sale Prices of the Company’s Common Stock for each of five consecutive trading days ending on a date chosen by the Company in a reasonable manner to effect the intent of this Agreement multiplied by the number of such Shares that are Registrable Securities; provided further that whenever the consent or approval of the Majority Holders is required hereunder, any Registrable Securities owned directly or indirectly by the Company or any Affiliate shall not be counted in determining whether such consent or approval was given by the Majority Holders; provided further that if the Company shall issue any additional Securities under the Indenture prior to the effectiveness of any Shelf Registration Statement, such additional Securities, to the extent they are Registrable Securities, and the Securities to be issued on June 16, 2008, to the extent they are Registrable Securities, shall be treated together as one class for purposes of determining whether the consent or approval of the Majority Holders has been obtained.

(v) “**Notice and Questionnaire**” means a written notice delivered to the Company containing substantially the information called for by the Form of Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum.

(w) “**Notice Holder**” means, on any date, any Holder that has delivered a properly completed Notice and Questionnaire to the Company on or prior to such date.

(x) “**Notes**” has the meaning assigned thereto in the first paragraph of this Agreement.

(y) “**Offering Memorandum**” means the Final Offering Memorandum dated June 10, 2008 relating to the offer and sale of the Notes.

(z) “**Person**” means a corporation, limited liability company, association, partnership, organization, business, individual, government or political subdivision thereof or governmental agency.

(aa) “**Prospectus**” means the prospectus included in any Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A, 430B or 430C under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective

amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

(bb) “**Purchase Agreement**” has the meaning assigned thereto in the first paragraph of this Agreement.

(cc) “**Registrable Securities**” means the Securities; *provided, however*, that such Securities shall not be Registrable Securities if as of the applicable date of determination (i) such Securities have ceased to be outstanding; (ii) in the circumstances contemplated by Section 2(a), a registration statement registering such Securities under the Securities Act has been declared or becomes effective and such Securities have been sold or otherwise transferred or disposed of by the Holder thereof pursuant to such effective registration statement; or (iii) such Securities are eligible to be sold to the public by the Holder thereof without restriction pursuant to Rule 144.

(dd) “**Registration Default**” has the meaning assigned thereto in Section 2(d).

(ee) “**Registration Expenses**” has the meaning assigned thereto in Section 5.

(ff) “**Rule 144**,” “**Rule 144A**,” “**Rule 405**,” “**Rule 415**” and “**Rule 433**” mean, in each case, such rule as promulgated under the Securities Act.

(gg) “**Securities**” means the Notes and the Shares.

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

(ii) “**Shares**” means the shares of common stock of the Company, par value \$0.001 per share (the “**Common Stock**”), into which the Notes are convertible or that have been issued upon any conversion of Notes into common stock of the Company.

(jj) “**Shelf Inspectors**” has the meaning assigned thereto in Section 3(a)(vii).

(kk) “**Shelf Registration Statement**” means the shelf registration statement referred to in Section 2(a), as amended or supplemented by any amendment or supplement, including post-effective amendments and any additional information contained in a form of prospectus or prospectus supplement that is deemed retroactively to be a part of the Shelf Registration Statement pursuant to Rules 430A, 430B or 430C, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Shelf Registration Statement, which may be an Automatic Shelf Registration Statement.

(ll) “**Special Counsel**” shall have the meaning assigned thereto in Section 5.

(mm) “**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, or any successor thereto, and the rules, regulations and forms promulgated thereunder, all as the same shall be amended from time to time.

(nn) “**Trustee**” shall have the meaning assigned such term in the Indenture.

Unless the context otherwise requires, any reference herein to a “Section” or “clause” refers to a Section or clause, as the case may be, of this Agreement, and the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision. Unless the context otherwise requires, any reference to a statute, rule or regulation refers to the same (including any successor statute, rule or regulation thereto) as it may be amended from time to time.

2. *Registration Under the Securities Act.*

(a) The Company agrees that if:

(i) on the six-month anniversary of the last date of original issuance of the Notes any Registrable Securities are held by any Person other than the Company, an Affiliate of the Company or an Initial Purchaser;

(ii) at any time after the six-month anniversary of the last date of original issuance of the Notes the conditions set forth in paragraph (c)(1) of Rule 144 are not satisfied with respect to the Securities; or

(iii) an Initial Purchaser or an Affiliate that holds Registrable Securities requests;

the Company shall file an Automatic Shelf Registration Statement, if the Company is eligible to do so and has not already done so (provided such previously filed Automatic Shelf Registration Statement covers all Holders of Registrable Securities determined as of the date such subsequent obligation arose), and, if the Company is not eligible for an Automatic Shelf Registration Statement, then in lieu of the foregoing the Company shall file a Shelf Registration Statement for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities pursuant to Rule 415 or any similar rule that may be adopted by the Commission, and use its commercially reasonable efforts to cause the Shelf Registration Statement to become or be declared effective under the Securities Act, (x) on the day that is six months after the last date of original issuance of the Notes, in the case of clause (i) above, (y) as soon as practicable in the case of clause (ii) above and (z) by the 30th day after the date of receipt of notice requesting registration from an Initial Purchaser or an Affiliate that has delivered a properly completed Notice and Questionnaire to the Company on or prior to such date, but not before the six-month anniversary of the last date of original issuance of the Notes, in the case of clause (iii). It being understood that if there are no Registrable Securities entitled to be included in the Shelf Registration Statement at such time that the Company shall have no obligation to file such Shelf Registration Statement at such time.

The Company agrees to use its commercially reasonable efforts to keep such Shelf Registration Statement continuously effective, subject to Section 3(b), until the earliest of (x) one year from the last date of original issuance of the Notes; (y) the date by

which all Registrable Securities have been sold pursuant to such Shelf Registration Statement; and (z) such date as each of the Registrable Securities covered by the Shelf Registration Statement ceases to be a Registrable Security (the “**Effective Period**”).

(b) The Company further agrees that it shall cause the Shelf Registration Statement, the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, as of the time of sale of any Securities under such Shelf Registration Statement, and as of the date of any such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading, and the Company agrees to furnish to the Holders such number of copies as such Holders may reasonably request of any supplement or amendment prior to its being used or promptly following its filing with the Commission; *provided, however*, that the Company shall have no obligation to deliver to Holders copies of any amendment consisting exclusively of an Exchange Act report or other Exchange Act filing otherwise publicly available on the Commission’s Edgar database. If the Shelf Registration Statement, as amended or supplemented from time to time, ceases to be effective for any reason at any time during the Effective Period (other than because all Registrable Securities registered thereunder shall have been sold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof.

(c) Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to the Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(c), Section 3(c) and Section 4. From and after the date the Shelf Registration Statement is initially effective and until the tenth (10th) Business Day prior to the expiration of the Effective Period, the Company shall, as promptly as is reasonably practicable after the date a Notice and Questionnaire is delivered by a Notice Holder, and in any event within (x) ten (10) Business Days after the date such Notice and Questionnaire is received by the Company, (y) if a Notice and Questionnaire is so received during a Deferral Period, ten (10) Business Days after the expiration of such Deferral Period or (z) if a Notice and Questionnaire is received prior to a Deferral Period, but a Deferral Period occurs prior to ten (10) Business Days after such receipt, ten (10) Business Days after the expiration of such Deferral Period,

(i) if required by applicable law, file with the Commission a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling security holder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-

effective amendment to the Shelf Registration Statement and such amendment is not automatically effective, use its commercially reasonable efforts to cause such post-effective amendment to be declared or to otherwise become effective under the Securities Act as promptly as is reasonably practicable;

(ii) provide such Holder with as many copies of any documents filed pursuant to Section 2(c)(i) as such Holder may reasonably request in connection with the Securities covered by such Holder's Notice and Questionnaire; and

(iii) notify such Holder as promptly as reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(c)(i);

provided that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in this Section 2(c) above upon expiration of the Deferral Period in accordance with Section 3(b). Notwithstanding anything contained herein to the contrary, the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in any Shelf Registration Statement or related Prospectus or prospectus supplement; *provided, however,* that any Holder that becomes a Notice Holder pursuant to the provisions of this Section 2(c) (whether or not such Holder was a Notice Holder at the time the Shelf Registration Statement was declared or otherwise became effective) shall be named as a selling securityholder in the Shelf Registration Statement or related Prospectus in accordance with the requirements of this Section 2(c).

(d) If any of the following events (any such event a "**Registration Default**") shall occur, then additional interest (the "**Additional Interest**") shall become payable by the Company to Holders in respect of the Notes as follows:

(i) if on the day that is six months after the last date of original issuance of the Notes, Registrable Securities are held by any Person other than an Affiliate of the Company, the Company or an Initial Purchaser and the Shelf Registration Statement has not been filed with and declared effective by the Commission by such date (other than pursuant to Section 3(b) hereof), and the Company does not file and have declared effective a Shelf Registration Statement within five (5) Business Days, then, commencing on the day following the Registration Default, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.25% per annum for the first 90-day period following the Registration Default, and thereafter at a rate of 0.50% per annum;

(ii) at any time after the six-month anniversary of the last date of original issuance of the Notes the conditions set forth in paragraph (c)(1) of Rule 144 are not satisfied with respect to the Securities and the Shelf Registration Statement has not been filed with and declared effective by the Commission at or prior to the later of (x) the six month anniversary of the last date of original issuance of the Notes and (y) the time

that such conditions cease to be satisfied (other than pursuant to Section 3(b) hereof), and the Company does not file and have declared effective a Shelf Registration Statement within five (5) Business Days, then, commencing on such later date, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.25% per annum for the first 90-day period following the Registration Default, and thereafter at a rate of 0.50% per annum;

(iii) if the Shelf Registration Statement has become or been declared effective but such Shelf Registration Statement ceases to be effective or the prospectus contained therein ceases to be usable in connection with the resales of Registrable Securities at any time during the Effective Period (other than pursuant to Section 3(b) hereof), and the Company does not cure the Registration Default within five (5) Business Days by a post-effective amendment or a report filed pursuant to the Exchange Act, then, commencing on the day such Shelf Registration Statement ceases to be effective, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.25% per annum for the first 90-day period following such date on which the Shelf Registration Statement ceases to be effective, and thereafter at a rate of 0.50% per annum;

(iv) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(b) hereof, then, commencing on the day the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.25% per annum for the first 90-day period following the Registration Default, and thereafter at a rate of 0.50% per annum;

(v) by the one year anniversary of the last date of issuance of the Notes, the Company has failed to (x) exchange the beneficial interests in the Restricted Global Note (as defined in the Indenture) for beneficial interests in the Unrestricted Global Note (as defined in the Indenture) in accordance with Section 2.06(c) or Section 2.12 of the Indenture or otherwise or (y) exchange the certificates representing the Shares that contain the legends described in Section 2.06(d) of the Indenture for certificates representing the Shares that do not contain such legends in accordance with Section 2.06(c) of the Indenture, Additional Interest shall accrue on the principal amount of the outstanding Notes at a rate of 0.25% per annum for the first 90-day period following the Registration Default, and thereafter at a rate of 0.50% per annum;

provided, however, that the Additional Interest rate on the Notes shall not exceed in the aggregate 0.50% per annum and shall not be payable under more than one clause above for any given period of time, except that if Additional Interest would be payable under more than one clause above, but at a rate of 0.25% per annum under one clause and at a rate of 0.5% per annum under the other, then the Additional Interest rate shall be the higher rate of 0.5% per annum; *provided further*, however, that Additional Interest on the Notes that are Registrable Securities as a result of clauses (i) through (iv) above, shall cease to accrue upon the earlier of (x) the one-year anniversary of the last date of original

issuance of the Notes and (y)(1) the filing and effectiveness of the Shelf Registration Statement (in the case of clauses (i) and (ii) above), (2) the effectiveness of the Shelf Registration Statement which had ceased to remain effective (in the case of clause (iii) above), (3) the termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(b) to be exceeded (in the case of clause (iv) above), (4) the date the Notes cease to be Registrable Securities or (5) the date the Notes cease to be outstanding (as determined in accordance with the terms of the Indenture). Additional Interest on the Notes as a result of clause (v) above shall cease to accrue upon the earlier of (1) the exchange of the beneficial interests in the Restricted Global Note (as defined in the Indenture) for beneficial interests in the Unrestricted Global Note (as defined in the Indenture) in accordance with Section 2.06(c) and Section 2.12 of the Indenture or otherwise and (y) the exchange of the certificates representing the Shares that contain the legends described in Section 2.06(d) of the Indenture for certificates representing the Shares that do not contain such legends in accordance with Section 2.06(c) of the Indenture and (2) the date the Notes cease to be outstanding (as determined in accordance with the terms of the Indenture).

Additional Interest on the Notes, if any, will be payable in arrears in cash on December 15 and June 15 of each year (the “**Additional Interest Payment Date**”) to holders of record of outstanding Notes that are Registrable Securities at the close of business on December 1 or June 1 (whether or not a Business Day), as the case may be, immediately preceding the relevant Additional Interest Payment Date; *provided* that (x) any accrued and unpaid Additional Interest with respect to any Notes or portion thereof submitted for conversion shall be paid in the manner and to the extent provided for the payment of interest in Section 15.02(h) of the Indenture and (y) that any accrued and unpaid Additional Interest with respect to any Notes or portion thereof submitted for repurchase on a Fundamental Change Repurchase Date (as defined in the Indenture), and not withdrawn in compliance with Section 16.02 of the Indenture, shall be paid in the manner provided for the payment of interest in Section 16.01(a) of the Indenture. Following the cure of all Registration Defaults requiring the payment of Additional Interest to the Holders of Notes that are Registrable Securities pursuant to this Section 2(d), the accrual of Additional Interest will cease (without in any way limiting the effect of any subsequent Registration Default requiring the payment of Additional Interest). Additional Interest on the Notes, if any, will accrue beginning on the date provided for in clauses 2(d)(i) through (v) above, as applicable, to, but excluding, the date on which all Registration Defaults have been cured. If a Holder converts some or all of the Notes into Shares, such Holder will not be entitled to receive Additional Interest on such Shares.

The Company shall notify the Trustee as promptly as reasonably practicable upon the happening of each and every Registration Default. The Trustee shall be entitled, on behalf of Holders, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Additional Interest if any becomes due. Notwithstanding the foregoing, the parties agree that the sole monetary damages payable for a violation of the terms of this Agreement with respect to which additional monetary amounts are expressly provided shall be as set forth in this Section 2(d). Nothing shall

preclude a Notice Holder or Holder from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

3. Registration Procedures.

The following provisions shall apply to the Shelf Registration Statement filed pursuant to Section 2:

(a) The Company shall:

(i) notify the Holders of Registrable Securities at least 10 (ten) Business Days before filing any Shelf Registration Statement pursuant to Section 2 of the Company's intent to file such Shelf Registration Statement and seeking a determination from such Holder as to whether such Holder elects to have its Registrable Securities included in such Shelf Registration Statement;

(ii) before filing any Shelf Registration Statement or Prospectus or any amendments or supplements thereto with the Commission, furnish to each Initial Purchaser copies of all such documents proposed to be filed and use its commercially reasonable efforts to reflect in each such document when so filed with the Commission such comments as such Initial Purchasers reasonably shall propose within three (3) Business Days of the delivery of such copies to the Initial Purchasers; *provided, however*, that the Company shall be permitted to file prospectus supplements or post-effective amendments to reflect additional selling securityholders without prior review of the Initial Purchasers;

(iii) use its commercially reasonable efforts to prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement and file with the Commission any other required document as may be necessary to keep such Shelf Registration Statement continuously effective until the expiration of the Effective Period; cause the related Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and comply with the provisions of the Securities Act applicable to it with respect to the disposition of all Securities covered by such Shelf Registration Statement during the Effective Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Shelf Registration Statement as so amended or such Prospectus as so supplemented;

(iv) as promptly as reasonably practicable, notify the Notice Holders (A) when such Shelf Registration Statement or the Prospectus included therein or any amendment or supplement to the Prospectus or post-effective amendment has been filed with the Commission, and, with respect to such Shelf Registration Statement or any post-effective amendment that is not an Automatic Shelf Registration Statement, when the same is declared or has become effective, *provided*, that the availability of such Shelf Registration Statement or any Prospectus or post-effective amendment on the Commission's EDGAR database shall be considered notice for the purpose of this

Section 3(a)(iv), (B) of any request (but not the nature or details regarding such request), following the effectiveness of the Shelf Registration Statement, by the Commission or any other federal or state governmental authority for amendments or supplements to the Shelf Registration Statement or related Prospectus (other than any such request relating to a review of the Company's Exchange Act filings), (C) of the issuance by the Commission of any stop order suspending the effectiveness of such Shelf Registration Statement or the initiation or written threat of any proceedings for that purpose, (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or written threat of any proceeding for such purpose, (E) of the occurrence of any event or the existence of any fact (but not the nature of or details concerning such event or fact) (a "**Material Event**") as a result of which any Shelf Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that no notice by the Company shall be required pursuant to this clause (E) in the event that the Company either promptly files a prospectus supplement, amendment to the Shelf Registration Statement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Shelf Registration Statement, which, in either case, contains the requisite information with respect to such Material Event that results in such Shelf Registration Statement or Prospectus, as the case may be, no longer containing any untrue statement of material fact or omitting to state a material fact required to be stated therein or necessary to make the statements contained therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading, (F) of the determination by the Company that a post-effective amendment to the Shelf Registration Statement (other than for the purpose of naming a Notice Holder as a selling securityholder therein) will be filed with the Commission, which notice may, at the discretion of the Company (or as required pursuant to Section 3(b)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(b) shall apply or (G) at any time when a Prospectus is required (or but for the exemption contained in Rule 172 would be required) to be delivered under the Securities Act, that the Shelf Registration Statement, Prospectus, Prospectus amendment or supplement or post-effective amendment does not conform in all material respects to the applicable requirements of the Securities Act and the rules and regulations of the Commission thereunder;

(v) prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its commercially reasonable efforts to register or qualify, or cooperate with the Notice Holders included therein and their respective counsel in connection with the registration or qualification of Securities for offer and sale under the securities or blue sky laws of such jurisdictions within the United States as any such Notice Holders reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Securities covered by the Shelf Registration Statement; prior to any public offering of the

Registrable Securities pursuant to the Shelf Registration Statement, use its commercially reasonable efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effective Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and use its commercially reasonable efforts to provide for the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the Shelf Registration Statement and the related Prospectus; *provided* that for purposes of this Section 3(a)(v), the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to general service of process or to taxation in any such jurisdiction where it is not then so subject;

(vi) use its commercially reasonable efforts to lift any suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in each case at the earliest practicable date;

(vii) upon reasonable written notice, and only in connection with a disposition of Securities under the Shelf Registration Statement, for a reasonable period prior to the filing of the Shelf Registration Statement, and throughout the Effective Period (but not during a Deferral Period), (i) make reasonably available for inspection by a representative of, and Special Counsel acting for, the Majority Holders and any underwriter (and its counsel) participating in any disposition of Securities pursuant to such Shelf Registration Statement (collectively, the "**Shelf Inspectors**"), all relevant and material financial and other records and pertinent corporate documents of the Company and its subsidiaries and (ii) use commercially reasonable efforts to have its officers, employees, accountants and counsel make available all relevant material information reasonably requested by such representative, Special Counsel or any such underwriter in connection with such Shelf Registration Statement, in each case as is reasonable and customary for similar "due diligence" examinations of issuers of similar size and business of the Company; *provided, however*, that such persons shall first agree with the Company that any information that is reasonably designated by the Company as confidential at the time of delivery shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement and satisfying "due diligence" obligations under the Securities Act and such person shall not engage in trading any securities of the Company until such material non-public information becomes properly publicly available, unless (w) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (x) disclosure of such information is required by law, including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Shelf Registration Statement or the use of any Prospectus or prospectus supplement referred to in this Agreement upon a customary opinion of counsel for such persons delivered and reasonably satisfactory to the Company, (y) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person, or (z) such information becomes available to any such person from a source (other than the Company, its Affiliates, officers, employees, accountants, agents and counsel) and such source is not bound by a confidentiality agreement; *provided, further*,

that with respect to any Special Counsel engaged by the Majority Holders, the foregoing inspection and information gathering shall be coordinated by one counsel designated by the Majority Holders;

(viii) if requested by the Majority Holders, their Special Counsel or the managing underwriters (if any) in connection with an underwritten offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its commercially reasonable efforts to cause (i) its counsel to deliver an opinion relating to the Shelf Registration Statement and the Securities in a customary form, (ii) its officers to execute and deliver all customary documents and certificates reasonably requested by the Majority Holders, their Special Counsel or the managing underwriters (if any) and (iii) its registered independent public accounting firm to provide a comfort letter or letters relating to the Shelf Registration Statement in a reasonable and customary form, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72 or any successor statement thereto, covering matters of the type customarily covered in comfort letters in connection with secondary underwritten offerings; *provided*, that in no event shall the Company be required to furnish such opinions, documents or comfort letters pursuant to the provisions of this Section in more than three underwritten offerings.

(ix) if reasonably requested in writing by any Initial Purchaser or any Notice Holder as a result of the “due diligence” examination referred to in Section 3(a)(vii) above, promptly incorporate in a prospectus supplement or post-effective amendment to the Shelf Registration Statement such information as such Initial Purchaser or such Notice Holder shall, on the basis of a written opinion of Special Counsel, determine to be required to be included therein by applicable law and make any required filings of such prospectus supplement or such post-effective amendment; *provided*, that the Company shall not be required to take any actions under this Section 3(a)(ix) that are not, in the reasonable opinion of counsel for the Company, in compliance with applicable law; *provided, further*, that the Company shall have no liability for Additional Interest under this Agreement if it reasonably objects to making such additional filing and if such additional filing would otherwise cause the Company to pay Additional Interest.

(x) as promptly as practicable furnish to each Notice Holder and the Initial Purchasers, upon their request and without charge, at least one (1) conformed copy of the Shelf Registration Statement and any amendments thereto, including financial statements but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits; *provided, however*, that the Company shall have no obligation to deliver to Notice Holders or the Initial Purchasers a copy of any amendment publicly available on the Company’s website or in the Commission’s EDGAR database;

(xi) during the Effective Period, deliver to each Notice Holder in connection with any sale of Registrable Securities pursuant to the Shelf Registration Statement, upon their request and without charge, as many copies of the Prospectus relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request; and the

Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein and subject to applicable law; and

(xii) during the Effective Period, cooperate with the Notice Holders to facilitate the timely preparation and delivery of certificates representing Securities to be sold pursuant to the Shelf Registration Statement free of any restrictive legends, unless required by applicable law, and in such denominations as permitted by the Indenture and registered in such names as the Holders thereof may request in writing at least two (2) Business Days prior to sales of Securities pursuant to such Shelf Registration Statement; *provided*, that nothing herein shall require the Company to deliver certificated Securities to any beneficial holder of Securities, except as required by the Indenture; *provided further* however, such Notice Holders shall pay any such tax that is due because such Notice Holder requests any shares of Common Stock to be issued in a name other than the holder's name as provided for in Sections 2.06(a) and 15.02(e) of the Indenture.

(b) Upon (A) the issuance by the Commission of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any Material Event as a result of which the Shelf Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any corporate development or business reason that, in the sole discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus, including, without limitation, the acquisition of assets, pending corporate developments, public filings with Commission and similar events, the Company will (i) in the case of clause (B) above, subject to the second sentence of this provision, use its commercially reasonable efforts to prepare and file an amendment to such Shelf Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Shelf Registration Statement and Prospectus so that (1) such Shelf Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (2) such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered or made available to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to the Shelf Registration Statement, subject to the second sentence of this provision, use its commercially reasonable efforts to cause it to be

declared effective or otherwise become effective and (ii) give notice to the Notice Holders that the availability of the Shelf Registration Statement is suspended (a “**Deferral Notice**”). The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as reasonably practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as, in the sole discretion of the Company, such suspension is no longer appropriate; *provided* that the period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the “**Deferral Period**”), without the Company incurring any obligation to pay Additional Interest pursuant to Section 2(d), shall not exceed forty-five (45) days in the aggregate in any ninety (90) day period or an aggregate of ninety (90) days in any 12-month period.

(c) Each Holder agrees that upon receipt of any Deferral Notice from the Company, such Holder shall forthwith discontinue (and cause any placement or sales agent or underwriters acting on their behalf to discontinue) the disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder (i) shall have received copies of such amended or supplemented Prospectus and, if so directed by the Company, such Holder shall deliver to the Company (at the Company’s expense) all copies, other than permanent file copies, then in such Holder’s possession of the Prospectus covering such Registrable Securities at the time of receipt of such notice or (ii) shall have received notice from the Company that the disposition of Registrable Securities pursuant to the Shelf Registration may continue. Each Holder shall keep confidential any communication received by it from the Company regarding the suspension of the use of the Prospectus, except as required by applicable law.

(d) The Company may require each Holder as to which any registration pursuant to Section 2(a) is being effected to furnish to the Company such information regarding such Holder and such Holder’s intended method of distribution of such Registrable Securities as the Company may from time to time reasonably request in writing, but only to the extent such information is required to comply with the Securities Act.

(e) The Company shall provide a CUSIP number for all Registrable Securities covered by the Shelf Registration Statement not later than the effective date of such Shelf Registration Statement and provide the Trustee and the transfer agent for the Shares with printed certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(f) The Company shall use commercially reasonable efforts to provide such information as is required for any filings required to be made with FINRA.

(g) Until the expiration of the Effective Period, the Company will not resell, and will use its commercially reasonable efforts to prevent its “affiliates” (as defined in

Rule 144) from reselling, any of the Securities that have been reacquired by any of them except pursuant to an effective registration statement under the Securities Act.

(h) The Company shall cause the Indenture to be qualified under the Trust Indenture Act in a the manner prescribed by the Trust Indenture Act and shall enter into any necessary supplemental indentures in connection therewith.

(i) The Company shall enter into such customary agreements and take such other reasonable and lawful actions in connection therewith (including those reasonably requested by the Majority Holders) in order to expedite or facilitate disposition of such Registrable Securities.

4. Holders' Obligations.

(a) In addition to the other limitations and requirements described herein, each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to the Shelf Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a completed Notice and Questionnaire as required pursuant to Section 2(c) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees to notify the Company as promptly as practicable of any inaccuracy or change in information previously furnished by such Notice Holder to the Company or of the occurrence of any event in either case as a result of which any Prospectus relating to such registration contains or would contain an untrue statement of a material fact regarding such Notice Holder or such Notice Holder's intended method of disposition of such Registrable Securities or omits to state any material fact regarding such Notice Holder or such Notice Holder's intended method of disposition of such Registrable Securities necessary to make the statements therein, in light of circumstances in which they were made, not misleading, and promptly to furnish to the Company (i) any additional information required to correct and update any previously furnished information or required so that such Prospectus shall not contain, with respect to such Notice Holder or the disposition of such Registrable Securities, an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading and (ii) any other information regarding such Notice Holder and the distribution of such Registrable Securities as may be required to be disclosed in the Shelf Registration Statement under applicable law or pursuant to Commission comments. Each Holder further agrees not to sell any Registrable Securities pursuant to the Shelf Registration Statement without delivering, causing to be delivered, or, if permitted by applicable law, making available, a Prospectus to the purchaser thereof and, following termination of the Effective Period, to notify the Company, within ten (10) Business Days of a request by the Company, of the amount of Registrable Securities sold pursuant to the Shelf Registration Statement and, in the absence of a response, the Company may assume that all of the Holder's Registrable Securities were so sold in compliance with applicable law and this Agreement unless and until the Company is notified otherwise.

(b) Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading. Each Holder further agrees that such Holder will not make any offer relating to the Registrable Securities that would constitute an “issuer free writing prospectus” (as defined in Rule 433) or that would otherwise constitute a “free writing prospectus” (as defined in Rule 405) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Securities Act, unless it has obtained the prior written consent of the Company.

(c) The Holders shall not offer Registrable Securities under the Shelf Registration Statement in an underwritten offering without the Company’s prior written consent. Any underwritten offering agreed to by the Company shall be on terms and conditions agreed to by the Company in connection with such offering. The Company shall not be required to undertake more than three underwritten offerings pursuant to this Agreement.

5. *Registration Expenses.*

The Company agrees to bear and to pay or cause to be paid promptly after request being made therefor all fees and expenses incident to the Company’s performance of or compliance with this Agreement, including, but not limited to, (a) all Commission and any FINRA registration and filing fees and expenses, (b) all fees and expenses in connection with the qualification of the Securities for offering and sale under the state securities and blue sky laws referred to in Section 3(a)(v) hereof, including reasonable fees and disbursements of one counsel for the placement agent or underwriters, if any, in connection with such qualifications, (c) all expenses relating to the preparation, printing, distribution and reproduction of the Shelf Registration Statement, the related Prospectus, each amendment or supplement to each of the foregoing, the certificates representing the Securities and all other documents relating hereto, (d) fees and expenses of the Trustee under the Indenture, any escrow agent or custodian, and of the registrar and transfer agent for the Shares, (e) in connection with an underwritten offering, fees, disbursements and expenses of counsel and the registered independent public accounting firm of the Company (including the expenses of any opinions or “cold comfort” letters required by or incident to such performance and compliance) and (f) reasonable fees, disbursements and expenses of one counsel for all Holders retained in connection with the Shelf Registration Statement, as selected by the Company (unless reasonably objected to by the Majority Holders, in which case the Majority Holders shall select such counsel for the Holders) (“**Special Counsel**”), and fees, expenses and disbursements of any other Persons, including special experts, retained by the Company in connection with such registration (collectively, the “**Registration Expenses**”). To the extent that any reasonable and proper Registration Expenses are incurred, assumed or paid by any Holder or any underwriter or placement agent therefor, the Company shall reimburse such Person for the full amount of the Registration Expenses so incurred,

assumed or paid promptly after receipt of a documented request therefor. Notwithstanding the foregoing, the Holders of the Registrable Securities being registered shall pay all underwriting discounts and commissions and placement agent fees and commissions attributable to the sale of such Registrable Securities and the fees and disbursements of any counsel or other advisors or experts retained by such Holders (severally or jointly), other than the Special Counsel and experts specifically referred to above.

6. *Indemnification.*

(a) The Company shall indemnify and hold harmless each Notice Holder (including, without limitation, each Initial Purchaser), its Affiliates, their respective officers, directors, employees, representatives and agents, and each Person, if any, who controls such Notice Holder within the meaning of the Securities Act or the Exchange Act (collectively referred to for purposes of this Section 6 and Section 7 as an “**Indemnified Holder**”) from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, without limitation, any loss, claim, damage, liability or action relating to purchases and sales of Registrable Securities), to which that Indemnified Holder may become subject, whether commenced or threatened, under the Securities Act, the Exchange Act, any other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any such Shelf Registration Statement or any Prospectus forming part thereof, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, and shall reimburse each Indemnified Holder promptly upon demand for any legal or other expenses reasonably incurred by that Indemnified Holder in connection with investigating or defending or preparing to defend against or appearing as a third party witness in connection with any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with any information provided by such Indemnified Holder in writing to the Company expressly for use therein including its Notice and Questionnaire. This indemnity agreement shall be in addition to any liability that the Company may otherwise have.

(b) Each Notice Holder (including, without limitation, each Initial Purchaser) shall indemnify and hold harmless the Company, its Affiliates, their respective officers, directors, employees, representatives and agents, and each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (collectively referred to for purposes of this Section 6(b) and Section 7 as the Company), from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company may become subject, whether commenced or threatened, under the Securities Act, the Exchange Act, any other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or

action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any such Shelf Registration Statement or any Prospectus forming part thereof, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with any information furnished to the Company in writing by such Notice Holder expressly for use therein including its Notice and Questionnaire, and shall reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending or preparing to defend against or appearing as a third party witness in connection with any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that no such Notice Holder shall be liable for any indemnity claims hereunder in excess of the amount of net proceeds received by such Notice Holder from the sale of Registrable Securities pursuant to such Shelf Registration Statement. This indemnity agreement will be in addition to any liability which any such Notice Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party pursuant to Section 6(a) or 6(b), notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under this Section 6 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and *provided, further*, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under this Section 6. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 6 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than the reasonable costs of investigation; *provided, however*, that an indemnified party shall have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel for the indemnified party will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based upon advice of counsel to the indemnified party) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based upon advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will

not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm of attorneys (in addition to any local counsel) at any one time for all such indemnified party or parties. Each indemnified party, as a condition of the indemnity agreements contained in Sections 6(a) and 6(b), shall use its reasonable efforts to cooperate with the indemnifying party in the defense of any such action or claim. No indemnifying party shall be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses or counsel as contemplated by this section, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of a request in writing setting forth proposed settlement terms from the indemnified party and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with the aforesaid request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement or admission of fault, culpability or a failure to act, by or on behalf of the indemnified party.

(d) The provisions of this Section 6 and Section 7 shall remain in full force and effect, regardless of any investigation made by or on behalf of any Notice Holder, the Company, or any of the indemnified Persons referred to in this Section 6 and Section 7, and shall survive the sale by a Notice Holder of Registrable Securities covered by the Shelf Registration Statement.

7. Contribution.

If the indemnification provided for in Section 6 is unavailable or insufficient to hold harmless an indemnified party under Section 6(a) or 6(b), then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof,

(i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company from the offering and sale of the Notes, on the one hand, and a Holder with respect to the sale by such Holder of Registrable Securities, on the other, or (ii) if the allocation provided by clause (i) above 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 such Holder on the other with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and a Holder on the other with respect to such offering and such sale shall be deemed to be in the same proportion as the total net proceeds from the offering of the Notes (before deducting expenses) received by or on behalf of the Company, on the one hand, and the total net proceeds (before deducting expenses) received by such Holder upon a resale of the Registrable Securities, on the other, bear to the total gross proceeds from the sale of all Registrable Securities pursuant to the Shelf Registration Statement in the offering of the Registrable Securities from which the contribution claim arises. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to the Company or information supplied by the Company on the one hand or to any information contained in the relevant Notice and Questionnaire supplied by such Holder on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Notice Holders' respective obligations to contribute pursuant to this Section 7 are several in proportion to the respective number of Registrable Securities they have sold pursuant to the Shelf Registration Statement and not joint. The parties hereto agree that it would not be just and equitable if contributions pursuant to this Section 7 were to be determined by *pro rata* allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 7 shall be deemed to include, for purposes of this Section 7, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending or preparing to defend any such action or claim. Notwithstanding the provisions of this Section 7, an indemnifying party that is a Holder shall not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such indemnifying party to any purchaser exceeds the amount of any damages which such indemnifying party has otherwise paid or become liable to pay by reason of any 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 Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

8. *Information Requirements.*

The Company covenants that, if at any time before the end of the Effective Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder and take such further customary action as any Holder may reasonably request in writing (including, without limitation, making such representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell

Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 8 shall be deemed to require the Company to register any of its securities under any section of the Exchange Act.

9. *Miscellaneous.*

(a) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Majority Holders. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose Registrable Securities are being sold pursuant to the Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by Holders of a majority in aggregate amount of the Registrable Securities being sold by such Holders pursuant to the Shelf Registration Statement; *provided* that such aggregate amount, with respect to such Registrable Securities that are Notes will be based on the aggregate principal amount of such Notes that are Registrable Securities, and with respect to such Registrable Securities that are Shares, will be based on the average of the Last Reported Sale Prices of the Company's Common Stock for each of five consecutive trading days ending on a date chosen by the Company in a reasonable manner to effect the intent of this Agreement multiplied by the number of such Registrable Securities that are Shares. Notwithstanding the foregoing sentence, (i) this Agreement may be amended by written agreement signed by the Company and the Initial Purchasers, without the consent of the Holders, to cure any ambiguity or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising under this Agreement that shall not adversely affect the interests of the Holders. Each Holder at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 9(a), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

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

- (1) If to the Company, initially at the address set forth in the Indenture;
- (2) If to the Initial Purchasers, initially at c/o J.P. Morgan Securities Inc., 277 Park Avenue, New York, New York 10172 (fax: (212) 622-8358);

Attention: Equity Syndicate Desk and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, 4 World Financial Center, New York, New York 10080 (fax: (212) 449-2785); Attention: Equity Capital Markets; and

(3) If to a Holder, to the address of such Holder set forth in the register (described in Section 2.06 of the Indenture), the Notice and Questionnaire or other records of the Company.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; one (1) Business Day after being delivered to a next-day air courier; five (5) Business Days after being deposited in the mail, if being delivered by first-class mail; and when receipt is acknowledged by the recipient's telecopier machine, if sent by telecopier.

Notwithstanding the foregoing, the notice required pursuant to Section 3(a)(i) shall be given in the same manner that notices are required to be delivered to holders of Notes pursuant to the Indenture.

(c) Successors and Assigns. This Agreement shall be binding upon the Company and each of its successors and assigns. Any Person who purchases any Securities from any Initial Purchaser shall be deemed, for purposes of this Agreement, to be an assignee of such Initial Purchaser. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder, *provided that* nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Indenture. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof.

(d) Counterparts. This Agreement may be executed in any number of counterparts (which may be delivered in original form or by telecopier) and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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

(f) Governing Law. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF)..

(g) Remedies. In the event of a breach by the Company or by any Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law, including recovery

of damages (other than the recovery of damages for a breach by the Company of its obligations under Section 3 hereof for which Additional Interest has been paid pursuant to Section 2 hereof), will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agree that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(h) No Inconsistent Agreements. The Company represents, warrants and agrees that (i) it has not entered into and shall not on or after the date of this Agreement enter into any agreement that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof, (ii) it has not previously entered into any agreement which remains in effect and does not currently contemplate entering into any agreement granting any registration rights with respect to any of its debt securities to any Person other than (a) this Agreement and (b) the Third Amended and Restated Investor Rights Agreement, dated February 3, 2006, among the Company and the other parties thereto, as has been or may be amended or supplement from time to time and (iii) without limiting the generality of the foregoing, without the written consent of the Majority Holders, it shall not grant to any Person the right to request the Company to register any securities of the Company under the Securities Act unless the rights so granted are not in conflict or inconsistent with the provisions of this Agreement.

(i) Piggyback on Registrations. The Company may grant registration rights that would permit any person that is a third party the right to piggyback on any Shelf Registration Statement, provided that if the managing underwriter, if any, of any underwritten offering conducted pursuant to Section 4(c) hereof notifies the Company that the total amount of securities which the Notice Holders and the holders of such piggyback rights intend to include in any Shelf Registration Statement is so large as to materially threaten the success of such offering (including the price at which such securities can be sold), then the amount, number or kind of securities to be offered for the account of holders of such piggyback rights will be reduced to the extent necessary to reduce the total amount of securities to be included in such offering to the amount, number and kind recommended by the managing underwriter prior to any reduction in the amount of Registrable Securities to be included in such Shelf Registration Statement; provided that it would not be a default under the agreements granting such piggyback rights to make such reduction; provided further that to the extent it would be such a default under any such agreement to make such reduction, the Company will use its commercially reasonable efforts to obtain appropriate waivers.

(j) Severability. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the

intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any term, provision, covenant or restriction that may be hereafter declared invalid, illegal, void or unenforceable.

(k) Survival. The respective indemnities, agreements, representations, warranties and each other provision set forth in this Agreement or made pursuant hereto shall remain in full force and effect regardless of any investigation (or statement as to the results thereof) made by or on behalf of any Holder, any director, officer or partner of such Holder, any agent or underwriter or any director, officer or partner thereof, or any controlling Person of any of the foregoing, and shall survive (x) the delivery and payment for the Notes pursuant to the Purchase Agreement and (y) the transfer and registration of Registrable Securities by holders of Registrable Securities.

(l) Securities Held by the Company, etc. Whenever the consent or approval of Holders of a specified percentage of Securities is required hereunder, Securities held by the Company or its Affiliates (other than subsequent Holders if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to us a counterpart hereof, whereupon this instrument will become a binding agreement between the Company and the Initial Purchasers in accordance with its terms.

Very truly yours,

THE COMPANY

INSULET CORPORATION

By: /s/ R. Anthony Diehl _____

Name: R. Anthony Diehl

Title: General Counsel and Secretary

Accepted: June 16, 2008

By: J.P. MORGAN SECURITIES INC.

By: /s/ Jason M. Wood

Name: Jason M. Wood

Title: Managing Director

By: MERRILL LYNCH & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ James Boylan

Name: James Boylan

Title: Managing Director