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): May 28, 2008 (May 21, 2008)

EnerSys

(Exact name of registrant as specified in its charter)

Commission File Number: 1-32253

Delaware	**23-3058564**
(State or other jurisdiction of incorporation)	**(IRS Employer Identification No.)**

2366 Bernville Road, Reading, Pennsylvania 19605
(Address of principal executive offices, including zip code)

(610) 208-1991
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ 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.

(a) Indenture

On May 28, 2008, EnerSys (the "Company") and The Bank of New York, as trustee (the "Trustee"), entered into an Indenture, the form of which was filed as Exhibit 4.5 to the Company's Registration Statement on Form S-3ASR (No. 333-151000) (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") on May 19, 2008.

The Indenture, which is filed as Exhibit 4.1 hereto, is hereby incorporated by reference into the Registration Statement.

(b) Supplemental Indenture

On May 28, 2008, the Company and the Trustee entered into a First Supplemental Indenture (the "Supplemental Indenture") to the Indenture dated May 28, 2008. The Supplemental Indenture relates to the Company's 3.375% Convertible Senior Notes due 2038 (the "Notes"). On May 28, 2008, the Company issued and sold $172,500,000 original aggregate principal amount of the Notes in a public offering pursuant to the Registration Statement. The Supplemental Indenture includes a form of Note.

The Notes will pay interest semiannually at a rate of 3.375% per annum until June 1, 2015, after which their principal amount will accrete at a rate that provides holders with an aggregate annual yield to maturity of 3.375% per year. Commencing with the interest period beginning June 1, 2015, the Notes will also pay contingent interest under certain circumstances based on the trading price of the Notes. The Notes will mature on June 1, 2038, subject to earlier repurchase or conversion. The Notes have an initial conversion rate of 24.6305 shares of common stock per $1,000 original principal amount (equivalent to a conversion price of approximately $40.60 per share), subject to adjustment.

The foregoing description of the Supplemental Indenture is not complete and is qualified in its entirety by reference to the full text of the Supplemental Indenture, which is filed as Exhibit 4.2 hereto and incorporated herein by reference. The Supplemental Indenture is hereby incorporated by reference into the Registration Statement.

(c) Underwriting Agreements

On May 21, 2008, the Company entered into an Underwriting Agreement (the "Common Stock Underwriting Agreement") with Goldman, Sachs & Co. and Banc of America Securities LLC, as representatives of the underwriters named therein, and the selling stockholders named therein, relating to the sale by the selling stockholders of up to 3,740,000 shares of the Company's common stock, par value $0.01 per share, at an initial price to public of $29.00 per share.

The foregoing description of the Common Stock Underwriting Agreement is not complete and is qualified in its entirety by reference to the full text of the Common Stock Underwriting Agreement, which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

On May 21, 2008, the Company entered into an Underwriting Agreement (the "Convertible Notes Underwriting Agreement") with Goldman, Sachs & Co. and Banc of America Securities LLC, as representatives of the underwriters named therein, relating to the sale by the Company of up to $172,500,000 aggregate original principal amount of convertible senior notes due 2038 (the "Notes").

The foregoing description of the Convertible Notes Underwriting Agreement is not complete and is qualified in its entirety by reference to the full text of the Convertible Notes Underwriting Agreement, which is filed as Exhibit 10.2 hereto and incorporated herein by reference.

Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory, commercial and investment banking services for the Company, for which they received or will receive customary fees and expenses. Certain of the underwriters or their affiliates are agents or lenders under the Company's credit facility.

The Underwriting Agreements are hereby incorporated by reference into the Registration Statement.

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

The information included in Item 1.01(b) above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
4.1	Indenture, dated as of May 28, 2008, between EnerSys and The Bank of New York, as trustee
4.2	First Supplemental Indenture, dated as of May 28, 2008, between EnerSys and The Bank of New York, as trustee
10.1	Underwriting Agreement, dated as of May 21, 2008, among EnerSys, Goldman, Sachs & Co. and Banc of America Securities LLC, as representatives of the several underwriters named therein, and the selling stockholders named therein
10.2	Underwriting Agreement, dated as of May 21, 2008, among EnerSys, Goldman, Sachs & Co. and Banc of America Securities LLC, as representatives of the several underwriters named therein

SIGNATURES

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

ENERSYS

By: /s/ Michael T. Philion
Name: Michael T. Philion
Title: Executive Vice President-Finance and Chief Financial Officer

Dated: May 28, 2008

Exhibit Index

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10.2	Underwriting Agreement, dated as of May 21, 2008, among EnerSys, Goldman, Sachs & Co. and Banc of America Securities LLC, as representatives of the several underwriters named therein

Exhibit 4.1

ENERSYS

INDENTURE

Dated as of

May 28, 2008

DEBT SECURITIES

THE BANK OF NEW YORK

Trustee

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* The Table of Contents is not a part of the Indenture.

INDENTURE dated as of May 28, 2008, among EnerSys, a Delaware corporation (the "Company"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of unsecured debentures, notes, bonds or other evidences of indebtedness (the "Securities") in an unlimited aggregate principal amount to be issued from time to time in one or more series as provided in this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of the premises and the purchase of the Securities by the Holders thereof for the equal and proportionate benefit of all of the present and future Holders of the Securities, each party agrees and covenants as follows:

ARTICLE I

DEFINITIONS

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

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(b) all terms used herein without definition which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein; and

(c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(d) References to "Article" or "Section" or other subdivision herein are references to an Article, Section or other subdivision of the Indenture, unless the context otherwise requires.

Section 1.01 Definitions.

(a) Unless otherwise defined in this Indenture or the context otherwise requires, all terms used herein shall have the meanings assigned to them in the Trust Indenture Act.

(b) Unless the context otherwise requires, the terms defined in this Section 1.01(b) shall for all purposes of this Indenture have the meanings hereinafter set forth, the following definitions to be equally applicable to both the singular and the plural forms of any of the terms herein defined:

Affiliate:

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

Authenticating Agent:

The term “Authenticating Agent” shall have the meaning assigned to it in Section 11.09.

Board of Directors:

The term “Board of Directors” shall mean either the board of directors of the Company or the executive or any other committee of that board duly authorized to act in respect hereof.

Board Resolution:

The term “Board Resolution” shall mean a copy of a resolution or resolutions certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors (or by a committee of the Board of Directors to the extent that any such other committee has been authorized by the Board of Directors to establish or approve the matters contemplated) and to be in full force and effect on the date of such certification and delivered to the Trustee.

Business Day:

The term “Business Day,” when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment or other location are authorized or obligated by law or executive order to close.

Capital Stock:

The term “Capital Stock” shall mean:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

Code:

The term "Code" shall mean the Internal Revenue Code of 1986 as in effect on the date hereof.

Company:

The term "Company" shall mean the Person named as the "Company" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

Company Order:

The term "Company Order" shall mean a written order signed in the name of the Company by the Chairman, President, Executive Vice President, Senior Vice President, Treasurer, Assistant Treasurer, Controller, Assistant Controller, Secretary or Assistant Secretary of the Company, and delivered to the Trustee.

Corporate Trust Office:

The term "Corporate Trust Office," or other similar term, shall mean the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at, 101 Barclay Street, Floor 8W, New York, New York 10286, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust officer of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

Currency:

The term "Currency" shall mean U.S. Dollars or Foreign Currency.

Default:

The term "Default" shall have the meaning assigned to it in Section 11.03.

Defaulted Interest:

The term "Defaulted Interest" shall have the same meaning assigned to it in Section 3.08(b).

Depositary:

The term "Depositary" shall mean, with respect to the Securities of any series issuable in whole or in part in the form of one or more Global Securities, the Person designated as Depositary by the Company pursuant to Section 3.01 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "Depositary" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Securities of that series.

Designated Currency:

The term "Designated Currency" shall have the same meaning assigned to it in Section 3.12.

Discharged:

The term "Discharged" shall have the meaning assigned to it in Section 12.03.

Event of Default:

The term "Event of Default" shall have the meaning specified in Section 7.01.

Exchange Act:

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

Exchange Rate:

The term "Exchange Rate" shall have the meaning assigned to it in Section 7.01.

Floating Rate Security:

The term "Floating Rate Security" shall mean a Security that provides for the payment of interest at a variable rate determined periodically by reference to an interest rate index specified pursuant to Section 3.01.

Foreign Currency:

The term "Foreign Currency" shall mean a currency issued by the government of any country other than the United States or a composite currency, the value of which is determined by reference to the values of the currencies of any group of countries.

GAAP:

The term “GAAP,” with respect to any computation required or permitted hereunder, shall mean generally accepted accounting principles in effect in the United States as in effect from time to time, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession.

Global Security:

The term “Global Security” shall mean any Security that evidences all or part of a series of Securities, issued in fully-registered certificated form to the Depositary for such series in accordance with Section 3.03 and bearing the legend prescribed in Section 3.03(g).

Holder; Holder of Securities:

The terms “Holder” and “Holder of Securities” are defined under “Securityholder; Holder of Securities; Holder.”

Indebtedness:

The term “Indebtedness” shall mean any and all obligations of a Person for money borrowed which, in accordance with GAAP, would be reflected on the balance sheet of such Person as a liability on the date as of which Indebtedness is to be determined.

Indenture:

The term “Indenture” or “this Indenture” shall mean this instrument and all indentures supplemental hereto.

Interest:

The term “interest” shall mean, with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, interest payable after Maturity.

Interest Payment Date:

The term “Interest Payment Date” shall mean, with respect to any Security, the Stated Maturity of an installment of interest on such Security.

Mandatory Sinking Fund Payment:

The term “Mandatory Sinking Fund Payment” shall have the meaning assigned to it in Section 5.01.

Maturity:

The term "Maturity," with respect to any Security, shall mean the date on which the principal of such Security shall become due and payable as therein and herein provided, whether by declaration, call for redemption or otherwise.

Members:

The term "Members" shall have the meaning assigned to it in Section 3.03(i).

Officer's Certificate:

The term "Officer's Certificate" shall mean a certificate signed by any of the Chairman of the Board of Directors, the President or a Vice President, Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary of the Company and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 16.01 if and to the extent required by the provisions of such Section.

Opinion of Counsel:

The term "Opinion of Counsel" shall mean an opinion in writing signed by legal counsel, who may be an employee of or of counsel to the Company that meets the requirements provided for in Section 16.01.

Optional Sinking Fund Payment:

The term "Optional Sinking Fund Payment" shall have the meaning assigned to it in Section 5.01.

Original Issue Discount Security:

The term "Original Issue Discount Security" shall mean any Security that is issued with "original issue discount" within the meaning of Section 1273(a) of the Code and the regulations thereunder and any other Security designated by the Company as issued with original issue discount for United States federal income tax purposes.

Outstanding:

The term "Outstanding," when used with respect to Securities means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

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

(b) Securities or portions thereof for which payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities or Securities as to

which the Company's obligations have been Discharged; provided, however, that if such Securities or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(c) Securities that have been paid pursuant to Section 3.07(b) or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to a Responsible Officer of the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Securities of a series Outstanding have performed any action hereunder, Securities owned by the Company or any other obligor upon the Securities of such series or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such action, only Securities of such series that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon such Securities or any Affiliate of the Company or of such other obligor. In determining whether the Holders of the requisite principal amount of Outstanding Securities of a series have performed any action hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purpose shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 7.02 and the principal amount of a Security denominated in a Foreign Currency that shall be deemed to be Outstanding for such purpose shall be the amount calculated pursuant to Section 3.11(b).

Paying Agent:

The term "Paying Agent" shall have the meaning assigned to it in Section 6.02(a).

Person:

The term "Person" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization or a government or an agency or political subdivision thereof.

Place of Payment:

The term "Place of Payment" shall mean, when used with respect to the Securities of any series, the place or places where the principal of and premium, if any, and interest on the Securities of that series are payable as specified pursuant to Section 3.01.

Predecessor Security:

The term "Predecessor Security" shall mean, with respect to any Security, every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security, and, for the purposes of this definition, any Security authenticated and delivered under Section 3.07 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

Record Date:

The term "Record Date" shall mean, with respect to any interest payable on any Security on any Interest Payment Date, the close of business on any date specified in such Security for the payment of interest pursuant to Section 3.01.

Redemption Date:

The term "Redemption Date" shall mean, when used with respect to any Security to be redeemed, in whole or in part, the date fixed for such redemption by or pursuant to this Indenture and the terms of such Security, which, in the case of a Floating Rate Security, unless otherwise specified pursuant to Section 3.01, shall be an Interest Payment Date only.

Redemption Price:

The term "Redemption Price," when used with respect to any Security to be redeemed, in whole or in part, shall mean the price at which it is to be redeemed pursuant to the terms of the Security and this Indenture.

Register:

The term "Register" shall have the meaning assigned to it in Section 3.05(a).

Registrar:

The term "Registrar" shall have the meaning assigned to it in Section 3.05(a).

Responsible Officers:

The term "Responsible Officers" of the Trustee hereunder shall mean any vice president, any assistant vice president, any trust officer, any assistant trust officer or any other officer associated with the corporate trust department of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such 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.

SEC:

The term “SEC” shall mean the U.S. Securities and Exchange Commission, as constituted from time to time.

Securities Act:

The term “Securities Act” shall mean the Securities Act of 1933, as amended.

Security:

The term “Security” or “Securities” shall have the meaning stated in the recitals and shall more particularly mean one or more of the Securities duly authenticated by the Trustee and delivered pursuant to the provisions of this Indenture.

Security Custodian:

The term “Security Custodian” shall mean the custodian with respect to any Global Security appointed by the Depositary, or any successor Person thereto, and shall initially be the Paying Agent.

Securityholder; Holder of Securities; Holder:

The term “Securityholder” or “Holder of Securities” or “Holder,” shall mean the Person in whose name Securities shall be registered in the Register kept for that purpose hereunder.

Senior Indebtedness:

The term “Senior Indebtedness” means the principal of (and premium, if any) and unpaid interest on (x) Indebtedness of the Company, whether outstanding on the date hereof or thereafter created, incurred, assumed or guaranteed, for money borrowed other than (a) any Indebtedness of the Company which when incurred, and without respect to any election under Section 1111(b) of the Federal Bankruptcy Code, was without recourse to the Company, (b) any Indebtedness of the Company to any of its Subsidiaries, (c) Indebtedness to any employee of the Company, (d) any liability for taxes, (e) Trade Payables and (f) any Indebtedness of the Company which is expressly subordinate in right of payment to any other Indebtedness of the Company, and (y) renewals, extensions, modifications and refundings of any such Indebtedness. For purposes of the foregoing and the definition of “Senior Indebtedness,” the phrase “subordinated in right of payment” means debt subordination only and not lien subordination, and accordingly, (i) unsecured indebtedness shall not be deemed to be subordinated in right of payment to secured indebtedness merely by virtue of the fact that it is unsecured, and (ii) junior liens, second liens and other contractual arrangements that provide for priorities among Holders of the same or different issues of indebtedness with respect to any collateral or the proceeds of collateral shall not constitute subordination in right of payment. This definition may be modified or superseded by a supplemental indenture.

Special Record Date:

The term “Special Record Date” shall have the meaning assigned to it in Section 3.08(b)(i).

Stated Maturity:

The term “Stated Maturity” when used with respect to any Security or any installment of interest thereon, shall mean the date specified in such Security as the fixed date on which the principal (or any portion thereof) of or premium, if any, on such Security or such installment of interest is due and payable.

Subsidiary:

The term “Subsidiary,” when used with respect to any Person, shall mean:

(a) any corporation, limited liability company, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

Successor Company:

The term “Successor Company” shall have the meaning assigned to it in Section 3.06(i).

Trade Payables:

The term “Trade Payables” means accounts payable or any other Indebtedness or monetary obligations to trade creditors created or assumed by the Company or any Subsidiary of the Company in the ordinary course of business (including guarantees thereof or instruments evidencing such liabilities).

Trust Indenture Act; TIA:

The term “Trust Indenture Act” or “TIA” shall mean the Trust Indenture Act of 1939, as amended.

Trustee:

The term “Trustee” shall mean the Person named as the “Trustee” in the first paragraph of this Indenture until a successor Trustee shall have become such with respect to one or more

series of Securities pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

U.S. Dollars:

The term "U.S. Dollars" shall mean such currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts.

U.S. Government Obligations:

The term "U.S. Government Obligations" shall mean (i) direct non-callable obligations of, or guaranteed by, the United States or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, in either case, for the payment of which guarantee or obligation the full faith and credit of the United States is pledged.

United States:

The term "United States" shall mean the United States of America (including the States and the District of Columbia), its territories and its possessions and other areas subject to its jurisdiction.

ARTICLE II

FORMS OF SECURITIES

Section 2.01 Terms of the Securities.

(a) The Securities of each series shall be substantially in the form set forth in a Company Order or in one or more indentures supplemental hereto, and shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Company may deem appropriate 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 on which any series of the Securities may be listed or of any automated quotation system on which any such series may be quoted, or to conform to usage, all as determined by the officers executing such Securities as conclusively evidenced by their execution of such Securities. The Company shall furnish any such legends or endorsements to the Trustee.

(b) The terms and provisions of the Securities 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 2.02 Form of Trustee's Certificate of Authentication.

(a) Only such of the Securities as shall bear thereon a certificate substantially in the form of the Trustee's certificate of authentication hereinafter recited, executed by the Trustee by manual signature, shall be valid or become obligatory for any purpose or entitle the Holder thereof to any right or benefit under this Indenture.

(b) Each Security shall be dated the date of its authentication, except that any Global Security shall be dated as of the date specified as contemplated in Section 3.01.

(c) The form of the Trustee's certificate of authentication to be borne by the Securities shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Date of authentication:

THE BANK OF NEW YORK, as Trustee

By: _____
Authorized Signatory

Section 2.03 Form of Trustee's Certificate of Authentication by an Authenticating Agent. If at any time there shall be an Authenticating Agent appointed with respect to any series of Securities, then the Trustee's Certificate of Authentication by such Authenticating Agent to be borne by Securities of each such series shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Date of authentication:

THE BANK OF NEW YORK, as Trustee

By: [NAME OF AUTHENTICATING AGENT]
as Authenticating Agent

By: _____
Authorized Signatory

ARTICLE III

THE DEBT SECURITIES

Section 3.01 Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series. There shall be set forth in a Company Order or in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(a) the title of the Securities of the series (which shall distinguish the Securities of such series from the Securities of all other series, except to the extent that additional Securities of an existing series are being issued);

(b) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 3.04, 3.06, 3.07, 4.06, or 14.05);

(c) the dates on which or periods during which the Securities of the series may be issued, and the dates on, or the range of dates within, which the principal of and premium, if any, on the Securities of such series are or may be payable or the method by which such date or dates shall be determined or extended;

(d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue, or the method by which such date or dates shall be determined, the Interest Payment Dates on which any such interest shall be payable, and the Record Dates for the determination of Holders to whom interest is payable on such Interest Payment Dates or the method by which such date or dates shall be determined, the right, if any, to extend or defer interest payments and the duration of such extension or deferral;

(e) if other than U.S. Dollars, the Currency in which Securities of the series shall be denominated or in which payment of the principal of, premium, if any, or interest on the Securities of the series shall be payable and any other terms concerning such payment and the designation of the mutual exchange rate agent if any;

(f) if the amount of payment of principal of, premium, if any, or interest on the Securities of the series may be determined with reference to an index, formula or other method including, but not limited to, an index based on a Currency or Currencies other than that in which the Securities are stated to be payable, the manner in which such amounts shall be determined and the designation of the mutual calculator agent thereof, if any;

(g) if the principal of, premium, if any, or interest on Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a Currency other than that in which the Securities are denominated or stated to be payable without such election, the period or periods within which, and the terms and conditions upon which, such election may be made and the time and the manner of determining the exchange rate between the Currency in which the Securities are denominated or payable without such election and the Currency in which the Securities are to be paid if such election is made;

(h) the place or places, if any, in addition to or instead of the Corporate Trust Office of the Trustee where the principal of, premium, if any, and interest on Securities of the series shall be payable, and where Securities of any series may be presented for registration of transfer, exchange or conversion, and the place or places where notices and demands to or upon the Company in respect of the Securities of such series may be made;

(i) the price or prices at which, the period or periods within which or the date or dates on which, and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option;

(j) the obligation or right, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any sinking fund, amortization or analogous provisions or at the option of a Holder thereof and the price or prices at which, the period or periods within which or the date or dates on which, the Currency or Currencies in which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(k) if other than denominations of $1,000 or any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(l) if other than the principal amount thereof, the portion of the principal amount of the Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 7.02;

(m) whether the Securities of the series are to be issued as Original Issue Discount Securities and the amount of discount with which such Securities may be issued;

(n) provisions, if any, for the defeasance of Securities of the series in whole or in part and any addition or change in the provisions related to satisfaction and discharge;

(o) whether the Securities of the series are to be issued in whole or in part in the form of one or more Global Securities and, in such case, the Depositary for such Global Security or Securities and the terms and conditions, if any, upon which interests in such Global Security or Securities may be exchanged in whole or in part for the individual Securities represented thereby;

(p) the date as of which any Global Security of the series shall be dated if other than the original issuance of the first Security of the series to be issued;

(q) the form of the Securities of the series;

(r) if the Securities of the series are to be convertible into or exchangeable for any securities or property of any Person (including the Company), the terms and conditions upon which such Securities will be so convertible or exchangeable, and any additions or changes, if any, to permit or facilitate such conversion or exchange;

(s) whether the Securities of such series are subject to subordination and the terms of such subordination;

(t) any restriction or condition on the transferability of the Securities of such series;

(u) any addition or change in the provisions related to compensation and reimbursement of the Trustee which applies to Securities of such series;

(v) any addition or change in the provisions related to supplemental indentures set forth in Sections 14.04 and 14.02 which applies to Securities of such series;

(w) provisions, if any, granting special rights to Holders upon the occurrence of specified events;

(x) any addition to or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 7.02 and any addition or change in the provisions set forth in Article VII which applies to Securities of the series;

(y) any addition to or change in the covenants set forth in Article VI which applies to Securities of the series; and

(z) any other terms of the Securities of such series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 14.01).

All Securities of any one series shall be substantially identical, except as to denomination and except as may otherwise be provided herein or set forth in a Company Order or in one or more indentures supplemental hereto.

Section 3.02 Denominations. In the absence of any specification pursuant to Section 3.01 with respect to Securities of any series, the Securities of such series shall be issuable only as Securities in denominations of any integral multiple of $1,000, and shall be payable only in U.S. Dollars.

Section 3.03 Execution, Authentication, Delivery and Dating.

(a) The Securities shall be executed in the name and on behalf of the Company by the manual or facsimile signature of its Chairman of the Board of Directors, its President, one of its Vice Presidents or Treasurer. If the Person whose signature is on a Security no longer holds that office at the time the Security is authenticated and delivered, the Security shall nevertheless be valid.

(b) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities and the supplemental indenture, or the Company Order setting forth the terms of Securities of the series, if required pursuant to Section 3.01. The Trustee shall thereupon authenticate and deliver such Securities without any further action by the Company. The Company Order shall specify the amount of Securities to be authenticated and the date on which the original issue of Securities is to be authenticated.

(c) In authenticating the first Securities of any series and accepting the additional responsibilities under this Indenture in relation to such Securities the Trustee shall receive, and (subject to Section 11.02) shall be fully protected in relying upon an Officer's Certificate and an Opinion of Counsel, each prepared in accordance with Section 16.01 stating that the conditions precedent, if any, provided for in the Indenture have been complied with.

(d) The Trustee shall have the right to decline to authenticate and deliver the Securities under this Section 3.03 if the issue of the Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

(e) Each Security shall be dated the date of its authentication, except as otherwise provided pursuant to Section 3.01 with respect to the Securities of such series.

(f) Notwithstanding the provisions of Section 3.01 and of this Section 3.03, if all of the Securities of any series are not to be originally issued at the same time, then the documents required to be delivered pursuant to this Section 3.03 must be delivered only once prior to the authentication and delivery of the first Security of such series;

(g) If the Company shall establish pursuant to Section 3.01 that the Securities of a series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall authenticate and deliver one or more Global Securities that (i) shall represent an aggregate amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such Global Securities, (ii) shall be registered, if in registered form, in the name of the Depositary for such Global Security or Securities or the nominee of such Depositary, (iii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instruction and (iv) shall bear a legend substantially to the following effect:

"Unless and until it is exchanged in whole or in part for the individual Securities represented hereby, this Global Security may not be transferred except as a whole 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."

The aggregate principal amount of each Global Security may from time to time be increased or decreased by adjustments made on the records of the Security Custodian, as provided in this Indenture.

(h) Each Depositary designated pursuant to Section 3.01 for a Global Security in registered form must, at the time of its designation and at all times while it serves as such Depositary, be a clearing agency registered under the Exchange Act and any other applicable statute or regulation.

(i) Members of, or participants in, the Depositary ("Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or by the Security Custodian under such Global Security, and the Depositary may be treated by the Company, the Trustee, the Paying Agent and the Registrar and any of their agents as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, the Paying Agent or the Registrar or any of their agents from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Members, the operation of customary practices of the Depositary governing the exercise of the rights of an owner of a beneficial interest in any Global Security. The Holder of a Global Security may grant proxies and otherwise authorize any Person, including Members and Persons that may hold interests through Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

(j) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in one of the forms provided for herein duly executed by the Trustee or by an Authenticating Agent by manual signature of an authorized signatory of the Trustee, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

Section 3.04 Temporary Securities.

(a) Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise reproduced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Any such temporary Security may be in global form, representing all or a portion of the Outstanding Securities of such series. Every such temporary Security shall be executed by the Company and shall be authenticated and delivered by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Security or Securities in lieu of which it is issued.

(b) If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of such temporary Securities at the office or agency of the Company in a Place of Payment for such series, without charge to

the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations and of like tenor. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

(c) Upon any exchange of a portion of a temporary Global Security for a definitive Global Security or for the individual Securities represented thereby pursuant to this Section 3.04 or Section 3.06, the temporary Global Security shall be endorsed by the Trustee to reflect the reduction of the principal amount evidenced thereby, whereupon the principal amount of such temporary Global Security shall be reduced for all purposes by the amount so exchanged and endorsed.

Section 3.05 Registrar and Paying Agent.

(a) The Company will keep, at an office or agency to be maintained by it in a Place of Payment where Securities may be presented for registration or presented and surrendered for registration of transfer or of exchange, and where Securities of any series that are convertible or exchangeable may be surrendered for conversion or exchange, as applicable (the "Registrar"), a security register for the registration and the registration of transfer or of exchange of the Securities (the registers maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "Register"), as in this Indenture provided, which Register shall at all reasonable times be open for inspection by the Trustee. Such Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. The Company may have only one Registrar for any series.

(b) The Company shall enter into an appropriate agency agreement with any Registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of each such agent. If the Company fails to maintain a Registrar for any series, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 11.01. The Company or any Affiliate thereof may act as Registrar or transfer agent.

(c) The Company hereby appoints the Trustee at its Corporate Trust Office as Registrar in connection with the Securities and this Indenture, until such time as another Person is appointed as such.

Section 3.06 Transfer and Exchange.

(a) Transfer.

(i) Upon surrender for registration of transfer of any Security of any series at the Registrar the Company shall execute, and the Trustee or any Authenticating Agent shall authenticate and deliver, in the name of the designated transferee, one or more new Securities of the same series for like aggregate principal amount of any authorized denomination or denominations. The transfer

of any Security shall not be valid as against the Company or the Trustee unless registered at the Registrar at the request of the Holder, or at the request of his, her or its attorney duly authorized in writing.

(ii) Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for the individual Securities represented thereby, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

(b) Exchange.

(i) At the option of the Holder, Securities of any series (other than a Global Security, except as set forth below) may be exchanged for other Securities of the same series for like aggregate principal amount of any authorized denomination or denominations, upon surrender of the Securities to be exchanged at the Registrar.

(ii) Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(c) Exchange of Global Securities for Individual Securities. Except as provided below, owners of beneficial interests in Global Securities will not be entitled to receive individual Securities.

(i) Individual Securities shall be issued to all owners of beneficial interests in a Global Security in exchange for such interests if: (A) at any time the Depositary for the Securities of a series notifies the Company that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for the Securities of such series shall no longer be eligible under Section 3.03(h) and, in each case, a successor Depositary is not appointed by the Company within 90 days of such notice, or (B) the Company executes and delivers to the Trustee and the Registrar an Officer’s Certificate stating that such Global Security shall be so exchangeable.

In connection with the exchange of an entire Global Security for individual Securities pursuant to this subsection (c), such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Securities of such series, will authenticate and deliver to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of individual Securities of authorized denominations.

(ii) The owner of a beneficial interest in a Global Security will be entitled to receive an individual Security in exchange for such interest if an Event of Default has occurred and is continuing. Upon receipt by the Security Custodian and Registrar of instructions from the Holder of a Global Security directing the Security Custodian and Registrar to (x) issue one or more individual Securities in the amounts specified to the owner of a beneficial interest in such Global Security and (y) debit or cause to be debited an equivalent amount of beneficial interest in such Global Security, subject to the rules and regulations of the Depositary:

(A) the Security Custodian and Registrar shall notify the Company and the Trustee of such instructions, identifying the owner and amount of such beneficial interest in such Global Security;

(B) the Company shall promptly execute and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Securities of such series, shall authenticate and deliver to such beneficial owner individual Securities in an equivalent amount to such beneficial interest in such Global Security; and

(C) the Security Custodian and Registrar shall decrease such Global Security by such amount in accordance with the foregoing. In the event that the individual Securities are not issued to each such beneficial owner promptly after the Registrar has received a request from the Holder of a Global Security to issue such individual Securities, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 7.07 hereof, the right of any beneficial Holder of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial Holder's Securities as if such individual Securities had been issued.

(iii) If specified by the Company pursuant to Section 3.01 with respect to a series of Securities, the Depositary for such series of Securities may surrender a Global Security for such series of Securities in exchange in whole or in part for individual Securities of such series on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge,

(A) to each Person specified by such Depositary a new individual Security or Securities of the same series, of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and

(B) to such Depositary a new Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of individual Securities delivered to Holders thereof.

(iv) In any exchange provided for in clauses (i) through (iii), the Company will execute and the Trustee will authenticate and deliver individual Securities in registered form in authorized denominations.

(v) Upon the exchange in full of a Global Security for individual Securities, such Global Security shall be canceled by the Trustee. Individual Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Persons in whose names such Securities are so registered.

(d) All Securities issued upon any registration of transfer or exchange of Securities shall be valid obligations of the Company evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered for such registration of transfer or exchange.

(e) Every Security presented or surrendered for registration of transfer, or for exchange or payment shall (if so required by the Company, the Trustee or the Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company, the Trustee and the Registrar, duly executed by the Holder thereof or by his, her or its attorney duly authorized in writing.

(f) No service charge will be made for any registration of transfer or exchange of Securities. The Company may require payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than those expressly provided in this Indenture to be made at the Company’s own expense or without expense or charge to the Holders.

(g) The Company shall not be required to (i) register, transfer or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the transmission of a notice of redemption of Securities of such series selected for redemption under Section 4.03 and ending at the close of business on the day of such transmission, or (ii) register, transfer or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

(h) Prior to the due presentation for registration of transfer or exchange of any Security, the Company, the Trustee, the Paying Agent, the Registrar or any of their agents may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of

ownership or other writing thereon) for all purposes whatsoever, and none of the Company, the Trustee, the Paying Agent, the Registrar or any of their agents shall be affected by any notice to the contrary.

(i) In case a successor Company ("Successor Company") has executed an indenture supplemental hereto with the Trustee pursuant to Article XIV, any of the Securities authenticated or delivered pursuant to such transaction may, from time to time, at the request of the Successor Company, be exchanged for other Securities executed in the name of the Successor Company with such changes in phraseology and form as may be appropriate, but otherwise identical to the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Company Order of the Successor Company, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a Successor Company pursuant to this Section 3.06 in exchange or substitution for or upon registration of transfer of any Securities, such Successor Company, at the option of the Holders but without expense to them, shall provide for the exchange of all Securities at the time Outstanding for Securities authenticated and delivered in such new name.

(j) Each Holder of a Security agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Security in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

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

(l) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

Section 3.07 Mutilated, Destroyed, Lost and Stolen Securities.

(a) If (i) any mutilated Security is surrendered to the Trustee at its Corporate Trust Office or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee security or indemnity satisfactory to them to save each of them and any Paying Agent harmless, and neither the Company nor the Trustee receives notice that such Security has been acquired by a protected purchaser, then the Company shall execute and upon Company Order the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of the same series and of like tenor, form, terms and principal amount, bearing a number not contemporaneously outstanding, that neither gain nor loss in interest shall result from such exchange or substitution.

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

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

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

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

Section 3.08 Payment of Interest; Interest Rights Preserved.

(a) Interest on any Security that is payable and is punctually paid or duly provided for on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered at the close of business on the Record Date for such interest notwithstanding the cancellation of such Security upon any transfer or exchange subsequent to the Record Date. Payment of interest on Securities shall be made at the Corporate Trust Office (except as otherwise specified pursuant to Section 3.01) or, at the option of the Company, by check mailed to the address of the Person entitled thereto as such address shall appear in the Register or, if provided pursuant to Section 3.01 and in accordance with arrangements satisfactory to the Trustee, at the option of the Holder by wire transfer to an account designated by the Holder.

(b) Any interest on any Security that is payable but is not punctually paid or duly provided for on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Record Date by virtue of his, her or its having been such a Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make

arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 calendar days and not less than 10 calendar days prior to the date of the proposed payment and not less than 10 calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holders of such Securities at their addresses as they appear in the Register, not less than 10 calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (ii).

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

(c) Subject to the provisions set forth herein relating to Record Dates, each Security delivered pursuant to any provision of this Indenture in exchange or substitution for, or upon registration of transfer of, any other Security shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.09 Cancellation. Unless otherwise specified pursuant to Section 3.01 for Securities of any series, all Securities surrendered for payment, redemption, registration of transfer or exchange or credit against any sinking fund or otherwise shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation and shall be promptly canceled by it and, if surrendered to the Trustee, shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. The Trustee shall dispose of all canceled Securities held by it in accordance with its then customary procedures and deliver a certificate of such disposal to the Company. The acquisition of any Securities by the Company shall not operate as a redemption or satisfaction of the Indebtedness represented thereby unless and until such Securities are surrendered to the Trustee for cancellation.

Section 3.10 Computation of Interest. Except as otherwise specified pursuant to Section 3.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 Currency of Payments in Respect of Securities.

(a) Except as otherwise specified pursuant to Section 3.01 for Securities of any series, payment of the principal of and premium, if any, and interest on Securities of such series will be made in U.S. Dollars.

(b) For purposes of any provision of the Indenture where the Holders of Outstanding Securities may perform an action that requires that a specified percentage of the Outstanding Securities of all series perform such action and for purposes of any decision or determination by the Trustee of amounts due and unpaid for the principal of and premium, if any, and interest on the Securities of all series in respect of which moneys are to be disbursed ratably, the principal of and premium, if any, and interest on the Outstanding Securities denominated in a Foreign Currency will be the amount in U.S. Dollars based upon exchange rates, determined as specified pursuant to Section 3.01 for Securities of such series, as of the date for determining whether the Holders entitled to perform such action have performed it or as of the date of such decision or determination by the Trustee, as the case may be.

(c) Any decision or determination to be made regarding exchange rates shall be made by an agent appointed by the Company; provided, that such agent shall accept such appointment in writing and the terms of such appointment shall, in the opinion of the Company at the time of such appointment, require such agent to make such determination by a method consistent with the method provided pursuant to Section 3.01 for the making of such decision or determination. All decisions and determinations of such agent regarding exchange rates shall in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company, the Trustee and all Holders of the Securities.

Section 3.12 Judgments. The Company may provide pursuant to Section 3.01 for Securities of any series that (a) the obligation, if any, of the Company to pay the principal of, premium, if any, and interest on the Securities of any series in a Foreign Currency or U.S. Dollars (the “Designated Currency”) as may be specified pursuant to Section 3.01 is of the essence and agrees that, to the fullest extent possible under applicable law, judgments in respect of such Securities shall be given in the Designated Currency; (b) the obligation of the Company to make payments in the Designated Currency of the principal of and premium, if any, and interest on such Securities shall, notwithstanding any payment in any other Currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the Designated Currency that the Holder receiving such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other Currency (after any premium and cost of exchange) on the business day in the country of issue of the Designated Currency or in the international banking community (in the case of a composite currency) immediately following the day on which such Holder receives such payment; (c) if the amount in the Designated Currency that may be so purchased for any reason falls short of the amount originally due, the Company shall pay such additional amounts as may be necessary to compensate for such shortfall; and (d) any obligation of the Company not discharged by such payment shall be due as a separate and independent obligation and, until discharged as provided herein, shall continue in full force and effect.

Section 3.13 CUSIP Numbers. The Company in issuing any Securities may use CUSIP, ISIN or other similar numbers, if then generally in use, and thereafter with respect to such series, the Trustee may use such numbers in any notice of redemption or exchange with respect to such series provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the CUSIP, ISIN or other similar numbers.

ARTICLE IV

REDEMPTION OF SECURITIES

Section 4.01 Applicability of Right of Redemption. Redemption of Securities (other than pursuant to a sinking fund, amortization or analogous provision) permitted by the terms of any series of Securities shall be made (except as otherwise specified pursuant to Section 3.01 for Securities of any series) in accordance with this Article; provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

Section 4.02 Selection of Securities to be Redeemed.

(a) If the Company shall at any time elect to redeem all or any portion of the Securities of a series then Outstanding, it shall at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter period shall be satisfactory to the Trustee) notify the Trustee of such Redemption Date and of the principal amount of Securities to be redeemed, and thereupon the Trustee shall select, by lot or in such other manner as the Trustee shall deem appropriate and fair and which may provide for the selection for redemption of a portion of the principal amount of any Security of such series; provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. In any case where more than one Security of such series is registered in the same name, the Trustee may treat the aggregate principal amount so registered as if it were represented by one Security of such series. The Trustee shall, as soon as practicable, notify the Company in writing of the Securities and portions of Securities so selected.

(b) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed. If the Company shall so direct, Securities registered in the name of the Company, any Affiliate or any Subsidiary thereof shall not be included in the Securities selected for redemption.

Section 4.03 Notice of Redemption.

(a) Notice of redemption shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company, not less than 30 nor more than 60 days prior to the Redemption Date, to the Holders of Securities of any series to be redeemed in whole or in part pursuant to this Article, in the manner provided in Section 16.04. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. Failure to give such notice, or any defect in such notice to the Holder of any Security of a series designated for redemption, in whole or in part, shall not affect the sufficiency of any notice of redemption with respect to the Holder of any other Security of such series.

(b) All notices of redemption shall identify the Securities to be redeemed (including CUSIP, ISIN or other similar numbers, if available) and shall state:

(i) such election by the Company to redeem Securities of such series pursuant to provisions contained in this Indenture or the terms of the Securities of such series or a supplemental indenture establishing such series, if such be the case;

(ii) the Redemption Date;

(iii) the Redemption Price;

(iv) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the Securities of such series to be redeemed;

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed, and that, if applicable, interest thereon shall cease to accrue on and after said date;

(vi) the Place or Places of Payment where such Securities are to be surrendered for payment of the Redemption Price; and

(vii) that the redemption is for a sinking fund, if such is the case;

Section 4.04 Deposit of Redemption Price. On or prior to 11:00 a.m., New York City time, on the Redemption Date for any Securities, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 6.03) an amount of money in the Currency in which such Securities are denominated (except as provided pursuant to Section 3.01) sufficient to pay the Redemption Price of such Securities or any portions thereof that are to be redeemed on that date.

Section 4.05 Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, any Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price and from and after such date (unless the Company shall Default in the payment of the Redemption Price) such Securities shall cease to bear interest.

Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price; provided, however, that (unless otherwise provided pursuant to Section 3.01) installments of interest that have a Stated Maturity on or prior to the Redemption Date for such Securities shall be payable according to the terms of such Securities and the provisions of Section 3.08.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal thereof and premium, if any, thereon shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 4.06 Securities Redeemed in Part. Any Security that is to be redeemed only in part shall be surrendered at the Corporate Trust Office or such other office or agency of the Company as is specified pursuant to Section 3.01 with, if the Company, the Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company, the Registrar and the Trustee duly executed by the Holder thereof or his, her or its attorney duly authorized in writing, and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series, of like tenor and form, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. In the case of a Security providing appropriate space for such notation, at the option of the Holder thereof, the Trustee, in lieu of delivering a new Security or Securities as aforesaid, may make a notation on such Security of the payment of the redeemed portion thereof.

ARTICLE V

SINKING FUNDS

Section 5.01 Applicability of Sinking Fund.

(a) Redemption of Securities permitted or required pursuant to a sinking fund for the retirement of Securities of a series by the terms of such series of Securities shall be made in accordance with such terms of such series of Securities and this Article, except as otherwise specified pursuant to Section 3.01 for Securities of such series, provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

(b) The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "Mandatory Sinking Fund Payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "Optional Sinking Fund Payment." If provided for by the terms of Securities of any series, the cash amount of any Mandatory Sinking Fund Payment may be subject to reduction as provided in Section 5.02.

Section 5.02 Mandatory Sinking Fund Obligation. The Company may, at its option, satisfy any Mandatory Sinking Fund Payment obligation, in whole or in part, with respect to a particular series of Securities by (a) delivering to the Trustee Securities of such series in

transferable form theretofore purchased or otherwise acquired by the Company or redeemed at the election of the Company pursuant to Section 4.03 or (b) receiving credit for Securities of such series (not previously so credited) acquired by the Company and theretofore delivered to the Trustee. The Trustee shall credit such Mandatory Sinking Fund Payment obligation with an amount equal to the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such Mandatory Sinking Fund Payment shall be reduced accordingly. If the Company shall elect to so satisfy any Mandatory Sinking Fund Payment obligation, it shall deliver to the Trustee not less than 45 days prior to the relevant sinking fund payment date a written notice signed on behalf of the Company by its Chairman of the Board of Directors, its President, one of its Vice Presidents, its Treasurer or one of its Assistant Treasurers, which shall designate the Securities (and portions thereof, if any) so delivered or credited and which shall be accompanied by such Securities (to the extent not theretofore delivered) in transferable form. In case of the failure of the Company, at or before the time so required, to give such notice and deliver such Securities the Mandatory Sinking Fund Payment obligation shall be paid entirely in moneys.

Section 5.03 Optional Redemption at Sinking Fund Redemption Price. In addition to the sinking fund requirements of Section 5.02, to the extent, if any, provided for by the terms of a particular series of Securities, the Company may, at its option, make an Optional Sinking Fund Payment with respect to such Securities. Unless otherwise provided by such terms, (a) to the extent that the right of the Company to make such Optional Sinking Fund Payment shall not be exercised in any year, it shall not be cumulative or carried forward to any subsequent year, and (b) such optional payment shall operate to reduce the amount of any Mandatory Sinking Fund Payment obligation as to Securities of the same series. If the Company intends to exercise its right to make such optional payment in any year it shall deliver to the Trustee not less than 45 days prior to the relevant sinking fund payment date a certificate signed by its Chairman of the Board of Directors, its President, one of its Vice Presidents, its Treasurer or one of its Assistant Treasurers stating that the Company will exercise such optional right, and specifying the amount which the Company will pay on or before the next succeeding sinking fund payment date. Such certificate shall also state that no Event of Default has occurred and is continuing.

Section 5.04 Application of Sinking Fund Payment.

(a) If the sinking fund payment or payments made in funds pursuant to either Section 5.02 or 5.03 with respect to a particular series of Securities plus any unused balance of any preceding sinking fund payments made in funds with respect to such series shall exceed $50,000 (or a lesser sum if the Company shall so request, or such equivalent sum for Securities denominated other than in U.S. Dollars), it shall be applied by the Trustee on the sinking fund payment date next following the date of such payment, unless the date of such payment shall be a sinking fund payment date, in which case such payment shall be applied on such sinking fund payment date, to the redemption of Securities of such series at the redemption price specified pursuant to Section 4.03(b). The Trustee shall select, in the manner provided in Section 4.02, for redemption on such sinking fund payment date, a sufficient principal amount of Securities of such series to absorb said funds, as nearly as may be, and shall, at the expense and in the name of the Company, thereupon cause notice of redemption of the Securities to be given in substantially the manner provided in Section 4.03(a) for the redemption of Securities in part at the option of the Company, except that the notice of redemption shall also state that the

Securities are being redeemed for the sinking fund. Any sinking fund moneys not so applied by the Trustee to the redemption of Securities of such series shall be added to the next sinking fund payment received in funds by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 5.04. Any and all sinking fund moneys held by the Trustee on the last sinking fund payment date with respect to Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee to the payment of the principal of the Securities of such series at Maturity.

(b) On or prior to each sinking fund payment date, the Company shall pay to the Trustee a sum equal to all interest accrued to but not including the date fixed for redemption on Securities to be redeemed on such sinking fund payment date pursuant to this Section 5.04.

(c) The Trustee shall not redeem any Securities of a series with sinking fund moneys or mail any notice of redemption of Securities of such series by operation of the sinking fund during the continuance of a Default in payment of interest on any Securities of such series or of any Event of Default (other than an Event of Default occurring as a consequence of this paragraph) of which the Trustee has actual knowledge, except that if the notice of redemption of any Securities of such series shall theretofore have been mailed in accordance with the provisions hereof, the Trustee shall redeem such Securities if funds sufficient for that purpose shall be deposited with the Trustee in accordance with the terms of this Article. Except as aforesaid, any moneys in the sinking fund at the time any such Default or Event of Default shall occur and any moneys thereafter paid into the sinking fund shall, during the continuance of such Default or Event of Default, be held as security for the payment of all the Securities of such series; provided, however, that in case such Default or Event of Default shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date on which such moneys are required to be applied pursuant to the provisions of this Section 5.04.

ARTICLE VI

PARTICULAR COVENANTS OF THE COMPANY

The Company hereby covenants and agrees as follows:

Section 6.01 Payments of Securities. The Company will duly and punctually pay the principal of and premium, if any, on each series of Securities, and the interest which shall have accrued thereon, at the dates and place and in the manner provided in the Securities and in this Indenture.

Section 6.02 Paying Agent.

(a) The Company will maintain in each Place of Payment for any series of Securities, if any, an office or agency where Securities may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served (the “Paying Agent”). 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 of the Trustee, and the Company hereby appoints the Trustee as Paying Agent to receive all presentations, surrenders, notices and demands.

(b) The Company may also from time to time designate different or additional offices or agencies where the Securities of any series may be presented or surrendered for any or all such purposes (in or outside of such Place of Payment), and may from time to time rescind any such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligations described in the preceding paragraph. The Company will give prompt written notice to the Trustee of any such additional designation or rescission of designation and of any change in the location of any such different or additional office or agency. The Company shall enter into an appropriate agency agreement with any Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of each such agent. The Company or any Affiliate thereof may act as Paying Agent.

Section 6.03 To Hold Payment in Trust.

(a) If the Company or an Affiliate thereof shall at any time act as Paying Agent with respect to any series of Securities, then, on or before the date on which the principal of and premium, if any, or interest on any of the Securities of that series by their terms or as a result of the calling thereof for redemption shall become payable, the Company or such Affiliate will segregate and hold in trust for the benefit of the Holders of such Securities or the Trustee a sum sufficient to pay such principal and premium, if any, or interest which shall have so become payable until such sums shall be paid to such Holders or otherwise disposed of as herein provided, and will notify the Trustee of its action or failure to act in that regard. Upon any proceeding under any federal bankruptcy laws with respect to the Company or any Affiliate thereof, if the Company or such Affiliate is then acting as Paying Agent, the Trustee shall replace the Company or such Affiliate as Paying Agent.

(b) If the Company shall appoint, and at the time have, a Paying Agent for the payment of the principal of and premium, if any, or interest on any series of Securities, then prior to 11:00 a.m., New York City time, on the date on which the principal of and premium, if any, or interest on any of the Securities of that series shall become payable as aforesaid, whether by their terms or as a result of the calling thereof for redemption, the Company will deposit with such Paying Agent a sum sufficient to pay such principal and premium, if any, or interest, such sum to be held in trust for the benefit of the Holders of such Securities or the Trustee, and (unless such Paying Agent is the Trustee), the Company or any other obligor of such Securities will promptly notify the Trustee of its payment or failure to make such payment.

(c) If the Paying Agent shall be other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 6.03, that such Paying Agent shall:

(i) hold all moneys held by it for the payment of the principal of and premium, if any, or interest on the Securities of that series in trust for the benefit of the Holders of such Securities until such sums shall be paid to such Holders or otherwise disposed of as herein provided;

(ii) give to the Trustee notice of any Default by the Company or any other obligor upon the Securities of that series in the making of any payment of the principal of and premium, if any, or interest on the Securities of that series; and

(iii) at any time during the continuance of any such Default, upon the written request of the Trustee, pay to the Trustee all sums so held in trust by such Paying Agent.

(d) Anything in this Section 6.03 to the contrary notwithstanding, the Company may at any time, for the purpose of obtaining a release, satisfaction or 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 by any Paying Agent other than the Trustee as required by this Section 6.03, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent.

(e) 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 and premium, if any, or interest on any Security of any series and remaining unclaimed for two years after such principal and premium, if any, or interest has become due and payable shall be paid to the Company upon Company Order along with any interest that has accumulated thereon as a result of such money being invested at the direction of the Company, or (if then held by the Company) shall be discharged from such trust, and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment of such amounts without interest thereon, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 6.04 Merger, Consolidation and Sale of Assets. Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities:

(a) The Company will not consolidate with any other entity or accept a merger of any other entity into the Company or permit the Company to be merged into any other entity, or sell other than for cash or lease all or substantially all its assets to another entity, or purchase all or substantially all the assets of another entity, unless (i) either the Company shall be the continuing entity, or the successor, transferee or lessee entity (if other than the Company) shall expressly assume, by indenture supplemental hereto, executed and delivered by such entity

prior to or simultaneously with such consolidation, merger, sale or lease, the due and punctual payment of the principal of and interest and premium, if any, on all the Securities, according to their tenor, and the due and punctual performance and observance of all other obligations to the Holders and the Trustee under this Indenture or under the Securities to be performed or observed by the Company; and (ii) immediately after such consolidation, merger, sale, lease or purchase the Company or the successor, transferee or lessee entity (if other than the Company) would not be in Default in the performance of any covenant or condition of this Indenture. A purchase by a Subsidiary of all or substantially all of the assets of another entity shall not be deemed to be a purchase of such assets by the Company.

(b) Upon any consolidation with or merger into any other entity, or any sale other than for cash, or any conveyance or lease of all or substantially all of the assets of the Company in accordance with this Section 6.04, the successor entity formed by such consolidation or into or with which the Company is merged or to which the Company is sold or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor entity had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Company shall be relieved of all obligations and covenants under this Indenture and the Securities, and from time to time such entity may exercise each and every right and power of the Company under this Indenture, in the name of the Company, or in its own name; and any act or proceeding by any provision of this Indenture required or permitted to be done by the Board of Directors or any officer of the Company may be done with like force and effect by the like board or officer of any entity that shall at the time be the successor of the Company hereunder. In the event of any such sale or conveyance, but not any such lease, the Company (or any successor entity which shall theretofore have become such in the manner described in this Section 6.04) shall be discharged from all obligations and covenants under this Indenture and the Securities and may thereupon be dissolved and liquidated.

Section 6.05 Compliance Certificate. Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, the Company shall furnish to the Trustee annually, within 120 days after the end of each fiscal year, a brief certificate from the principal executive officer, principal financial officer, principal accounting officer, or vice president and treasurer as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture (which compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture) and, in the event of any Default, specifying each such Default and the nature and status thereof of which such person may have knowledge. Such certificates need not comply with Section 16.01 of this Indenture.

Section 6.06 Conditional Waiver by Holders of Securities. Anything in this Indenture to the contrary notwithstanding, the Company may fail or omit in any particular instance to comply with a covenant or condition set forth herein with respect to any series of Securities if the Company shall have obtained and filed with the Trustee, prior to the time of such failure or omission, evidence (as provided in Article VIII) of the consent of the Holders of a majority in aggregate principal amount of the Securities of such series at the time Outstanding, either waiving such compliance in such instance or generally waiving compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, or impair any right consequent thereon and, until such waiver shall have become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

Section 6.07 Statement by Officers as to Default. The Company shall deliver to the Trustee as soon as possible and in any event within 30 days after the Company becomes aware of the occurrence of any Event of Default or an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, an Officer's Certificate setting forth the details of such Event of Default or Default and the action which the Company proposes to take with respect thereto.

ARTICLE VII

REMEDIES OF TRUSTEE AND SECURITYHOLDERS

Section 7.01 Events of Default. Except where otherwise indicated by the context or where the term is otherwise defined for a specific purpose, the term "Event of Default" as used in this Indenture with respect to Securities of any series shall mean one of the following described events unless it is either inapplicable to a particular series or it is specifically deleted or modified in the manner contemplated in Section 3.01:

(a) the failure of the Company to pay any installment of interest on any Security of such series when and as the same shall become payable, which failure shall have continued unremedied for a period of 30 days;

(b) the failure of the Company to pay the principal of (and premium, if any, on) any Security of such series, when and as the same shall become payable, whether at Maturity as therein expressed, by call for redemption (otherwise than pursuant to a sinking fund), by declaration as authorized by this Indenture or otherwise;

(c) the failure of the Company to pay a sinking fund installment, if any, when and as the same shall become payable by the terms of a Security of such series, which failure shall have continued unremedied for a period of 30 days;

(d) the failure of the Company, subject to the provisions of Section 6.06, to perform any covenants or agreements contained in this Indenture (including any indenture supplemental hereto pursuant to which the Securities of such series were issued as contemplated by Section 3.01) (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of a series of Securities other than that series and other than a covenant or agreement a default in the performance of which is elsewhere in this Section 7.01 specifically addressed), which failure shall not have been remedied, or without provision deemed to be adequate for the remedying thereof having been made, for a period of 90 days after written notice shall have been given to the Company by the Trustee or shall have been given to the Company and the Trustee by Holders of 25% or more in aggregate principal amount of the Securities of such series then Outstanding, specifying such failure, requiring the Company to remedy the same and stating that such notice is a "Notice of Default" hereunder;

(e) the entry by a court having jurisdiction in the premises of a decree or order for relief in respect of the Company in an involuntary case under the federal bankruptcy

laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or of substantially all the property of the Company or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days;

(f) the commencement by the Company of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by the Company to the entry of an order for relief in an involuntary case under any such law, or the consent by the Company to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or similar official) of the Company or of substantially all the property of the Company or the making by it of an assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any action; or

(g) the occurrence of any other Event of Default with respect to Securities of such series as provided in Section 3.01;

provided, however, that no event described in clause (d) or (other than with respect to a payment default) (g) above shall constitute an Event of Default hereunder until a Responsible Officer assigned to and working in the Trustee's corporate trust department has actual knowledge thereof or until a written notice of any such event is received by the Trustee at the Corporate Trust Office, and such notice refers to the facts underlying such event, the Securities generally, the Company and the Indenture.

Notwithstanding the foregoing provisions of this Section 7.01, if the principal or any premium or interest on any Security is payable in a Currency other than the Currency of the United States and such Currency is not available to the Company for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligations to Holders of the Securities by making such payment in the Currency of the United States in an amount equal to the Currency of the United States equivalent of the amount payable in such other Currency, as determined by the Trustee by reference to the noon buying rate in The City of New York for cable transfers for such Currency ("Exchange Rate"), as such Exchange Rate is reported or otherwise made available by the Federal Reserve Bank of New York on the date of such payment, or, if such rate is not then available, on the basis of the most recently available Exchange Rate. Notwithstanding the foregoing provisions of this Section 7.01, any payment made under such circumstances in the Currency of the United States where the required payment is in a Currency other than the Currency of the United States will not constitute an Event of Default under this Indenture.

Section 7.02 Acceleration; Recission and Annulment.

(a) Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, if any one or more of the above-described Events of Default

(other than an Event of Default specified in Section 7.01(e) or 7.01(f)) shall happen with respect to Securities of any series at the time Outstanding, then, and in each and every such case, during the continuance of any such Event of Default, the Trustee or the Holders of 25% or more in principal amount of the Securities of such series then Outstanding may declare the principal (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of and all accrued but unpaid interest on all the Securities of such series then Outstanding to be due and payable immediately by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable. If an Event of Default specified in Section 7.01(e) or 7.01(f) occurs and is continuing, then in every such case, the principal amount of all of the Securities of that series then Outstanding shall automatically, and without any declaration or any other action on the part of the Trustee or any Holder, become due and payable immediately. Upon payment of such amounts in the Currency in which such Securities are denominated (subject to Section 7.01 and except as otherwise provided pursuant to Section 3.01), all obligations of the Company in respect of the payment of principal of and interest on the Securities of such series shall terminate.

(b) The provisions of Section 7.02(a), however, are subject to the condition that, at any time after the principal of all the Securities of such series, to which any one or more of the above-described Events of Default is applicable, shall have been so declared to be due and payable, and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article, the Event of Default giving rise to such declaration of acceleration shall, without further act, be deemed to have been waived, and such declaration and its consequences shall, without further act, be deemed to have been rescinded and annulled, if:

(i) the Company has paid or deposited with the Trustee or Paying Agent a sum in the Currency in which such Securities are denominated (subject to Section 7.01 and except as otherwise provided pursuant to Section 3.01) sufficient to pay

(A) all amounts owing the Trustee and any predecessor trustee hereunder under Section 11.01(a) (provided, however, that all sums payable under this clause (A) shall be paid in U.S. Dollars);

(B) all arrears of interest, if any, upon all the Securities of such series (with interest, to the extent that interest thereon shall be legally enforceable, on any overdue installment of interest at the rate borne by such Securities at the rate or rates prescribed therefor in such Securities); and

(C) the principal of and premium, if any, on any Securities of such series that have become due otherwise than by such declaration of acceleration and interest thereon;

(ii) every other Default and Event of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 7.06.

(c) No such rescission shall affect any subsequent default or impair any right consequent thereon.

(d) For all purposes under this Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

Section 7.03 Other Remedies. If the Company shall fail for a period of 30 days to pay any installment of interest on the Securities of any series or shall fail to pay the principal of and premium, if any, on any of the Securities of such series when and as the same shall become due and payable, whether at Maturity, or by call for redemption (other than pursuant to the sinking fund), by declaration as authorized by this Indenture, or otherwise, or shall fail for a period of 30 days to make any required sinking fund payment as to a series of Securities, then, upon demand of the Trustee, the Company will pay to the Paying Agent for the benefit of the Holders of Securities of such series then Outstanding the whole amount which then shall have become due and payable on all the Securities of such series, with interest on the overdue principal and premium, if any, and (so far as the same may be legally enforceable) on the overdue installments of interest at the rate borne by the Securities of such series, and all amounts owing the Trustee and any predecessor trustee hereunder under Section 11.01(a).

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon the Securities of such series, and collect the moneys adjudged or decreed to be payable out of the property of the Company or any other obligor upon the Securities of such series, wherever situated, in the manner provided by law. Every recovery of judgment in any such action or other proceeding, subject to the payment to the Trustee of all amounts owing the Trustee and any predecessor trustee hereunder under Section 11.01(a), shall be for the ratable benefit of the Holders of such series of Securities which shall be the subject of such action or proceeding. All rights of action upon or under any of the Securities or this Indenture may be enforced by the Trustee without the possession of any of the Securities and without the production of any thereof at any trial or any proceeding relative thereto.

Section 7.04 Trustee as Attorney-in-Fact. The Trustee is hereby appointed, and each and every Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have appointed the Trustee, the true and lawful attorney-in-fact of such Holder, with authority to make or file (whether or not the Company shall be in Default in respect of the payment of the principal of, or interest on, any of the Securities), in its own name and as trustee of an express trust or otherwise as it shall deem advisable, in any receivership, insolvency, liquidation, bankruptcy, reorganization or other judicial proceeding relative to the Company or any other obligor upon the Securities or to their respective creditors or property, any and all claims, proofs of claim, proofs of debt, petitions, consents, other papers and documents and amendments of any thereof, as may be necessary or advisable in order to have the claims of the Trustee and any predecessor trustee hereunder and of the Holders of the Securities allowed in any such proceeding and to collect and receive any moneys or other property payable or deliverable on any such claim, and to execute and deliver any and all other papers and documents and to do and perform any and all other acts and things, as it may deem necessary or advisable in order to enforce in any such proceeding any of the claims of the Trustee and any predecessor trustee hereunder and of any of such Holders in respect of any of the Securities; and any receiver, assignee, trustee, custodian or debtor in any such proceeding is hereby authorized, and each and every taker or Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have authorized any such receiver, assignee, trustee, custodian or debtor, to make any such payment or delivery only to or on the order of the Trustee, and to pay to the Trustee any amount due it and any predecessor trustee hereunder under Section 11.01(a); provided, however, that nothing herein contained shall be deemed to authorize or empower the Trustee to consent to or accept or adopt, on behalf of any Holder of Securities, any plan of reorganization or readjustment affecting the Securities or the rights of any Holder thereof, or to authorize or empower the Trustee to vote in respect of the claim of any Holder of any Securities in any such proceeding.

Section 7.05 Priorities. Any moneys or properties collected by the Trustee with respect to a series of Securities under this Article VII shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys or properties and, in the case of the distribution of such moneys or properties on account of the Securities of any series, upon presentation of the Securities of such series, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: To the payment of all amounts due to the Trustee and any predecessor trustee hereunder under Section 11.01(a).

Second: In case the principal of the Outstanding Securities of such series shall not have become due and be unpaid, to the payment of interest on the Securities of such series, in the chronological order of the Maturity 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 such Securities, such payments to be made ratably to the Persons entitled thereto.

Third: In case the principal of the Outstanding Securities of such series shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Securities of such series for principal and premium, if any, and

interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by the Securities of such series, and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon the Securities of such series, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Security of such series over any other Security of such series, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest.

Any surplus then remaining shall be paid to the Company or as directed by a court of competent jurisdiction.

Section 7.06 Control by Securityholders; Waiver of Past Defaults. The Holders of a majority in principal amount of the Securities of any series at the time Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or of exercising any trust or power hereby conferred upon the Trustee with respect to the Securities of such series, provided, however, that, subject to the provisions of Sections 11.01 and 11.02, the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action so directed may not lawfully be taken or would be unduly prejudicial to Holders not joining in such direction or would involve the Trustee in personal liability. Prior to any declaration accelerating the Maturity of the Securities of any series, the Holders of a majority in aggregate principal amount of such series of Securities at the time Outstanding may on behalf of the Holders of all of the Securities of such series waive any past Default or Event of Default hereunder and its consequences except a Default in the payment of interest or any premium on or the principal of the Securities of such series. Upon any such waiver the Company, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; 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 7.06, said Default or Event of Default shall for all purposes of the Securities of such series and this Indenture be deemed to have been cured and to be not continuing.

Section 7.07 Limitation on Suits. No Holder of any Security of any series shall have any right to institute any action, suit or proceeding at law or in equity for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder, in each case with respect to an Event of Default with respect to such series of Securities, unless such Holder previously shall have given to the Trustee written notice of one or more of the Events of Default herein specified with respect to such series of Securities, and unless also the Holders of 25% in principal amount of the Securities of such series then Outstanding shall have requested the Trustee in writing to take action in respect of the matter complained of, and unless also there shall have been offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after receipt of such notification, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; no direction inconsistent with such written request

has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series; and such notification, request and offer of indemnity are hereby declared in every such case to be conditions precedent to any such action, suit or proceeding by any Holder of any Security of such series; it being understood and intended that no one or more of the Holders of Securities of such series shall have any right in any manner whatsoever by his, her, its or their action to enforce any right hereunder, except in the manner herein provided, and that every action, suit or proceeding at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Holders of the Outstanding Securities of such series; provided, however, that nothing in this Indenture or in the Securities of such series shall affect or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on the Securities of such series to the respective Holders of such Securities at the respective due dates in such Securities stated, or affect or impair the right, which is also absolute and unconditional, of such Holders to institute suit to enforce the payment thereof.

Section 7.08 Undertaking for Costs. All parties to this Indenture and each Holder of any Security, by such Holder's acceptance thereof, shall be deemed to have agreed that any court may in its discretion require, in any action, suit or proceeding for the enforcement of any right or remedy under this Indenture, or in any action, suit or proceeding against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such action, suit or proceeding of an undertaking to pay the costs of such action, suit or proceeding, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such action, suit or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 7.08 shall not apply to any action, suit or proceeding instituted by the Trustee, to any action, suit or proceeding instituted by any one or more Holders of Securities holding in the aggregate more than 10% in principal amount of the Securities of any series Outstanding, or to any action, suit or proceeding instituted by any Holder of Securities of any series for the enforcement of the payment of the principal of or premium, if any, or the interest on, any of the Securities of such series, on or after the respective due dates expressed in such Securities.

Section 7.09 Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities of any series is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Trustee or of any Holder of the Securities of any series 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 Event of Default or an acquiescence therein; and every power and remedy given by this Article VII to the Trustee and to the Holders of Securities of any series, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Holders of Securities of such series, as the case may be. In case the Trustee or any Holder of Securities of any series shall have proceeded to enforce any right under this Indenture and the proceedings for the enforcement thereof shall have been discontinued or abandoned because of waiver or for any other reason or shall have been adjudicated adversely to the Trustee or to such Holder of Securities, then and in every such case the Company, the Trustee and the Holders of the Securities of such series shall

severally and respectively be restored to their former positions and rights hereunder, and thereafter all rights, remedies and powers of the Trustee and the Holders of the Securities of such series shall continue as though no such proceedings had been taken, except as to any matters so waived or adjudicated.

ARTICLE VIII

CONCERNING THE SECURITYHOLDERS

Section 8.01 Evidence of Action of Securityholders. Whenever in this Indenture it is provided that the Holders of a specified percentage or a majority in aggregate principal amount of the Securities or of any series of Securities 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 or majority have joined therein may be evidenced by (a) any instrument or any number of instruments of similar tenor executed by Securityholders in person, by an agent or by a proxy appointed in writing, including through an electronic system for tabulating consents operated by the Depositary for such series or otherwise (such action becoming effective, except as herein otherwise expressly provided, when such instruments or evidence of electronic consents are delivered to the Trustee and, where it is hereby expressly required, to the Company), or (b) by the record of the Holders of Securities voting in favor thereof at any meeting of Securityholders duly called and held in accordance with the provisions of Article IX, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Securityholders.

Section 8.02 Proof of Execution or Holding of Securities. Proof of the execution of any instrument by a Securityholder or his, her or its agent or proxy and proof of the holding by any Person of any of the Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any Person of any such instrument may be proved (i) by the certificate of any notary public or other officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments or proof of deeds to be recorded within such jurisdiction, that the Person who signed such instrument did acknowledge before such notary public or other officer the execution thereof, or (ii) by the affidavit of a witness of such execution sworn to before any such notary or other officer. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority.

(b) The ownership of Securities of any series shall be proved by the Register of such Securities or by a certificate of the Registrar for such series.

(c) The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

(d) The Trustee may require such additional proof of any matter referred to in this Section 8.02 as it shall deem appropriate or necessary, so long as the request is a reasonable one.

(e) If the Company shall solicit from the Holders of Securities of any series any action, the Company may, at its option fix in advance a record date for the determination of Holders of Securities entitled to take such action, but the Company shall have no obligation to do so. Any such record date shall be fixed at the Company's discretion. If such a record date is fixed, such action may be sought or given before or after the record date, but only the Holders of Securities of record at the close of business on such record date shall be deemed to be Holders of Securities for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities of such series have authorized or agreed or consented to such action, and for that purpose the Outstanding Securities of such series shall be computed as of such record date.

Section 8.03 Persons Deemed Owners.

(a) The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and premium, if any, and (subject to Section 3.08) interest, if any, on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. All payments made to any Holder, or upon his, her or its order, shall be valid, and, to the extent of the sum or sums paid, effectual to satisfy and discharge the liability for moneys payable upon such Security.

(b) None of the Company, the Trustee, any Paying Agent or the Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 8.04 Effect of Consents. After an amendment, supplement, waiver or other action becomes effective as to any series of Securities, a consent to it by a Holder of such series of Securities is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Securities or portion thereof, and of any Security issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

ARTICLE IX

SECURITYHOLDERS' MEETINGS

Section 9.01 Purposes of Meetings. A meeting of Securityholders of any or all series may be called at any time and from time to time pursuant to the provisions of this Article IX 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, 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 Securityholders pursuant to any of the provisions of Article VIII;

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

(c) to consent to the execution of an Indenture or of indentures supplemental hereto pursuant to the provisions of Section 14.02; 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 Securities of any one or more or all series, as the case may be, under any other provision of this Indenture or under applicable law.

Section 9.02 Call of Meetings by Trustee. The Trustee may at any time call a meeting of all Securityholders of all series that may be affected by the action proposed to be taken, to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Securityholders of a series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed to Holders of Securities of such series at their addresses as they shall appear on the Register of the Company. Such notice shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Section 9.03 Call of Meetings by Company or Securityholders. In case at any time the Company or the Holders of at least 10% in aggregate principal amount of the Securities of a series (or of all series, as the case may be) then Outstanding that may be affected by the action proposed to be taken, shall have requested the Trustee to call a meeting of Securityholders of such series (or of all series), by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Securityholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04 Qualifications for Voting. To be entitled to vote at any meeting of Securityholders, a Person shall (a) be a Holder of one or more Securities affected by the action proposed to be taken at the meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more such Securities. The only Persons who shall be entitled to be present or to speak at any meeting of Securityholders 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 9.05 Regulation of Meetings.

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

(b) 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

Securityholders as provided in Section 9.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chair. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

(c) At any meeting of Securityholders of a series, each Securityholder of such series of such Securityholder's proxy shall be entitled to one vote for each $1,000 principal amount of Securities of such series Outstanding held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security 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 Securities of such series held by him or her or instruments in writing as aforesaid duly designating him or her as the Person to vote on behalf of other Securityholders. At any meeting of the Securityholders duly called pursuant to the provisions of Section 9.02 or 9.03 the presence of Persons holding or representing Securities in an aggregate principal amount sufficient to take action upon the business for the transaction of which such meeting was called shall be necessary to constitute a quorum, and any such meeting may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 Voting. The vote upon any resolution submitted to any meeting of Securityholders of a series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts of the Securities of such series 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 Securityholders 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 9.02. The record shall show the principal amounts of the Securities 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.

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

Section 9.07 No Delay of Rights by Meeting. Nothing contained in this Article IX shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Securityholders of any series 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 Securityholders of such series under any of the provisions of this Indenture or of the Securities of such series.

ARTICLE X

REPORTS BY THE COMPANY AND THE TRUSTEE AND SECURITYHOLDERS' LISTS

Section 10.01 Reports by Trustee.

(a) So long as any Securities are outstanding, 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 therein. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15 following the date of this Indenture deliver to Holders a brief report which complies with the provisions of such Section 313(a).

(b) The Trustee shall, at the time of the transmission to the Holders of Securities of any report pursuant to the provisions of this Section 10.01, file a copy of such report with each stock exchange upon which the Securities are listed, if any, and also with the SEC in respect of a Security listed and registered on a national securities exchange, if any. The Company agrees to notify the Trustee when, as and if the Securities become listed on any stock exchange.

The Company will reimburse the Trustee for all expenses incurred in the preparation and transmission of any report pursuant to the provisions of this Section 10.01 and of Section 10.02.

Section 10.02 Reports by the Company. The Company shall file with the Trustee and the SEC, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided in the Trust Indenture Act; provided that, unless available on EDGAR, any such information, documents or reports required to be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 30 days after the same is filed with the SEC; and provided further, that the filing of the reports specified in Section 13 or 15(d) of the Exchange Act by an entity that is the direct or indirect parent of the Company will satisfy the requirements of this Section 10.02 so long as such entity is an obligor or guarantor on the Securities; and provided further that the reports of such entity will not be required to include condensed consolidating financial information for the Company in a footnote to the financial statements of such entity.

Section 10.03 Securityholders' Lists. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee:

(a) semi-annually, within 15 days after each Record Date, but in any event not less frequently than semi-annually, a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of Securities to which such Record Date applies, as of such Record Date, and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, that so long as the Trustee shall be the Registrar, such lists shall not be required to be furnished.

ARTICLE XI

CONCERNING THE TRUSTEE

Section 11.01 Rights of Trustees; Compensation and Indemnity. The Trustee accepts the trusts created by this Indenture upon the terms and conditions hereof, including the following, to all of which the parties hereto and the Holders from time to time of the Securities agree:

(a) The Trustee shall be entitled to such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (including in any agent capacity in which it acts). The compensation of the Trustee shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon its request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Trustee (including the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall have been caused by its own negligence, bad faith or willful misconduct.

The Company also agrees to indemnify each of the Trustee and any predecessor Trustee hereunder for, and to hold it harmless against, any and all loss, liability, damage, claim, or expense incurred without its own negligence, bad faith or willful misconduct, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder and the performance of its duties (including in any agent capacity in which it acts), as well as the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder, except those attributable to its negligence, willful misconduct or bad faith. The Trustee shall notify the Company promptly of any claim of which a Responsible Officer has received written notice and for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have one separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Company under this Section 11.01(a), the Trustee shall have a lien upon all property and funds held or collected by the Trustee as such, except funds held in trust by the Trustee to pay principal of and interest on any Securities. Notwithstanding any provisions of this Indenture to the contrary, the obligations of the Company to compensate and indemnify the Trustee under this Section 11.01(a) shall survive the resignation or removal of the Trustee and any satisfaction and discharge under Article XII or any other termination of this Indenture. When the Trustee incurs expenses or renders services after an Event of Default specified in clause (e) or (f) of Section 7.01 occurs, the expenses and compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or similar laws.

(b) The Trustee may execute any of the trusts or powers hereof and perform any duty hereunder either directly or by its agents and attorneys and shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(c) The Trustee shall not be responsible in any manner whatsoever for the correctness of the recitals herein or in the Securities (except its certificates of authentication thereon) contained, all of which are made solely by the Company; and the Trustee shall not be responsible or accountable in any manner whatsoever for or with respect to the validity or execution or sufficiency of this Indenture or of the Securities (except its certificates of authentication thereon), and the Trustee makes no representation with respect thereto, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. The Trustee shall not be accountable for the use or application by the Company of any Securities, or the proceeds of any Securities, authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

(d) The Trustee may consult with counsel of its selection, and, to the extent permitted by Section 11.02, any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in good faith and in accordance with such Opinion of Counsel.

(e) The Trustee, to the extent permitted by Section 11.02, may rely upon the certificate of the Secretary or one of the Assistant Secretaries of the Company as to the adoption of any Board Resolution or resolution of the stockholders of the Company, and any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by, and whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may rely upon, an Officer’s Certificate of the Company (unless other evidence in respect thereof be herein specifically prescribed).

(f) Subject to Section 11.04, the Trustee or any agent of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights it would have had if it were not the Trustee or such agent.

(g) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

(h) Any action taken by the Trustee pursuant to any provision hereof at the request or with the consent of any Person who at the time is the Holder of any Security shall be conclusive and binding in respect of such Security upon all future Holders thereof or of any Security or Securities which may be issued for or in lieu thereof in whole or in part, whether or not such Security shall have noted thereon the fact that such request or consent had been made or given.

(i) Subject to the provisions of Section 11.02, the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(j) Subject to the provisions of Section 11.02, the Trustee shall not be under any 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 Holders of the Securities, pursuant to any provision of this Indenture, unless one or more of the Holders of the Securities shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred by it therein or thereby.

(k) Subject to the provisions of Section 11.02, the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within its discretion or within the rights or powers conferred upon it by this Indenture.

(l) Subject to the provisions of Section 11.02, the Trustee shall not be deemed to have knowledge or notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless the Holders of not less than 25% of the Outstanding Securities notify the Trustee thereof.

(m) Subject to the provisions of the first paragraph of Section 11.02, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of Indebtedness or other paper or document, but the Trustee may, but shall not be required to, make further inquiry or investigation into such facts or matters as it may see fit at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

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

(o) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form or action.

Section 11.02 Duties of Trustee.

(a) If one or more of the Events of Default specified in Section 7.01 with respect to the Securities of any series shall have happened, then, during the continuance thereof, the Trustee shall, with respect to such Securities, exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person’s own affairs.

(b) None of the provisions of this Indenture shall be construed as relieving the Trustee from liability for its own negligent action, its own negligent action, negligent failure to act, or its own willful misconduct, except that, anything in this Indenture contained to the contrary notwithstanding,

(i) unless and until an Event of Default specified in Section 7.01 with respect to the Securities of any series shall have happened which at the time is continuing,

(A) the Trustee undertakes to perform such duties and only such duties with respect to the Securities of that series as are specifically set out in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee, whose duties and obligations shall be determined solely by the express provisions of this Indenture; and

(B) the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of the Trustee, upon certificates and opinions furnished to it pursuant to the express provisions of this Indenture; but in the case of any such certificates or opinions which, by the provisions of this Indenture, 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 mathematical calculations or other facts, statements, opinions or conclusions stated therein);

(ii) the Trustee shall not be liable to any Holder of Securities or to any other Person 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 negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable to any Holder of Securities or to any other Person with respect to any action taken or omitted to be taken by it in good faith, in accordance with the direction of Securityholders given as provided in Section 7.06, relating to the time, method and place of conducting any proceeding for any remedy available to it or exercising any trust or power conferred upon it by this Indenture.

(c) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 11.02.

Section 11.03 Notice of Defaults. Within 90 days after the occurrence thereof, and if known to the Trustee, the Trustee shall give to the Holders of the Securities of a series notice of each Default or Event of Default with respect to the Securities of such series known to the Trustee, by transmitting such notice to Holders at their addresses as the same shall then appear on the Register of the Company, unless such Default shall have been cured or waived before the giving of such notice (the term "Default" being hereby defined to be the events specified in Section 7.01, which are, or after notice or lapse of time or both would become, Events of Default as defined in said Section). Except in the case of a Default or Event of Default in payment of the principal of, premium, if any, or interest on any of the Securities of such series when and as the same shall become payable, or to make any sinking fund payment as to Securities of the same series, the Trustee shall be protected in withholding such notice, if and so long as a Responsible Officer or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities of such series.

Section 11.04 Eligibility; Disqualification.

(a) The Trustee shall at all times satisfy the requirements of TIA Section 310(a). The Trustee shall have a combined capital and surplus of at least $50 million as set forth in its most recent published annual report of condition, and shall have a Corporate Trust Office. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11.04, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(b) The Trustee shall comply with TIA Section 310(b); provided, however, that there shall be excluded from the operation of TIA Section 310(b)(i) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA Section 310(b)(i) are met. If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. If Section 310(b) of the Trust Indenture Act is amended any time after the date of this Indenture to change the circumstances under which a Trustee shall be deemed to have a conflicting interest with respect to the Securities of any series or to change any of the definitions in connection therewith, this Section 11.04 shall be automatically amended to incorporate such changes.

Section 11.05 Registration and Notice; Removal. The Trustee, or any successor to it hereafter appointed, may at any time resign and be discharged of the trusts hereby created with respect to any one or more or all series of Securities by giving to the Company notice in writing. Such resignation shall take effect upon the appointment of a successor Trustee and the

acceptance of such appointment by such successor Trustee. Any Trustee hereunder may be removed with respect to any series of Securities at any time by the filing with such Trustee and the delivery to the Company of an instrument or instruments in writing signed by the Holders of a majority in principal amount of the Securities of such series then Outstanding, specifying such removal and the date when it shall become effective.

If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 11.04 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(3) 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, (i) the Company by written notice to the Trustee may remove the Trustee and appoint a successor Trustee with respect to all Securities, or (ii) subject to TIA Section 315(e), any Securityholder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

Upon its resignation or removal, any Trustee shall be entitled to the payment of reasonable compensation for the services rendered hereunder by such Trustee and to the payment of all reasonable expenses incurred hereunder and all moneys then due to it hereunder. The Trustee's rights to indemnification provided in Section 11.01(a) shall survive its resignation or removal.

Section 11.06 Successor Trustee by Appointment.

(a) In case at any time the Trustee shall resign, or shall be removed (unless the Trustee shall be removed as provided in Section 11.04(b), in which event the vacancy shall be filled as provided in said subdivision), or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if 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 with respect to the Securities of one or more series, a successor Trustee with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any series) may be appointed by the Holders of a majority in principal amount of the Securities of that or those series then Outstanding, by an instrument or instruments in writing signed in duplicate by such Holders and filed, one original thereof with the Company

and the other with the successor Trustee; but, until a successor Trustee shall have been so appointed by the Holders of Securities of that or those series as herein authorized, the Company, or, in case all or substantially all the assets of the Company shall be in the possession of one or more custodians or receivers lawfully appointed, or of trustees in bankruptcy or reorganization proceedings (including a trustee or trustees appointed under the provisions of the federal bankruptcy laws, as now or hereafter constituted), or of assignees for the benefit of creditors, such receivers, custodians, trustees or assignees, as the case may be, by an instrument in writing, shall appoint a successor Trustee with respect to the Securities of such series. Subject to the provisions of Sections 11.04 and 11.05, upon the appointment as aforesaid of a successor Trustee with respect to the Securities of any series, the Trustee with respect to the Securities of such series shall cease to be Trustee hereunder. After any such appointment other than by the Holders of Securities of that or those series, the Person making such appointment shall forthwith cause notice thereof to be mailed to the Holders of Securities of such series at their addresses as the same shall then appear on the Register of the Company but any successor Trustee with respect to the Securities of such series so appointed shall, immediately and without further act, be superseded by a successor Trustee appointed by the Holders of Securities of such series in the manner above prescribed, if such appointment be made prior to the expiration of one year from the date of the mailing of such notice by the Company, or by such receivers, trustees or assignees.

(b) If any Trustee with respect to the Securities of one or more series shall resign or be removed and a successor Trustee shall not have been appointed by the Company or by the Holders of the Securities of such series or, if any successor Trustee so appointed shall not have accepted its appointment within 30 days after such appointment shall have been made, the resigning Trustee at the expense of the Company may apply to any court of competent jurisdiction for the appointment of a successor Trustee. If in any other case a successor Trustee shall not be appointed pursuant to the foregoing provisions of this Section 11.06 within three months after such appointment might have been made hereunder, the Holder of any Security of the applicable series or any retiring Trustee at the expense of the Company may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, in any such case, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

(c) Any successor Trustee appointed hereunder with respect to the Securities of one or more series shall execute, acknowledge and deliver to its predecessor Trustee and to the Company, or to the receivers, trustees, assignees or court appointing it, as the case may be, an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, trusts, immunities, duties and obligations with respect to such series of such predecessor Trustee with like effect as if originally named as Trustee hereunder, and such predecessor Trustee, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to pay over, and such successor Trustee shall be entitled to receive, all moneys and properties held by such predecessor Trustee as Trustee hereunder, subject nevertheless to its lien provided for in Section 11.01(a). Nevertheless, on the written request of the Company or of the successor Trustee or of the Holders of at least 10% in principal amount of the Securities of such series then Outstanding, such predecessor Trustee, upon payment of its said charges and disbursements, shall execute and deliver an instrument transferring to such successor Trustee upon the trusts herein expressed all the rights, powers and trusts of such predecessor Trustee and

shall assign, transfer and deliver to the successor Trustee all moneys and properties held by such predecessor Trustee, subject nevertheless to its lien provided for in Section 11.01(a); and, upon request of any such successor Trustee and the Company shall make, execute, acknowledge and deliver any and all instruments in writing for more fully and effectually vesting in and confirming to such successor Trustee all such authority, rights, powers, trusts, immunities, duties and obligations.

Section 11.07 Successor Trustee by Merger. Any Person into which the Trustee or any successor to it in the trusts created by this Indenture shall be merged or converted, or any Person with which it or any successor to it shall be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee or any such successor to it shall be a party, or any Person to which the Trustee or any successor to it shall sell or otherwise transfer all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that such Person shall be otherwise qualified and eligible under this Article. In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture with respect to one or more series of Securities, any of such Securities shall have been authenticated but not delivered by the Trustee then in office, any successor to such Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor 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 Securities 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 authenticate Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 11.08 Right to Rely on Officer's Certificate. Subject to Section 11.02, and subject to the provisions of Section 16.01 with respect to the certificates required thereby, 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 suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate with respect thereto delivered to the Trustee, and such Officer's Certificate, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 11.09 Appointment of Authenticating Agent. The Trustee may appoint an agent (the "Authenticating Agent") reasonably acceptable to the Company to authenticate the Securities, and the Trustee shall give written notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent. Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder.

Each Authenticating Agent shall at all times be a corporation organized and doing business and in good standing under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Article XI, the combined capital and surplus of such corporation 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 an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Article XI, it shall resign immediately in the manner and with the effect specified in this Article XI.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Article XI, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof 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 such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 11.09, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give written notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 11.09.

The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 11.09, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 11.01.

Section 11.10 Communications by Securityholders with Other Securityholders. Holders of Securities may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to such communications.

ARTICLE XII

SATISFACTION AND DISCHARGE; DEFEASANCE

Section 12.01 Applicability of Article. If, pursuant to Section 3.01, provision is made for the defeasance of Securities of a series and if the Securities of such series are denominated and payable only in U.S. Dollars (except as provided pursuant to Section 3.01), then the provisions of this Article shall be applicable except as otherwise specified pursuant to Section 3.01 for Securities of such series. Defeasance provisions, if any, for Securities denominated in a Foreign Currency may be specified pursuant to Section 3.01.

Section 12.02 Satisfaction and Discharge of Indenture. This Indenture, with respect to the Securities of any series (if all series issued under this Indenture are not to be affected), shall, upon Company Order, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Securities herein expressly provided for and rights to receive payments of principal of and premium, if any, and interest on such Securities) and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when,

(a) either:

(i) all Securities of such series theretofore authenticated and delivered (other than (A) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.07 and (B) Securities 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 6.03) have been delivered to the Trustee for cancellation; or

(ii) all Securities of such series not theretofore delivered to the Trustee for cancellation,

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year, or

(C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice by the Trustee in the name, and at the expense, of the Company, and the Company,

and in the case of (A), (B) or (C) above, has deposited or caused to be deposited with the Trustee or Paying Agent as trust funds in trust for the purpose an amount in the Currency in which such Securities are denominated (except as otherwise provided pursuant to Section 3.01) sufficient to pay and discharge the entire Indebtedness on such Securities for principal and premium, if any, and interest to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be; provided, however,

in the event a petition for relief under federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, is filed with respect to the Company within 91 days after the deposit and the Trustee is required to return the moneys then on deposit with the Trustee to the Company, the obligations of the Company under this Indenture with respect to such Securities shall not be deemed terminated or discharged;

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

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to such series have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 11.01 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (a)(i) of this Section, the obligations of the Trustee under Section 12.07 and the last paragraph of Section 6.03(e) shall survive such satisfaction and discharge.

Section 12.03 Defeasance upon Deposit of Moneys or U.S Government Obligations. At the Company's option, either (a) the Company shall be deemed to have been Discharged (as defined below) from its obligations with respect to Securities of any series on the first day after the applicable conditions set forth below have been satisfied or (b) the Company shall cease to be under any obligation to comply with any term, provision or condition set forth in Section 6.04 with respect to Securities of any series (and, if so specified pursuant to Section 3.01, any other restrictive covenant added for the benefit of such series pursuant to Section 3.01) at any time after the applicable conditions set forth below have been satisfied:

(a) The Company shall have deposited or caused to be deposited irrevocably with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series (i) money in an amount, or (ii) U.S. Government Obligations (as defined below) that through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient to pay and discharge each installment of principal (including any mandatory sinking fund payments) of and premium, if any, and interest on, the Outstanding Securities of such series on the dates such installments of interest or principal and premium are due;

(b) No Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit (other than a Default resulting from the borrowing of funds and the grant of any related liens to be applied to such deposit); and

(c) The Company shall have delivered to the Trustee an Opinion of Counsel to the effect that Holders of the Securities of such series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the Company's exercise of its option under this Section and will be subject to federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such action had not been exercised and, in the case of the Securities of such series being Discharged accompanied by a ruling to that effect received from or published by the Internal Revenue Service.

"Discharged" means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by, and obligations under, the Securities of such series and to have satisfied all the obligations under this Indenture relating to the Securities of such series (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except (A) the rights of Holders of Securities of such series to receive, from the trust fund described in clause (a) above, payment of the principal of and premium, if any, and interest on such Securities when such payments are due, (B) the Company's obligations with respect to Securities of such series under Sections 3.04, 3.06, 3.07, 6.02, 12.06 and 12.07 and (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder.

"U.S. Government Obligations" means securities that are (i) direct obligations of the United States for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States the timely of payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, that, in either case under clauses (i) or (ii) are not callable or redeemable at the action of the issuer thereof, and shall also include a depositary receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depositary receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depositary receipt.

Section 12.04 Repayment to Company. The Trustee and any Paying Agent shall promptly pay to the Company (or to its designee) upon Company Order any excess moneys or U.S. Government Obligations held by them at any time, including any such moneys or obligations held by the Trustee under any escrow trust agreement entered into pursuant to Section 12.06. The provisions of the last paragraph of Section 6.03 shall apply to any money held by the Trustee or any Paying Agent under this Article that remains unclaimed for two years after the Maturity of any series of Securities for which money or U.S. Government Obligations have been deposited pursuant to Section 12.03.

Section 12.05 Indemnity for U.S. Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the deposited U.S. Government Obligations or the principal or interest received on such U.S. Government Obligations.

Section 12.06 Deposits to Be Held in Escrow. Any deposits with the Trustee referred to in Section 12.03 above shall be irrevocable (except to the extent provided in Sections 12.04 and 12.07) and shall be made under the terms of an escrow trust agreement. If any Outstanding Securities of a series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund requirement, the applicable escrow trust agreement shall provide therefor and the Company shall

make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company. The agreement shall provide that, upon satisfaction of any mandatory sinking fund payment requirements, whether by deposit of moneys, application of proceeds of deposited U.S. Government Obligations or, if permitted, by delivery of Securities, the Trustee shall pay or deliver over to the Company as excess moneys pursuant to Section 12.04 all funds or obligations then held under the agreement and allocable to the sinking fund payment requirements so satisfied.

If Securities of a series with respect to which such deposits are made may be subject to later redemption at the option of the Company or pursuant to optional sinking fund payments, the applicable escrow trust agreement may, at the option of the Company, provide therefor. In the case of an optional redemption in whole or in part, such agreement shall require the Company to deposit with the Trustee on or before the date notice of redemption is given funds sufficient to pay the Redemption Price of the Securities to be redeemed together with all unpaid interest thereon to the Redemption Date. Upon such deposit of funds, the Trustee shall pay or deliver over to the Company as excess funds pursuant to Section 12.04 all funds or obligations then held under such agreement and allocable to the Securities to be redeemed. In the case of exercise of optional sinking fund payment rights by the Company, such agreement shall, at the option of the Company, provide that upon deposit by the Company with the Trustee of funds pursuant to such exercise the Trustee shall pay or deliver over to the Company as excess funds pursuant to Section 12.04 all funds or obligations then held under such agreement for such series and allocable to the Securities to be redeemed.

Section 12.07 Application of Trust Money.

(a) Neither the Trustee nor any other paying agent shall be required to pay interest on any moneys deposited pursuant to the provisions of this Indenture, except such as it shall agree with the Company in writing to pay thereon. Any moneys so deposited for the payment of the principal of, or premium, if any, or interest on the Securities of any series and remaining unclaimed for two years after the date of the maturity of the Securities of such series or the date fixed for the redemption of all the Securities of such series at the time outstanding, as the case may be, shall be repaid by the Trustee or such other paying agent to the Company upon its written request and thereafter, anything in this Indenture to the contrary notwithstanding, any rights of the Holders of Securities of such series in respect of which such moneys shall have been deposited shall be enforceable only against the Company, and all liability of the Trustee or such other paying agent with respect to such moneys shall thereafter cease.

(b) Subject to the provisions of the foregoing paragraph, any moneys which at any time shall be deposited by the Company or on its behalf with the Trustee or any other paying agent for the purpose of paying the principal of, premium, if any, and interest on any of the Securities shall be and are hereby assigned, transferred and set over to the Trustee or such other paying agent in trust for the respective Holders of the Securities for the purpose for which such moneys shall have been deposited; but such moneys need not be segregated from other funds except to the extent required by law.

Section 12.08 Deposits of Non-U.S. Currencies. Notwithstanding the foregoing provisions of this Article, if the Securities of any series are payable in a Currency other than U.S.

Dollars, the Currency or the nature of the government obligations to be deposited with the Trustee under the foregoing provisions of this Article shall be as set forth in the Officer's Certificate or established in the supplemental indenture under which the Securities of such series are issued.

ARTICLE XIII

IMMUNITY OF CERTAIN PERSONS

Section 13.01 No Personal Liability. No recourse shall be had for the payment of the principal of, or the premium, if any, or interest on, any Security or for any claim based thereon or otherwise in respect thereof or of the Indebtedness represented thereby, or upon any obligation, covenant or agreement of this Indenture, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Indenture and the Securities are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, because of the incurring of the Indebtedness hereby authorized or under or by reason of any of the obligations, covenants, promises or agreements contained in this Indenture or in any of the Securities, or to be implied herefrom or therefrom, and that all liability, if any, of that character against every such incorporator, stockholder, officer and director is, by the acceptance of the Securities and as a condition of, and as part of the consideration for, the execution of this Indenture and the issue of the Securities expressly waived and released.

ARTICLE XIV

SUPPLEMENTAL INDENTURES

Section 14.01 Without Consent of Securityholders. Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any one or more of or all the following purposes:

(a) to add to the covenants and agreements of the Company, to be observed thereafter and during the period, if any, in such supplemental indenture or indentures expressed, and to add Events of Default, in each case for the protection or benefit of the Holders of all or any series of the Securities (and if such covenants, agreements and Events of Default are to be for the benefit of fewer than all series of Securities, stating that such covenants, agreements and Events of Default are expressly being included for the benefit of such series as shall be identified therein), or to surrender any right or power herein conferred upon the Company;

(b) to delete or modify any Events of Default with respect to all or any series of the Securities, the form and terms of which are being established pursuant to such supplemental indenture as permitted in Section 3.01 (and, if any such Event of Default is

applicable to fewer than all such series of the Securities, specifying the series to which such Event of Default is applicable), and to specify the rights and remedies of the Trustee and the Holders of such Securities in connection therewith;

(c) to add to or change any of the provisions of this Indenture to provide, change or eliminate any restrictions on the payment of principal of or premium, if any, on Securities; provided that any such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect;

(d) to change or eliminate any of the provisions of this Indenture; provided that any such change or elimination shall become effective only when there is no Outstanding Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision and as to which such supplemental indenture would apply;

(e) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by such successor of the covenants and obligations of the Company contained in the Securities of one or more series and in this Indenture or any supplemental indenture;

(f) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to one or more series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 11.06(c);

(g) to secure any series of Securities;

(h) to evidence any changes to this Indenture pursuant to Sections 11.05, 11.06 or 11.07 hereof as permitted by the terms thereof;

(i) to cure any ambiguity or to correct or supplement any provision contained herein or in any indenture supplemental hereto which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture;

(j) to add to or change or eliminate any provision of this Indenture as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act;

(k) to add guarantors or co-obligors with respect to any series of Securities;

(l) to make any change in any series of Securities that does not adversely affect in any material respect the interests of the Holders of such Securities;

(m) to provide for uncertificated securities in addition to certificated securities;

(n) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities;

provided that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities;

(o) to prohibit the authentication and delivery of additional series of Securities; or

(p) to establish the form and terms of Securities of any series as permitted in Section 3.01, or to authorize the issuance of additional Securities of a series previously authorized or to add to the conditions, limitations or restrictions on the authorized amount, terms or purposes of issue, authentication or delivery of the Securities of any series, as herein set forth, or other conditions, limitations or restrictions thereafter to be observed.

Subject to the provisions of Section 14.03, the Trustee is authorized to join with the Company in the execution of any such supplemental indenture, to make the further agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property or assets thereunder.

Any supplemental indenture authorized by the provisions of this Section 14.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 14.02.

Section 14.02 With Consent of Securityholders; Limitations.

(a) With the consent of the Holders (evidenced as provided in Article VIII) of a majority in aggregate principal amount of the Outstanding Securities of each series affected by such supplemental indenture voting separately, the Company and the Trustee 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 provisions of this Indenture or of modifying in any manner the rights of the Holders of the Securities of such series to be affected; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security of each such series affected thereby,

(i) extend the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon redemption thereof, or extend the Stated Maturity of, or change the Currency in which the principal of and premium, if any, or interest on such Security is denominated or payable, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 7.02, or impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or materially adversely affect the economic terms of any right to convert or exchange any Security as may be provided pursuant to Section 3.01; or

(ii) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain Defaults hereunder and their consequences provided for in this Indenture; or

(iii) modify any of the provisions of this Section, Section 7.06 or Section 6.06, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and Section 6.06, or the deletion of this proviso, in accordance with the requirements of Sections 11.06 and 14.01(f); or

(iv) modify, without the written consent of the Trustee, the rights, duties or immunities of the Trustee.

(b) A supplemental indenture that changes or eliminates any provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

(c) It shall not be necessary for the consent of the Securityholders under this Section 14.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(d) The Company may set a record date for purposes of determining the identity of the Holders of each series of Securities entitled to give a written consent or waive compliance by the Company as authorized or permitted by this Section. Such record date shall not be more than 30 days prior to the first solicitation of such consent or waiver or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation pursuant to Section 312 of the Trust Indenture Act.

(e) Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 14.02, the Company shall mail a notice, setting forth in general terms the substance of such supplemental indenture, to the Holders of Securities at their addresses as the same shall then appear in the Register of the Company. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 14.03 Trustee Protected. Upon the request of the Company, accompanied by the Officer's Certificate and Opinion of Counsel required by Section 16.01 stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and evidence reasonably satisfactory to the Trustee of consent of the Holders if the supplemental indenture is to be executed pursuant to Section 14.02, the Trustee shall join with the Company in the execution of said supplemental indenture unless said supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may, but shall not be obligated to, enter into said supplemental indenture. The Trustee shall be fully protected in relying upon such Officer's Certificate and an Opinion of Counsel.

Section 14.04 Effect of Execution of Supplemental Indenture. Upon the execution of any supplemental indenture pursuant to the provisions of this Article XIV, this Indenture shall be deemed to be modified and amended in accordance therewith and, except as herein otherwise expressly provided, the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of all of the Securities or of the Securities of any series affected, as the case may be, 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 14.05 Notation on or Exchange of Securities. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear a notation in the form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for the Securities then Outstanding in equal aggregate principal amounts, and such exchange shall be made without cost to the Holders of the Securities.

Section 14.06 Conformity with TIA. Every supplemental indenture executed pursuant to the provisions of this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE XV

SUBORDINATION OF SECURITIES

Section 15.01 Agreement to Subordinate. In the event a series of Securities is designated as subordinated pursuant to Section 3.01, and except as otherwise provided in a Company Order or in one or more indentures supplemental hereto, the Company, for itself, its successors and assigns, covenants and agrees, and each Holder of Securities of such series by his, her or its acceptance thereof, likewise covenants and agrees, that the payment of the principal of (and premium, if any) and interest, if any, on each and all of the Securities of such series is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Indebtedness. In the event a series of Securities is not designated as subordinated pursuant to Section 3.01(s), this Article XV shall have no effect upon the Securities.

Section 15.02 Distribution on Dissolution, Liquidation and Reorganization; Subrogation of Securities. Subject to Section 15.01, upon any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise

(subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred in this Indenture upon the Senior Indebtedness and the holders thereof with respect to the Securities and the holders thereof by a lawful plan of reorganization under applicable bankruptcy law):

(a) the holders of all Senior Indebtedness shall be entitled to receive payment in full of the principal thereof (and premium, if any) and interest due thereon before the Holders of the Securities are entitled to receive any payment upon the principal (or premium, if any) or interest, if any, on Indebtedness evidenced by the Securities; and

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XV shall be paid by the liquidation trustee or agent or other Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the principal of (and premium, if any) and interest on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Indebtedness is paid in full, such payment or distribution shall be paid over, upon written notice to a Responsible Officer of the Trustee, to the holder of such Senior Indebtedness or his, her or its representative or representatives or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior Indebtedness may have been issued, ratably as aforesaid, as calculated by the Company, for application to payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

(d) Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities shall be subrogated to the rights of the holders of Senior Indebtedness (to the extent that distributions otherwise payable to such holder have been applied to the payment of Senior Indebtedness) to receive payments or distributions of cash, property or securities of the Company applicable to Senior Indebtedness until the principal of (and premium, if any) and interest, if any, on the Securities shall be paid in full and no such payments or distributions to the Holders of the Securities of cash, property or securities otherwise distributable to the holders of Senior Indebtedness shall, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities be deemed to be a payment by the Company to or on account of the Securities. It is understood that the provisions of this Article XV are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the other hand. Nothing contained

in this Article XV or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Securities, the obligation of the Company, which is unconditional and absolute, to pay to the Holders of the Securities the principal of (and premium, if any) and interest, if any, on the Securities as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or in the Securities prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XV of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any payment or distribution of assets of the Company referred to in this Article XV, the Trustee, subject to the provisions of Section 15.05, shall be entitled to conclusively rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereof and all other facts pertinent thereto or to this Article XV.

Section 15.03 No Payment on Securities in Event of Default on Senior Indebtedness. Subject to Section 15.01, no payment by the Company on account of principal (or premium, if any), sinking funds or interest, if any, on the Securities shall be made at anytime if: (i) a default on Senior Indebtedness exists that permits the holders of such Senior Indebtedness to accelerate its maturity and (ii) the default is the subject of judicial proceedings or the Company has received notice of such default. The Company may resume payments on the Securities when full payment of amounts then due for principal (premium, if any), sinking funds and interest on Senior Indebtedness has been made or duly provided for in money or money's worth.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 15.03, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of such Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, but only to the extent that the holders of such Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on such Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Senior Indebtedness.

Section 15.04 Payments on Securities Permitted. Subject to Section 15.01, nothing contained in this Indenture or in any of the Securities shall (a) affect the obligation of the Company to make, or prevent the Company from making, at any time except as provided in Sections 15.02 and 15.03, payments of principal of (or premium, if any) or interest, if any, on the Securities or (b) prevent the application by the Trustee of any moneys or assets deposited with it hereunder to the payment of or on account of the principal of (or premium, if any) or interest, if any, on the Securities, unless a Responsible Officer of the Trustee shall have received at its Corporate Trust Office written notice of any fact prohibiting the making of such payment from the Company or from the holder of any Senior Indebtedness or from the trustee for any such

holder, together with proof satisfactory to the Trustee of such holding of Senior Indebtedness or of the authority of such trustee more than two Business Days prior to the date fixed for such payment.

Section 15.05 Authorization of Securityholders to Trustee to Effect Subordination. Subject to Section 15.01, each Holder of Securities by his acceptance thereof authorizes and directs the Trustee on his, her or its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article XV and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 15.06 Notices to Trustee. The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies or assets to or by the Trustee in respect of the Securities of any series pursuant to the provisions of this Article XV. Subject to Section 15.01, notwithstanding the provisions of this Article XV or any other provisions of this Indenture, neither the Trustee nor any Paying Agent (other than the Company) shall be charged with knowledge of the existence of any Senior Indebtedness or of any fact which would prohibit the making of any payment of moneys or assets to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee or such Paying Agent shall have received (in the case of a Responsible Officer of the Trustee, at the Corporate Trust Office of the Trustee) written notice thereof from the Company or from the holder of any Senior Indebtedness or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Indebtedness or of the authority of such trustee and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects conclusively to presume that no such facts exist; provided, however, that if at least two Business Days prior to the date upon which by the terms hereof any such moneys or assets may become payable for any purpose (including, without limitation, the payment of either the principal (or premium, if any) or interest, if any, on any Security) a Responsible Officer of the Trustee shall not have received with respect to such moneys or assets the notice provided for in this Section 15.06, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys or assets and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such a notice has been given by a holder of Senior Indebtedness or a trustee on behalf of any such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article XV, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XV and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 15.07 Trustee as Holder of Senior Indebtedness. Subject to Section 15.01, the Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XV in

respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder. Nothing in this Article XV shall apply to claims of, or payments to, the Trustee under or pursuant to Sections 7.05 or 11.01.

Section 15.08 Modifications of Terms of Senior Indebtedness. Subject to Section 15.01, any renewal or extension of the time of payment of any Senior Indebtedness or the exercise by the holders of Senior Indebtedness of any of their rights under any instrument creating or evidencing Senior Indebtedness, including, without limitation, the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee. No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Indebtedness is outstanding or of such Senior Indebtedness, whether or not such release is in accordance with the provisions of any applicable document, shall in any way alter or affect any of the provisions of this Article XV or of the Securities relating to the subordination thereof.

Section 15.09 Reliance on Judicial Order or Certificate of Liquidating Agent. Subject to Section 15.01, upon any payment or distribution of assets of the Company referred to in this Article XV, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XV.

Section 15.10 Satisfaction and Discharge; Defeasance and Covenant Defeasance. Subject to Section 15.01, amounts and U.S. Government Obligations deposited in trust with the Trustee pursuant to and in accordance with Article XII and not, at the time of such deposit, prohibited to be deposited under Sections 15.02 or 15.03 shall not be subject to this Article XV.

Section 15.11 Trustee Not Fiduciary for Holders of Senior Indebtedness. With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or observe only such of its covenants and obligations as are specifically set forth in this Article XV, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness. The Trustee shall not be liable to any such holder if it shall pay over or distribute to or on behalf of Holders of Securities or the Company, or any other Person, moneys or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article XV or otherwise.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Section 16.01 Certificates and Opinions as to Conditions Precedent.

(a) Upon any request or application 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 Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (i) a statement that the Person giving such certificate or opinion has read such covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the view or opinion of such Person, he or she has made such examination or investigation as is necessary to enable such Person to express an informed view or opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether or not, in the view or opinion of such Person, such condition or covenant has been complied with.

(c) Any certificate, statement or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his or her certificate, statement or opinion is based are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate, statement or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate, statement or opinion or representations with respect to such matters are erroneous.

(d) Any certificate, statement or opinion of an officer of the Company or of counsel to the Company may be based, insofar as it relates to accounting matters, upon a certificate or opinion of, or representations by, an accountant or firm of accountants, unless such officer or counsel, as the case may be, knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the accounting matters upon which his or her certificate, statement or opinion may be based are erroneous. Any certificate or opinion of any firm of independent registered public accountants filed with the Trustee shall contain a statement that such firm is independent.

(e) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(f) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 16.02 Trust Indenture Act Controls. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by, or another provision included in this Indenture which is required to be included in this Indenture by any of the provisions of Sections 310 to 318, inclusive, of the Trust Indenture Act, such imposed duties or incorporated provision shall control.

Section 16.03 Notices to the Company and Trustee. Any notice or demand authorized by this Indenture to be made upon, given or furnished to, or filed with, the Company or the Trustee shall be sufficiently made, given, furnished or filed for all purposes if it shall be mailed, delivered or telefaxed to:

(a) the Company, at 2366 Bernville Road, Reading, Pennsylvania 19605, Attention: General Counsel, Facsimile No.: (610) 208-1807 or at such other address or facsimile number as may have been furnished in writing to the Trustee by the Company.

(b) the Trustee, at the Corporate Trust Office of the Trustee, Attention: Corporate Trust Administration.

Any such notice, demand or other document shall be in the English language.

Section 16.04 Notices to Securityholders; Waiver. Any notice required or permitted to be given to Securityholders shall be sufficiently given (unless otherwise herein expressly provided),

(a) if to Holders, if given in writing by first class mail, postage prepaid, to such Holders at their addresses as the same shall appear on the Register of the Company.

(b) In the event of suspension of regular mail service or by reason of any other cause it shall be impracticable to give notice by mail, then such notification as shall be given with the approval of the Trustee shall constitute sufficient notice for every purpose hereunder.

(c) Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance on such waiver. In any case where notice to Holders is given by mail;

neither the failure to mail such notice nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given. In any case where notice to Holders is given by publication, any defect in any notice so published as to any particular Holder shall not affect the sufficiency of such notice with respect to other Holders, and any notice that is published in the manner herein provided shall be conclusively presumed to have been duly given.

Section 16.05 Legal Holiday. Unless otherwise specified pursuant to Section 3.01, in any case where any Interest Payment Date, Redemption Date or Maturity of any Security of any series shall not be a Business Day at any Place of Payment for the Securities of that series, then payment of principal and premium, if any, or interest need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on such Interest Payment Date, Redemption Date or Maturity and no interest shall accrue on such payment for the period from and after such Interest Payment Date, Redemption Date or Maturity, as the case may be, to such Business Day if such payment is made or duly provided for on such Business Day.

Section 16.06 Effects of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 16.07 Successors and Assigns. All covenants and agreements in this Indenture by the parties hereto shall bind their respective successors and assigns and inure to the benefit of their permitted successors and assigns, whether so expressed or not.

Section 16.08 Separability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 16.09 Benefits of Indenture. Nothing in this Indenture expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or to give to, any Person or corporation other than the parties hereto and their successors and the Holders of the Securities any benefit or any right, remedy or claim under or by reason of this Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Indenture contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Holders of the Securities.

Section 16.10 Counterparts Originals. This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 16.11 Governing Law; Waiver of Trial by Jury. This Indenture and the Securities shall be deemed to be contracts made under the law of the State of New York, and for all purposes shall be governed by and construed in accordance with the law of said State.

EACH PARTY HERETO, AND EACH HOLDER OF A SECURITY BY ACCEPTANCE THEREOF, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE.

Section 16.12 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 which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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

ENERSYS,
as Issuer

By: /s/ Michael T. Philion
Name: Michael T. Philion
Title: Executive Vice President – Finance and Chief Financial Officer

THE BANK OF NEW YORK,
as Trustee

By: /s/ Mary LaGumina
Name: Mary LaGumina
Title: Vice President

Exhibit 4.2

EXECUTION VERSION

ENERSYS

ISSUER

THE BANK OF NEW YORK

TRUSTEE

FIRST SUPPLEMENTAL INDENTURE

Dated as of May 28, 2008

To

INDENTURE

Dated as of May 28, 2008

3.375% CONVERTIBLE SENIOR NOTES DUE 2038

ENERSYS

Certain Sections of this Indenture relating to Sections 310 through 318 of the Trust Indenture Act of 1939:

Trust Indenture Act Section	Supplemental Indenture Section
§ 310(a)(1)	Not Applicable
(a)(2)	Not Applicable
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	Not Applicable
§ 311(a)	Not Applicable
(b)	Not Applicable
§ 312(a)	9.01 9.02(a)
(b)	9.02(b)
(c)	9.02(c)
§ 313(a)	Not Applicable
(b)	Not Applicable
(c)	Not Applicable
(d)	Not Applicable
§ 314(a)	10.06
(b)	Not Applicable
(c)(1)	Not Applicable
(c)(2)	Not Applicable
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	Not Applicable
§ 315(a)	Not Applicable
(b)	Not Applicable
(c)	Not Applicable
(d)	Not Applicable
(e)	5.15
§ 316(a)(1)(A)	5.06
(a)(1)(B)	5.04
(a)(2)	Not Applicable
(b)	5.03
(c)	Not Applicable
§ 317(a)(1)	5.07
(a)(2)	5.08
(b)	10.05
§ 318(a)	Not Applicable

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

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FIRST SUPPLEMENTAL INDENTURE, dated as of May 28, 2008 (this "**Supplemental Indenture**," together with the Base Indenture (as defined below), the "**Indenture**"), between ENERSYS, a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 2366 Bernville Road, Reading, Pennsylvania 19605 (herein called the "**Company**"), and THE BANK OF NEW YORK, as Trustee hereunder (herein called the "**Trustee**").

RECITALS OF THE COMPANY

WHEREAS, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of May 28. 2008 (the "**Base Indenture**").

WHEREAS, the Company desires and has requested the Trustee pursuant to Section 14.01 of the Base Indenture to join with them in the execution and delivery of this Supplemental Indenture in order to supplement the Base Indenture as and to the extent set forth herein to provide for the issuance and the terms of the Company's 3.375% Convertible Senior Notes due 2038 (herein called the "**Notes**").

WHEREAS, Section 14.01(p) of the Base Indenture provides that a supplemental indenture may be entered into by the Company and the Trustee without the consent of any Holders to establish the form and terms of Securities (as defined in the Base Indenture) of any series as permitted in Section 3.01 of the Base Indenture.

WHEREAS, the execution and delivery of this Supplemental Indenture has been duly authorized by a Board Resolution of the Company, and all things necessary to make the Notes, when the Notes are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company have been done. Further, all things necessary to duly authorize the issuance of the Common Stock issuable upon the conversion of the Notes, and to duly reserve for issuance the amount of cash and the number of shares of Common Stock (or, at the election of the Company, the amount of cash or the number of shares of Common Stock) issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. *Definitions.*

For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Trust Indenture Act or the Base Indenture;

(b) the terms defined in this Article 1 have the meanings assigned to them in this Article 1 and include the plural as well as the singular;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and

(d) all other terms used in this Supplemental Indenture, which are defined in the Trust Indenture Act or which 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 the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this Indenture. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"**Accreted Principal Amount**" means the Original Principal Amount at any time prior to June 1, 2015, and the Original Principal Amount as adjusted upward for accretion as described in Section 3.04 at any time on or after June 1, 2015.

"**Additional Notes**" means an unlimited amount of Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 3.06, as part of the same series as the Initial Notes.

"**Additional Shares**" has the meaning specified in Section 12.01(e).

"**Adjustment Determination Date**" has the meaning specified in Section 12.04(i).

"**Adjustment Event**" has the meaning specified in Section 12.04(i).

"**Agent Member**" means any member of, or participant in, the Depositary.

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

"**Base Indenture**" has the meaning ascribed to it in the first paragraph under the caption "Recitals of the Company."

"**Board of Directors**" means either the board of directors of the Company or any duly authorized committee of that board, as applicable.

"**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.

"**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 Percentage**" means the percentage of the Daily Conversion Value in excess of the Principal Portion that the Company will elect to satisfy (or be deemed to have elected to satisfy) in cash, as specified in a Consideration Notice pursuant to Section 12.02(b) (or zero percent (0%) if no Cash Percentage is specified in a Consideration Notice).

"**Certificated Note**" means a certificated Note registered in the name of the Holder thereof and issued in accordance with this Supplemental Indenture, substantially in the form of Section 2.02 hereof, except that such Note will not bear the Global Note Legend.

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

"**Code**" means the Internal Revenue Code of 1986 as in effect on the date hereof.

"**Combination Settlement**" means settlement of the Company's Conversion Obligation by delivering (a) cash for the Principal Portion and (b) for the excess, if any, of the Conversion Obligation above the Principal Portion, a combination of cash and shares of Common Stock (or units of Reference Property) based on the Cash Percentage specified (or deemed to have been specified) in the applicable Consideration Notice.

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Stock**" means the Common Stock, par value $0.01 per share, of the Company authorized at the date of this instrument as originally executed or as such stock may be constituted from time to time. Subject to the provisions of Section 12.10, shares issuable upon conversion of Notes shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided*, *however*, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Notes shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which 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.

"**common stock**" includes any stock of any class of Capital Stock which has 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 issuer thereof and which is not subject to redemption by the issuer thereof.

"**Company**" means the Person named as the "**Company**" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Company**" shall mean such successor Person.

"**Consideration Notice**" has the meaning specified in Section 12.02(b).

"**Contingent Interest**" means interest that accrues and is payable as provided in Section 3.03.

"**Contingent Payment Debt Regulations**" has the meaning specified in Section 10.08(a).

"**Continuing Directors**" means (a) individuals who on the Issue Date constituted the Board of Directors and (b) any new directors whose election to the Board of Directors or whose nomination for election by the stockholders of the Company was approved by at least a majority of the directors then still in office (or a duly constituted committee thereof), either who were directors on the Issue Date or whose election or nomination for election was previously so approved.

"**Conversion Agent**" means any Person authorized by the Company to convert Notes in accordance with Article 12. The Company has initially appointed the Trustee as its Conversion Agent pursuant to Section 10.02.

"**Conversion Consideration**" has the meaning specified in Section 12.02(c).

"**Conversion Date**" has the meaning specified in Section 12.02(d).

"**Conversion Obligation**" means the obligation of the Company to deliver the consideration due under Article 12 upon a conversion of the Notes in accordance herewith.

"**Conversion Price**" means at any given time the amount equal to $1,000 divided by the then applicable Conversion Rate.

"**Conversion Rate**" has the meaning specified in Section 12.01(a).

"**Custodian**" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"**Daily Conversion Value**" means, for each of the 25 consecutive VWAP Trading Days during the Observation Period, one-twenty-fifth (1/25) of the product of (a) the applicable Conversion Rate and (b) the Daily VWAP of the Common Stock (or the Reference Property pursuant to Section 12.10) on such VWAP Trading Day, as determined by the Company. Any determination of the Daily Conversion Values by the Company shall be conclusive absent manifest error.

"**Daily Settlement Amount**" means, for each of the 25 VWAP Trading Days during the Observation Period,

(a) an amount of cash equal to the lesser of (i) the quotient of the Accreted Principal Amount per $1,000 Original Principal Amount as of such VWAP Trading Day and 25 and (ii) the Daily Conversion Value for such VWAP Trading Day (the "**Principal Portion**"); and

(b) if such Daily Conversion Value for such VWAP Trading Day exceeds the Principal Portion, either:

(i) if the Cash Percentage equals 0%, a number of shares of Common Stock (or the Reference Property pursuant to Section 12.10) (the "**Maximum Deliverable Shares**") equal to (1) the difference between such Daily Conversion Value and the Principal Portion, *divided by* (2) the Daily VWAP of the Common Stock (or the Reference Property pursuant to Section 12.10) for such VWAP Trading Day, or

(ii) if the Cash Percentage is greater than 0%, (1) an amount of cash equal to the product of the Cash Percentage and the Maximum Deliverable Shares and (2) a number of shares of Common Stock (or the Reference Property pursuant to Section 12.10) equal to the product of (x) 100% minus the Cash Percentage and (y) the Maximum Deliverable Shares.

"**Daily VWAP**" of the Common Stock (or Reference Property) means, for each of the 25 consecutive VWAP Trading Days during the Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page ENS.N <equity> AQR (or any equivalent successor page) in respect of the period from the scheduled open of trading on the principal trading market for the Common Stock to the scheduled close of trading on such market on such VWAP Trading Day (without regard to after-hours trading), or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock (or one unit of Reference Property consisting of marketable equity securities) on such VWAP Trading Day using a volume-weighted method (or, in the case of Reference Property consisting of cash, the amount of such cash or in the case of Reference Property other than marketable equity securities or cash, the market value thereof), in each case as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company.

"**Default**" means any event which is, or after notice or lapse of time or both would become, an Event of Default pursuant to Section 5.01.

"**Defaulted Interest**" has the meaning specified in Section 3.10.

"**Delivery Date**" has the meaning specified in Section 12.04(l).

"**Depositary**" means, with respect to Notes issuable in whole or in part in the form of one or more Global Notes, a clearing agency registered under the Exchange Act that is designated to act as Depositary for such Notes as contemplated by Section 3.07.

"**Distributed Property**" has the meaning specified in Section 12.04(c).

"**DTC**" means The Depository Trust Company, a New York corporation, or any successor.

"**Effective Date**" means the date on which a Fundamental Change occurs or becomes effective.

"**Event of Default**" has the meaning specified in Section 5.01.

"**Ex-Date**" means, with respect to any distribution on the Common Stock, the first date on which the shares of the Common Stock trade on the relevant exchange or in the relevant market, regular way, without the right to receive the issuance or distribution in question.

"**Exchange Act**" means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

"**Exchange Election**" has the meaning specified in Section 12.02(c).

"**Existing Credit Facilities**" means the credit facilities entered into by EnerSys Capital, Inc. with various lending institutions in effect on the Issue Date.

"**Extension Fee**" has the meaning specified in Section 5.02.

"**Extension Right**" has the meaning specified in Section 5.02.

"**Financial Institution**" has the meaning specified in Section 12.02(c).

"**Fundamental Change**" will be deemed to have occurred at the time after the Issue Date if any of the following occurs:

(1) any Person acquires beneficial ownership, directly or indirectly, through a purchase, tender or exchange offer, merger or other acquisition, transaction or series of transactions, of shares of the Company's Capital Stock entitling the Person to exercise 50% or more of the total voting power of all shares of the Company's Capital Stock entitled to vote generally in elections of directors and files a Schedule 13D or Schedule TO or any other schedule, form or report under the Exchange Act disclosing such beneficial ownership or the Company otherwise knows of such beneficial ownership; *provided*, *however*, that a Fundamental Change shall not occur as a result of this clause (1) if clause (2) also applies in which case clause (2) below shall apply (for purposes of this clause (1), whether a Person is a "beneficial owner" shall be determined in accordance with Rule 13d-3 under the Exchange Act, and "Person" shall include any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act); or

(2) the Company (i) merges or consolidates with or into any other Person, another Person merges with or into the Company, or the Company conveys, sells, transfers or leases all or substantially all of the Company's assets to another Person or (ii) engages in any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, in each case other than any merger or consolidation:

(x) that does not result in a reclassification, conversion, exchange or cancellation of the Company's outstanding Common Stock and pursuant to which the consideration received by holders of the Company's Common Stock immediately prior to the transaction entitles such holders to exercise, directly or indirectly, 50% or more of the voting

power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after such transaction in substantially the same proportions as their respective ownership of the Company's voting securities immediately prior to the transaction; or

(y) which is effected solely to change the Company's jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(3) the first day on which a majority of the members of the Company's Board of Directors does not consist of Continuing Directors; or

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

(5) if shares of the Common Stock, or shares of any other common stock into which the Notes are convertible pursuant to the terms of this Supplemental Indenture, are not listed for trading on any of the New York Stock Exchange, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors).

"**Fundamental Change Repurchase Date**" has the meaning specified in Section 11.09(a).

"**Fundamental Change Repurchase Notice**" has the meaning specified in Section 11.09(a)(i).

"**Fundamental Change Repurchase Notice Information**" has the meaning specified in Section 11.09(b).

"**Fundamental Change Repurchase Price**" has the meaning specified in Section 11.09(a).

"**Fundamental Change Repurchase Right Notice**" has the meaning specified in Section 11.09(b).

"**Global Note**" means a Note bearing the Global Note Legend that is registered in the Securities Register in the name of a Depositary or a nominee thereof.

"**Global Note Legend**" means the legend set forth in Section 2.02, which is required to be placed on all Global Notes issued under this Supplemental Indenture.

"**Holder**" means the Person in whose name the Note is registered in the Securities Register.

"**Indenture**" has the meaning specified in the first paragraph of this instrument.

"**Initial Notes**" means the first $150,000,000 aggregate Original Principal Amount of the Notes issued under this Supplemental Indenture on the date hereof. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Supplemental Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"**Interest**" means Regular Interest and Contingent Interest, if any.

"**Interest Payment Date**" means June 1 and December 1 of each year, beginning on December 1, 2008 and ending on June 1, 2015.

"**Interest Period**" has the meaning specified in Section 3.02.

"**Irrevocable Net Share Settlement Election**" has the meaning specified in Section 12.02(b).

"**Issue Date**" means May 28, 2008.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last 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 traded, as determined by the Company. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "**Last Reported Sale Price**" shall be the average of the last quoted bid and ask prices for the Common Stock in the over-the-counter market on the relevant date as reported by Pink Sheets LLC or a similar organization. If the Common Stock is not so quoted, the "**Last Reported Sale Price**" shall 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, which may include any or all of the Underwriters, selected by the Company for this purpose. Any such determination shall be conclusive absent manifest error.

"**Make-Whole Fundamental Change**" means any transaction or event that occurs on or prior to June 6, 2015 and that constitutes a Fundamental Change pursuant to clauses (1), (2) or (5) under the definition thereof.

"**Make-Whole Reference Date**" means with respect to any Make-Whole Fundamental Change, the earliest of the date on which such Make-Whole Fundamental Change is publicly announced, occurs or becomes effective.

"**Market Disruption Event**" means the occurrence or existence on any Scheduled Trading Day for the Common Stock 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 futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time within the 30 minutes prior to the closing time of the relevant exchange on such day.

"**Maturity,**" when used with respect to any Notes, means the date on which the principal of such Notes becomes due and payable as therein or herein provided, whether on the Maturity Date or by declaration of acceleration, exercise of the redemption right or repurchase right, set forth in Article 11 or otherwise.

"**Maturity Date**" means, with respect to the Notes, June 1, 2038.

"**Maximum Deliverable Shares**" has the meaning specified in the definition of Daily Settlement Amount.

"**Measurement Period**" (i) for purposes of determining whether the Company is required to pay Contingent Interest, has the meaning specified in Section 3.03(a) and (ii) for purposes of determining whether the Trading Price Condition has been met, the meaning specified in Section 12.01(a)(i).

"**Merger Event**" has the meaning specified in Section 12.10.

"**New Credit Facilities**" means any credit facilities entered into by the Company to refinance the Existing Credit Facilities.

"**Notes**" has the meaning ascribed to it in the second paragraph under the caption "Recitals of the Company." Unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"**Notice of Conversion**" has the meaning specified in Section 12.02(d).

"**Notice of Redemption**" has the meaning specified in Section 11.03.

"**Observation Period**" means, with respect to any Notes:

(a) with respect to any Conversion Date occurring within the Optional Redemption Conversion Period, the 25 consecutive VWAP Trading Day period beginning on, and including, the Redemption Date (or if the Redemption Date is not a VWAP Trading Day, the next succeeding VWAP Trading Day); or

(b) with respect to any Conversion Date occurring on or after the 30th Scheduled Trading Day prior to the Maturity Date of the Notes, the 25 consecutive VWAP Trading Day period beginning on, and including, the 27th Scheduled Trading Day prior to the Maturity Date (or if such day is not a VWAP Trading Day, the next succeeding VWAP Trading Day); or

(c) in all other instances, the 25 consecutive VWAP Trading Day period beginning on, and including, the third VWAP Trading Day after the related Conversion Date in respect of such Notes.

"**Opinion of Counsel**" means a written opinion of counsel, who may be an employee of or counsel to the Company, and who shall be reasonably acceptable to the Trustee.

"**Optional Redemption Conversion Period**" means the 15 calendar day period beginning on, and including, the 16th calendar day immediately preceding a Redemption Date.

"**Optional Put Repurchase Offer**" has the meaning specified in Section 11.08(a)(ii).

"**Optional Put Repurchase Date**" has the meaning specified in Section 11.08(a)(i).

"**Optional Put Repurchase Notice**" has the meaning specified in Section 11.08(a)(ii).

"**Optional Put Repurchase Price**" has the meaning specified in Section 11.08(a)(i).

"**Original Principal Amount**" means (a) with respect to the Initial Notes, the principal amount of the Initial Notes as of the Issue Date and (b) with respect to Additional Notes, if any, the principal amount of such Additional Notes on their date of issuance.

"**Outstanding,**" when used with respect to the Notes, means, as of the date of determination, all Notes theretofore authenticated and delivered under this Supplemental Indenture, except:

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

(b) Notes for the payment of which money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Notes in accordance with the terms of this Supplemental Indenture;

(c) Notes which have been paid pursuant to Section 3.09 or in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Supplemental Indenture;

(d) Notes converted into Common Stock pursuant to Article 12; and

(e) Notes redeemed or repurchased pursuant to Article 11;

provided, *however*, that in determining whether the Holders of the requisite principal amount of Outstanding Notes are present at a meeting of Holders for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee has been notified in writing to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor, and the Trustee shall be protected in relying upon an Officers' Certificate to such effect.

"**Paying Agent**" means any Person authorized by the Company to pay the principal of or Interest on any Notes on behalf of the Company and, except as otherwise specifically set forth herein, such term shall include the Company if it shall act as its own Paying Agent. The Company has initially appointed the Trustee as its Paying Agent pursuant to Section 10.02.

"**Person**" means any individual, corporation, limited liability company, partnership, joint venture, trust, estate, unincorporated organization or government or any agency or political subdivision thereof and any syndicate or group that would be deemed a "person" under Section 13(d)(3) of the Exchange Act.

"**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 3.09 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

"**Press Release**" means any press release issued by the Company and disseminated to a reputable national newswire service.

"**Principal Portion**" has the meaning specified in the definition of Daily Settlement Amount.

"**Prospectus Supplement**" means the prospectus supplement dated May 21, 2008 to the prospectus dated May 19, 2008 relating to the offering and sale of the Notes.

"**Record Date**" means any Regular Record Date or Special Record Date.

"**Redemption Date**" when used with respect to any Note to be redeemed, means the date fixed by the Company for such redemption pursuant to this Indenture.

"**Redemption Price**" has the meaning specified in Section 11.01.

"**Reference Property**" has the meaning specified in Section 12.10(a).

"**Registrar**" means the Trustee, for the purpose of registering Notes and transfers of Notes.

"**Regular Interest**" has the meaning specified in Section 3.02.

"**Regular Record Date**" for Interest payable in respect of any Note on any Interest Payment Date means 5:00 p.m. New York time on May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading or, if the Common Stock is not listed or admitted for trading on any exchange or market, a Business Day.

"**Securities Act**" means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

"**Significant Subsidiary**" means, with respect to any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X under the Securities Act and the Exchange Act.

"**Special Record Date**" has the meaning specified in Section 3.10(a).

"**Spin-Off**" has the meaning specified in Section 12.04(c).

"**Stock Price**" means the price per share of Common Stock at the time of a Make-Whole Fundamental Change pursuant to which Additional Shares shall be added to the Conversion Rate as set forth in Section 12.01(e), which shall be equal to (i) if holders of the Common Stock receive only cash consideration for their shares of Common Stock (in a single per-share amount, other than with respect to appraisal and similar rights) in connection with a Make-Whole Fundamental Change, the cash amount paid per share of Common Stock and (ii) in all other cases, the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day preceding the date on which such Make-Whole Fundamental Change occurs or becomes effective.

"**Successor Company**" has the meaning specified in Section 7.01(a).

"**Supplemental Indenture**" has the meaning specified in the first paragraph of this instrument.

"**Trading Day**" means a day during which (i) trading in the Common Stock generally occurs and (ii) there is no Market Disruption Event.

"**Trading Price**" of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Company or the Company's agent for $2.0 million in Original Principal Amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects, which may include any or all of the Underwriters; *provided* that if three such bids cannot reasonably be obtained, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid is obtained, that one bid shall be used. If at least one bid for $2.0 million in Original Principal Amount of the Notes cannot reasonably be obtained, then the Trading Price per $1,000 in Original Principal Amount of the Notes shall 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. Any such determination shall be conclusive absent manifest error. Notwithstanding the foregoing, for purposes of Section 3.03 only, if two bids cannot reasonably be obtained for $2.0 million Original Principal Amount of the Notes from nationally recognized securities dealers that the Company has selected, but one such bid can reasonably be obtained, this one bid shall be used. If at least one bid cannot reasonably be obtained for $2.0 million Original Principal Amount of the Notes from a nationally recognized securities dealer or in the Company's reasonable judgment the bid quotations are not indicative of the secondary market value of the Notes, then the Trading Price of

the Notes will be deemed to equal the product of (i) the Conversion Rate then in effect and (ii) the average Last Reported Sale Price of the Common Stock over the five Trading Day period ending on such determination date.

"**Trading Price Condition**" has the meaning specified in Section 12.01(a)(i).

"**Trigger Event**" has the meaning specified in Section 12.04(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "**Trust Indenture Act**" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"**Underwriters**" means Goldman, Sachs & Co., Banc of America Securities LLC, Wachovia Capital Markets, LLC and PNC Capital Markets LLC.

"**VWAP Market Disruption Event**" means (i) a failure by the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted to trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m. on any Scheduled Trading Day for the Common Stock for an aggregate one half-hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**VWAP Trading Day**" means a day during which (i) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading and (ii) there is no VWAP Market Disruption Event. If the Common Stock is not so listed or traded, then "**VWAP Trading Day**" means a Business Day.

Section 1.02. *[Reserved]*.

Section 1.03. *[Reserved]*.

Section 1.04. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.05. *[Reserved].*

Section 1.06. *[Reserved].*

Section 1.07. *[Reserved].*

Section 1.08. *Conflict with Trust Indenture Act.*

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Supplemental Indenture, the latter provision shall control. If any provision of this Supplemental Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Supplemental Indenture as so modified or to be excluded, as the case may be.

Section 1.09. *Successors and Assigns.*

All covenants and agreements in this Supplemental Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10. *Separability Clause.*

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

Section 1.11. *Benefits of Indenture.*

Nothing in this Supplemental Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 1.12. *Governing Law.*

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

Section 1.13. *Legal Holidays.*

In any case where any Interest Payment Date, Redemption Date, Optional Put Repurchase Date, Fundamental Change Repurchase Date or the Maturity Date

of any Note or the last date on which a Holder has the right to convert his Notes shall not be a Business Day, then (notwithstanding any other provision of this Supplemental Indenture or of the Notes) payment of Interest or principal or conversion of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Redemption Date, Optional Put Repurchase Date or Fundamental Change Repurchase Date, or at the Maturity Date, or on such last day for conversion; *provided* that no Interest shall accrue and no principal amount shall accrete for the period from and after such Interest Payment Date, Redemption Date, Optional Put Repurchase Date, Fundamental Change Repurchase Date or the Maturity Date, as the case may be. Notwithstanding the foregoing, the right to convert a Note shall cease at the close of business on the Scheduled Trading Day immediately preceding the Maturity Date.

Section 1.14. *[Reserved]*.

Section 1.15. *Relationship with Base Indenture.*

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

The Trustee accepts the amendment of the Base Indenture effected by this Supplemental Indenture and agrees to execute the trust created by the Base Indenture as hereby amended, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee in the performance of the trust created by the Base Indenture, and without limiting the generality of the foregoing, the Trustee shall not be responsible in any manner whatsoever for or with respect to any of the recitals or statements contained herein, all of which recitals or statements are made solely by the Company, or for or with respect to (a) the validity or sufficiency of this Supplemental Indenture or any of the terms or provisions hereof, (b) the proper authorization hereof by the Company, (c) the due execution hereof by the Company or (d) the consequences (direct or indirect and whether deliberate or inadvertent) of any amendment herein provided for, and the Trustee makes no representation with respect to any such matters.

ARTICLE 2
NOTE FORMS

Section 2.01. *Form Generally.*

The Notes shall be in substantially the form set forth in this Article 2, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Supplemental Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange, the Code, and regulations thereunder, or as may, consistent herewith, be determined by the officers executing such Notes, as evidenced by their execution thereof. The Company shall furnish any such legends and endorsements to the Trustee in writing. All Notes shall be in fully registered form.

Notices of Conversion shall be in substantially the form set forth in Section 2.03.

The Notes shall be printed, lithographed, typewritten or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any automated quotation system or securities exchange (including on steel engraved borders if so required by any securities exchange upon which the Notes may be listed) on which the Notes may be listed for trading, as the case may be, all as determined by the officers executing such Notes, as evidenced by their execution thereof.

Section 2.02. *Form of Note.*

[FORM OF FACE OF NOTE]

The following legend shall appear on the face of each Global Note:

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

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE 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.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE REGISTERED FORM IN THE LIMITED CIRCUMSTANCES REFERRED TO IN THE SUPPLEMENTAL INDENTURE, THIS GLOBAL NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE 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.

ENERSYS
3.375% Convertible Senior Notes due 2038

No. _____ Initially $ _____

CUSIP No. 29275Y AA0

ENERSYS, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "**Company,**" which term includes any successor Person under the Supplemental Indenture referred to on the reverse hereof), for value received, hereby promises to pay to _____ [**if this Note is a Global Note**, then insert – CEDE & CO.], or registered assigns, the principal sum of [_____ UNITED STATES DOLLARS (U.S. $_____)] [**if this Note is a Global Note, then insert** — the principal sum as set forth in the "Schedule of Increases or Decreases" attached hereto plus an accreted amount as specified below and in the Supplemental Indenture, which shall not exceed _____ UNITED STATES DOLLARS ($_____) except for such accreted amount], on June 1, 2038 (the "**Maturity Date**"), and to pay interest thereon, from May 28, 2008, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, semi-annually in arrears on June 1 and December 1 in each year (each, an "**Interest Payment Date**"), commencing on December 1, 2008 at the rate of 3.375% per annum. The Notes will cease to bear interest (except Contingent Interest, as applicable) on June 1, 2015, and instead from such date the principal amount of the Notes will accrete at a rate that provides Holders with an aggregate annual yield to maturity of 3.375% per year (computed on a semi-annual bond-equivalent basis) as provided in the Supplemental Indenture. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest, which shall be the May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Except as otherwise provided in the Supplemental Indenture, any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee pursuant to Section 3.10 of the Supplemental Indenture, notice whereof shall be given to Holders not less than 10 days prior to the Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any automated quotation system or securities exchange on which the Notes may then be listed for trading, and upon such notice as may be required by such exchange, all as more fully provided in the Supplemental Indenture. At the Company's request, the Trustee shall give any notice required hereunder to be provided to Holders in the Company's name

and at the Company's expense; *provided* that the text of such notice shall be prepared by the Company. Payments of principal shall be made upon the surrender of this Note by the Holder thereof at the Corporate Trust Office of the Trustee, or at such other office or agency of the Company as may be designated by it for such purpose in such lawful monies of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, or at such other offices or agencies as the Company may designate. All amounts due in cash with respect to the Notes shall be paid (a) in the case this Note is in global form, by wire transfer of immediately available funds to the account designated by the Depositary or its nominee; (b) in the case this Note is held, other than in global form, by a Holder in an aggregate principal amount of $5.0 million or less, by check mailed to such Holders; and (c) in the case this Note is held, other than in global form, by a Holder in an aggregate principal amount of more than $5.0 million, either by check mailed to such Holder or, upon application by such Holder to the Registrar not later than the relevant Record Date or 15 calendar days prior to such other date on which such amounts are due, by wire transfer in immediately available funds to such Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary.

Except as specifically provided herein and in the Supplemental Indenture, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof or an Authenticating Agent by the manual signature of one of their respective authorized signatories, this Note shall not be entitled to any benefit under the Supplemental Indenture or be valid or obligatory for any purpose.

[Remainder of page intentionally left blank]

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

ENERSYS

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Supplemental Indenture.

Dated:_____

THE BANK OF NEW YORK,
as Trustee

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

ENERSYS
3.375% Convertible Senior Notes due 2038

This Note is one of a duly authorized issue of Notes of the Company designated as its "**3.375% Convertible Senior Notes due 2038**" (herein called the "**Notes**") issued and to be issued under the Indenture (the "**Base Indenture**"), dated as of May 28, 2008, between the Company and The Bank of New York, as Trustee (herein called the "**Trustee,**" which term includes any successor trustee under the Indenture (as defined below)), as supplemented and modified by the First Supplemental Indenture (the "**Supplemental Indenture**" and, together with the Base Indenture, the "**Indenture**"), dated as of May 28, 2008, between the Company and the Trustee, to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. As provided in the Supplemental Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate Original Principal Amount of Notes of any authorized denominations as requested by the Holder surrendering the same upon surrender of the Note or Notes to be exchanged, at the Corporate Trust Office of the Trustee. The Trustee upon such surrender by the Holder hereof and the satisfaction of any requirements therefor set forth in the Supplemental Indenture shall issue the new Notes in the requested denominations. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Supplemental Indenture.

No sinking fund is provided for in the Notes.

In any case where any Interest Payment Date, Redemption Date, Optional Put Repurchase Date, Fundamental Change Repurchase Date or the Maturity Date of any Note or the last date on which a Holder has the right to convert his Notes shall not be a Business Day, then (notwithstanding any other provision of the Supplemental Indenture or of the Notes) payment of Interest or Accreted Principal Amount or conversion of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Redemption Date, Optional Put Repurchase Date or Fundamental Change Repurchase Date or at the Maturity Date, or on such last day for conversion, as the case may be; *provided* that no Interest shall accrue and no principal amount shall accrete for the period from and after such Interest Payment Date, Redemption Date, Optional Put Repurchase Date, Fundamental Change Repurchase Date or the Maturity Date, as the case may be.

The Supplemental 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 Original Principal Amount of the Notes at the time outstanding, evidenced as in the Supplemental Indenture provided, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Supplemental Indenture or of any supplemental indenture or modifying in any manner the rights of the Holders of the Notes; *provided*, *however*, that no such supplemental indenture shall make any of the changes set forth in Section 8.02 of the Supplemental Indenture, without the consent of the Holder of each Outstanding Note affected thereby. It is also provided in the Supplemental Indenture that, prior to any declaration accelerating the maturity of the Notes, the Holders of a majority in Original 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 Supplemental Indenture and its consequences except as provided in the Supplemental Indenture. Any such consent or waiver by the Holder of this Note (unless revoked as provided in the Supplemental Indenture) shall be conclusive and binding upon such Holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

No reference herein to the Supplemental Indenture and no provision of this Note or of the Supplemental Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Accreted Principal Amount of, and accrued and unpaid Interest on, this Note, at the place, at the respective times, at the rate and in the lawful money herein prescribed.

Subject to the provisions of the Supplemental Indenture, upon the occurrence of a Fundamental Change or on an Optional Put Repurchase Date, the Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in Original Principal Amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date or Optional Put Repurchase Date, as applicable, at a price equal to 100% of the Accreted Principal Amount of the Notes such Holder elects to require the Company to repurchase, together with accrued and unpaid Interest to, but excluding, the Fundamental Change Repurchase Date or Optional Put Repurchase Date, as applicable, unless such Fundamental Change Repurchase Date or Optional Put Repurchase Date, as applicable, falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, in which case the Company shall pay the full amount of accrued and unpaid Interest payable on such Interest Payment Date to the Holder of record at the close of business on the corresponding Regular Record Date. No later than 20 Business Days prior to each Optional Put Repurchase Date, the Company shall give notice to each Holder (and to beneficial owners as required by applicable law) of their related repurchase

right. The Company or, at the written request of the Company, the Trustee shall mail to all Holders of record of the Notes a notice of the occurrence of a Fundamental Change and of the repurchase right arising as a result thereof after the occurrence of any Fundamental Change, but on or before the 15th calendar day following such occurrence.

The Holder hereof has the right, at its option, (a) upon the occurrence of certain conditions specified in the Supplemental Indenture, at any time prior to the close of business on the Scheduled Trading Day immediately preceding March 1, 2015, or (b) on or after March 1, 2015, at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof which is $1,000 in Original Principal Amount or an integral multiple thereof, into a combination of cash and shares of Common Stock (or entirely cash or entirely shares of Common Stock, at the election of the Company, as set forth in Section 12.02 of the Supplemental Indenture) or Reference Property, in each case at the Conversion Rate specified in the Supplemental Indenture, as adjusted from time to time as provided in the Supplemental Indenture, upon satisfaction of certain requirements set forth in the Supplemental Indenture, including, if applicable, the surrender of this Note, together with a Notice of Conversion, a form of which is contained under Section 2.03 of the Supplemental Indenture, as provided in the Supplemental Indenture and this Note, to the Conversion Agent, and, unless the shares of Common Stock or Reference Property, as the case may be, issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or by his duly authorized attorney. The initial Conversion Rate shall be 24.6305 shares of Common Stock for each $1,000 in Original Principal Amount of Notes. No fractional shares of Common Stock or Reference Property, as the case may be, shall be issued upon any conversion, but an adjustment in cash shall be paid to the Holder, as provided in the Supplemental Indenture, in respect of any fraction of such share which would otherwise be issuable upon the surrender of any Note or Notes for conversion. No adjustment shall be made for dividends or any such shares issued upon conversion of such Notes except as provided in the Supplemental Indenture.

Upon due presentment for registration of transfer of this Note at the office or agency of the Company, a new Note or Notes of authorized denominations for an equal aggregate Original Principal Amount shall be issued to the transferee in exchange thereof, subject to the limitations provided in the Supplemental Indenture, without charge except for any tax, assessments or other governmental charge imposed in connection therewith.

The Company, the Trustee, any Authenticating Agent, any Paying Agent, any Conversion Agent and any Registrar may deem and treat the registered Holder hereof as the absolute owner of this Note (whether or not this Note shall

be overdue and notwithstanding any notation of ownership or other writing hereon), for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any Paying Agent nor any other Conversion Agent nor any Registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered Holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Note.

No recourse for the payment of the Accreted Principal Amount of, or accrued and unpaid Interest on, this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Supplemental Indenture or any indenture supplemental thereto or in any Note, or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

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

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

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

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

[TO BE INCLUDED IN GLOBAL NOTES]

SCHEDULE OF INCREASES OR DECREASES

The initial Original Principal Amount of this Note is _____ UNITED STATES DOLLARS ($_____). The following increases or decreases in a part of this Note have been made:

Date	Amount of decrease in Original Principal Amount of this Note	Amount of increase in Original Principal Amount of this Note	Original Principal Amount of this Note following such decrease (or increase)	Signature of authorized officer of Trustee

FORM OF OPTIONAL PUT REPURCHASE NOTICE AND FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: EnerSys

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from EnerSys (the "**Company**") as to the occurrence of (check the appropriate box):

☐ a Fundamental Change with respect to the Company;

☐ an Optional Put Repurchase Date;

and hereby directs the Company to pay, or cause the Trustee to pay, it or _____ an amount in cash equal to 100% of the Accreted Principal Amount, or the portion thereof (which is $1,000 in Original Principal Amount or an integral multiple thereof) below designated, to be repurchased plus interest accrued to, but excluding, the Optional Put Repurchase Date or the Fundamental Change Repurchase Date, as applicable, except as provided in the Supplemental Indenture.

Dated:

_____

_____

Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution (as defined in Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended) with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended.

_____

Signature Guaranteed

Certificate number(s), if applicable, of Note(s) tendered for repurchase: _____

Principal amount to be repurchased (at least U.S. $1,000 Original Principal Amount or an integral multiple of $1,000 in excess thereof): _____

Remaining principal amount following such repurchase (not less than U.S. $1,000 Original Principal Amount): _____

By: _____
Authorized Signatory

Section 2.03. *Form of Notice of Conversion.*

NOTICE OF CONVERSION

The undersigned Holder of this Note hereby irrevocably exercises the option to convert this Note, or any portion of the Accreted Principal Amount hereof (which is U.S. $1,000 Original Principal Amount or an integral multiple of U.S. $1,000 in excess thereof; *provided* that the unconverted portion of such Original Principal Amount is U.S. $1,000 or any integral multiple of U.S. $1,000 in excess thereof) below designated, into a combination of cash and shares of Common Stock (or, at the election of the Company, entirely cash or entirely shares of Common Stock) or Reference Property in accordance with the terms of the Supplemental Indenture referred to in this Note, and directs that the consideration due upon such conversion (including a check in payment for any fractional share and any Notes representing any unconverted principal amount hereof), be delivered to and be registered in the name of the undersigned unless a different name has been indicated below. If shares of Common Stock, Reference Property or Notes are to be registered in the name of a Person other than the undersigned, (a) the undersigned shall pay all transfer taxes payable with respect thereto and (b) the signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated: _____

_____
Signature(s)

If shares or Notes are to be registered in the name of a Person other than the Holder, please print such Person's name and address:

_____
(Name)

_____

_____
(Address)

_____
Social Security or other Identification
Number, if any

[Signature Guaranteed]

If only a portion of the Notes is to be converted, please indicate:

1. Accreted Principal Amount to be converted: U.S. $_____

2. Accreted Principal Amount and denomination of Notes representing unconverted Accreted Principal Amount to be issued: _____

Amount: U.S. $_____ Denominations: U.S. $_____

(U.S. $1,000 Original Principal Amount or any integral multiple of U.S. $1,000 in excess thereof, *provided* that the unconverted portion of such principal amount is U.S. $1,000 Original Principal Amount or any integral multiple of U.S. $1,000 in excess thereof).

Section 2.04. *Form of Assignment.*

ASSIGNMENT

For value received, _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert Social Security or other identifying number of assignee) the within note, and hereby irrevocably constitutes and appoints _____ as attorney to transfer the said note on the books of the Company, with full power of substitution in the premises.

Dated: _____

Signature(s)

Signature(s) must be guaranteed by an Eligible Guarantor Institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

Signature Guaranteed

ARTICLE 3
THE NOTES

Section 3.01. *Title and Terms.*

(a) The Notes shall be known and designated as the "**3.375% Convertible Senior Notes due 2038**" of the Company. Their Maturity Date shall be June 1, 2038 and they shall bear Regular Interest on the Original Principal Amount in accordance with Section 3.02.

(b) Beginning with the six-month period commencing on June 1, 2015, Contingent Interest shall be paid, if applicable, in accordance with Section 3.03.

(c) Commencing on June 1, 2015, the Accreted Principal Amount shall increase in accordance with Section 3.04.

(d) The Company shall pay Interest on overdue Accreted Principal Amount at the rate borne by the Notes, and it shall pay Interest on overdue installments of Interest at the same rate, in each case to the extent lawful.

(e) The Notes shall be subject to repurchase by the Company at the option of the Holders as provided in Section 11.08 and Section 11.09 hereof.

(f) The Accreted Principal Amount of and Interest on the Notes shall be payable as provided in the form of Notes set forth in Section 2.02. The Optional Put Repurchase Price or the Fundamental Change Repurchase Price, as applicable, shall be payable at such place as is identified in the Optional Put Repurchase Notice or the Fundamental Change Repurchase Right Notice, as applicable, given pursuant to Section 11.08 and Section 11.09, respectively.

(g) The Notes shall be general senior unsecured obligations of the Company and shall rank *pari passu* with all of the Company's other general senior unsecured obligations.

(h) The Notes may be redeemed at the option of the Company prior to Maturity pursuant to Section 11.01 hereof.

(i) The Notes shall be convertible as provided in Article 12.

(j) Article XII of the Base Indenture shall not be applicable to the Notes.

Section 3.02. *Regular Interest.*

Subject to the last paragraph of Section 3.10, Regular Interest will accrue on the Notes at the rate of 3.375% per year ("**Regular Interest**") during any six-month period from and including June 1 to and including November 30 or from

and including December 1 to and including May 31 (each, an "**Interest Period**"), commencing on December 1, 2008; *provided* that the initial Interest Period shall commence on May 28, 2008 and run to and including November 30, 2008. Regular Interest will be payable semi-annually in arrears on each Interest Payment Date (subject to Section 1.13) to the Holder of record at the close of business on the Regular Record Date preceding such Interest Payment Date; *provided* that the Notes will cease to accrue Regular Interest as of June 1, 2015.

Section 3.03. *Contingent Interest.*

(a) The Company will pay Contingent Interest in cash to Holders during any Interest Period beginning with the six-month Interest Period commencing on June 1, 2015, during any Interest Period if the Trading Price of the Notes for each of the five Trading Days ending on, and including, the second Trading Day immediately preceding the first day of the applicable Interest Period (as used in this Section 3.03, the "**Measurement Period**") equals or exceeds 130% of the Accreted Principal Amount of the Notes as of such Trading Day.

(b) During any Interest Period when Contingent Interest shall be payable with respect to the Notes, the Contingent Interest payable per $1,000 in Original Principal Amount of Notes will equal 0.40% of the average Trading Price of $1,000 in Original Principal Amount of the Notes for the applicable Measurement Period.

(c) The Company will promptly (and in any event prior to the applicable Interest Payment Date) notify Holders upon determination that they will be entitled to receive Contingent Interest during an Interest Period.

(d) The Company shall pay Contingent Interest owed pursuant to this Section 3.03 for any Interest Period on the Interest Payment Date immediately succeeding the applicable Interest Period, to Holders of the Notes as of the Regular Record Date related to such Interest Payment Date.

Section 3.04. *Accretion.*

Commencing on June 1, 2015, the Original Principal Amount shall accrete at a rate that provides Holders with an aggregate annual yield to Maturity of 3.375% per annum (computed on a semi-annual bond-equivalent yield basis). Schedule B hereto sets forth the Accreted Principal Amounts as of specified dates during the period from June 1, 2015 through the Maturity Date.

Section 3.05. *Denominations.*

The Notes shall be issuable only in registered form, without coupons, in denominations of U.S. $1,000 of Original Principal Amount and integral multiples of U.S. $1,000 in excess thereof.

Section 3.06. *Execution, Authentication, Delivery and Dating.*

The Notes shall be executed on behalf of the Company by its Chief Executive Officer, its President or one of its Vice Presidents, attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

At any time and from time to time after the execution and delivery of this Supplemental 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 as provided in this Indenture and not otherwise.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Supplemental Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 3.07. *Global Notes; Non-Global Notes; Book-Entry Provisions.*

(a) Global Notes

(i) Each Global Note issued and authenticated under this Supplemental Indenture shall be registered in the name of the Depositary designated by the Company for such Global Note or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture. The Company hereby appoints DTC as the initial Depositary.

(ii) Except for exchanges of Global Notes for definitive, non-Global Notes at the sole discretion of the Company, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Note or a nominee thereof unless (A) such Depositary (1) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note, or (2) has ceased to be a clearing agency registered as such under the Exchange Act, has ceased to be a "clearing corporation" within the meaning of the Uniform Commercial Code, or announces an intention permanently to cease business or does in fact do so or (B) there shall have occurred and be continuing an Event of Default with respect to such Global Note and the maturity of the Notes shall have been accelerated in accordance with Section 5.02 and any Holder shall have given written notice to the Company requesting the issuance of definitive Notes. In such event set forth in clause (A) above, if a successor Depositary for such Global Note is not appointed by the Company within 90 calendar days after the Company receives such notice or becomes aware of such ineligibility, the Company shall execute, and the Trustee, upon receipt of a Company Order directing the authentication and delivery of Notes, shall authenticate and deliver, Notes, in any authorized denominations in an aggregate principal amount equal to the Accreted Principal Amount of such Global Note in exchange for such Global Note.

(iii) If any Global Note is to be exchanged for other Notes or canceled in whole, it shall be surrendered by or on behalf of the Depositary or its nominee to the Trustee, as Registrar, for exchange or cancellation, as provided in this Article 3. If any Global Note is to be exchanged for other Notes or canceled in part, or if another Note is to be exchanged in whole or in part for a beneficial interest in any Global Note, in each case as provided in this Article 3, then either (A) such Global Note shall be so surrendered for exchange or cancellation, as provided in this Article 3, or (B) the Original Principal Amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Note to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Note, the Trustee shall, upon receipt of a Company Order, subject to this Article 3, authenticate and deliver any Notes issuable in exchange for such Global Note (or any portion thereof) to or upon the order of, and registered in such names as may be directed

by, the Depositary or its authorized representative. The Trustee shall be entitled to receive from the Depositary the names, addresses and tax identification numbers of the Persons in whose names the Notes are to be registered prior to such authentication and delivery. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Notes that are not in the form of Global Notes. The Trustee shall be entitled to rely upon any order, direction or request of the Depositary or its authorized representative which is given or made pursuant to this Article 3 if such order, direction or request is given or made in accordance with the Applicable Procedures.

(iv) Every Note authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Note or any portion thereof, whether pursuant to this Article 3 or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Note, unless such Note is to be registered in accordance with this Article 3 in the name of a Person other than the Depositary for such Global Note or a nominee thereof, in which case such Note shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(v) The Depositary or its nominee, as registered owner of a Global Note, shall be the Holder of such Global Note for all purposes under this Supplemental Indenture and the Notes, and owners of beneficial interests in a Global Note shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Note shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members and such owners of beneficial interests in a Global Note shall not be considered the owners or holders thereof.

(b) Non-Global Notes. Notes issued pursuant to Section 3.07(a)(ii) shall be in definitive, fully registered form, without interest coupons.

Section 3.08. *Persons Deemed Owners.*

Prior to due presentment of a Note for registration of transfer, the Company, the Trustee, any Paying Agent and any agent of the Company, the Trustee or any Paying Agent may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of and (subject to Section 3.10) Interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee, any Paying Agent nor any agent of the Company, the Trustee or any Paying Agent shall be affected by notice to the contrary.

Section 3.09. *Mutilated, Destroyed, Lost and Stolen Notes.*

If any mutilated Note is surrendered to the Trustee, the Company shall execute and upon receipt of a Company Order, the Trustee shall authenticate and deliver in exchange therefor a new Note of like tenor and Original Principal Amount and bearing a number not contemporaneously Outstanding.

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the destruction, loss or theft of any Note and (b) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and upon receipt of a Company Order, the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously Outstanding.

Upon the issuance of any new Note under this Section 3.09, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 3.09 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Supplemental Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 3.09 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 3.10. *Payment of Interest; Interest Rights Preserved.*

Interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such Interest.

Any Interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) 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 (a "**Special Record Date**"), which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements reasonably satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at his address as it appears in the Securities Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

Subject to the foregoing provisions of this Section 3.10, each Note delivered under this Supplemental Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to Interest accrued and unpaid, and to accrue, which were carried by such other Note, as provided for in this Indenture and the Notes.

Section 3.11. *Cancellation.*

All Notes surrendered for payment, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 3.11, except as expressly permitted by this Supplemental Indenture. All cancelled Notes held by the Trustee shall be disposed of as directed by a Company Order.

Section 3.12. *Computation of Interest.*

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE 4
DISCHARGE

Section 4.01. *Discharge of Liability on Notes.*

When (a) the Company shall deliver to the Registrar for cancellation all Notes then Outstanding not theretofore delivered to the Registrar for cancellation or (b) all the Notes then Outstanding not theretofore delivered to the Registrar for cancellation shall have (i) been deposited for conversion and the Company shall deliver to the Holders a combination of cash and shares of Common Stock (or, at the election of the Company, entirely cash or entirely shares of Common Stock) sufficient to pay all amounts owing in respect of all such Notes or (ii) become due and payable on the Maturity Date, Redemption Date, Optional Put Repurchase Date, Fundamental Change Repurchase Date or otherwise, and the Company shall deposit with the Trustee cash sufficient to pay all amounts owing in respect of all such Notes, including the Accreted Principal Amount and Interest accrued and unpaid to the Maturity Date, Redemption Date, Optional Put Repurchase Date, Fundamental Change Repurchase Date or other such date, and if in either case of clauses (a) or (b) above, no Event of Default set forth in Section 5.01(i) or (j) hereof or event (including resulting from such deposit) that, with lapse of time or notice or both, would become an Event of Default set forth in Section 5.01(i) or (j) hereof with respect to the Notes shall have occurred and be continuing, and the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Supplemental Indenture with respect to the Notes shall cease to be of further effect (except as to (x) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (y) rights hereunder of Holders to receive from the Trustee payments of the amounts then due, including Interest with respect to the Notes and the other rights, duties and

obligations of Holders, as beneficiaries hereof solely with respect to the amounts, if any, so deposited with the Trustee and (z) the rights, obligations and immunities of the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar under this Supplemental Indenture with respect to the Notes), and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 4.03 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Supplemental Indenture with respect to the Notes; *provided*, *however*, the Company hereby agrees to reimburse the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar for any costs or expenses thereafter reasonably and properly incurred by the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar and to compensate the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar for any services thereafter reasonably and properly rendered by the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar in connection with this Indenture with respect to the Notes.

Section 4.02. *Reinstatement.*

If the Trustee or the Paying Agent is unable to apply any money to the Holders entitled thereto by reason of any order or judgment of any court of governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Supplemental Indenture with respect to the Notes shall be revived and reinstated as though no discharge of liability on the Notes had occurred pursuant to Section 4.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with this Supplemental Indenture and the Notes to the Holders entitled thereto; *provided*, *however*, that if the Company makes any payment of the Accreted Principal Amount of or Interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

Section 4.03. *Officers' Certificate; Opinion of Counsel.*

Upon any application or demand by the Company to the Trustee to take any action under Section 4.01, the Company shall furnish to the Trustee an Officers' Certificate and Opinion of Counsel stating that all conditions precedent, if any, provided for in this Supplemental Indenture relating to the proposed action have been complied with.

ARTICLE 5
REMEDIES

Section 5.01. *Events of Default.*

"**Event of Default,**" wherever used herein, means any one of the following events with respect to the Notes (whatever the reason for such Event of Default or whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in any payment of Interest on any Note when due and payable and the default continues for a period of 30 days;

(b) default in the payment of Accreted Principal Amount of any Note when due and payable at Maturity, upon required repurchase, upon redemption, upon acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes into a combination of cash and shares of Common Stock (or entirely cash or entirely shares of Common Stock, at the election of the Company) and, if applicable, Reference Property, upon exercise of a Holder's conversion right;

(d) failure by the Company to comply with its obligations under Section 7.01;

(e) failure by the Company to comply with its notice requirements under Section 11.09(b) and Section 12.01 for a period of three Scheduled Trading Days after any such notice becomes due;

(f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% aggregate Original Principal Amount of the Notes then Outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or the Indenture;

(g) default by the Company or any Subsidiary of the Company with respect to 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 $15 million (or if any amount lower than $15 million is specified as the corresponding event of default in the New Credit Facilities, such lesser amount) in the aggregate of the Company and/or any such Subsidiary of the Company, whether such debt now exists or shall hereafter be created, which default results (i) in such debt becoming or being declared due and payable or (ii) from a failure to pay the principal of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration or otherwise. Unless the Company has entered into the New Credit Facilities by September 30, 2008, the Existing Credit Facilities will be deemed to be the New Credit Facilities for purposes of this Section 5.01(g) and Section 5.01(h);

(h) failure by the Company or any of its Subsidiaries, within 30 days, to pay, bond or otherwise discharge any judgments or orders for the payment of money the total uninsured amount of which for the Company or any of its Subsidiaries exceeds in the aggregate $15 million (or if any amount lower than $15 million is specified as the corresponding event of default in the New Credit Facilities, such lesser amount), which are not stayed on appeal;

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

(j) an involuntary case or other proceeding shall be commenced against the Company or any of its Significant Subsidiaries seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any of its Significant Subsidiaries or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive calendar days.

(k) For the avoidance of doubt, Article VII of the Base Indenture shall not be applicable to the Notes.

Section 5.02. *Acceleration of Maturity; Rescission and Annulment.*

If an Event of Default (other than an Event of Default specified in Section 5.01(i) or Section 5.01(j) with respect to the Company) occurs and is continuing, then in every such case (except as provided in the immediately following paragraph) the Trustee by a notice in writing to the Company or the Holders of not less than 25% in aggregate Original Principal Amount of the Outstanding Notes by notice in writing to the Trustee may declare 100% of the aggregate Accreted Principal Amount of and accrued and unpaid Interest on all the Notes to be due and payable immediately, and upon any such declaration of acceleration,

all principal and all accrued and unpaid Interest on the Notes shall become immediately due and payable. If an Event of Default specified in Section 5.01(i) or Section 5.01(j) with respect to the Company occurs, the aggregate accreted principal of, and accrued and unpaid Interest, if any, on, all of the Notes shall become due and payable immediately without any declaration or other Act of the Holders or any act on the part of the Trustee.

Notwithstanding the foregoing, at the election of the Company, the sole remedy of Holders for an Event of Default specified in Section 5.01(f) relating to the failure by the Company to comply with its obligations under Section 10.06 and for any failure by the Company to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, shall for the first 90 calendar days after the occurrence of such Event of Default consist exclusively of the right (the "**Extension Right**") to receive an extension fee on the Notes in an amount equal to 0.25% of the Accreted Principal Amount of the Notes as of the date of payment (the "**Extension Fee**"). If the Company elects to pay the Extension Fee as the sole remedy for an Event of Default specified in Section 5.01(f) relating to the failure by the Company to comply with its obligations under Section 10.06 and for any failure by the Company to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, the Company (a) shall notify, in the manner provided for in Section 16.04 of the Base Indenture, the Holders and the Trustee and Paying Agent of such election prior to the close of business on the first Business Day following the date on which such Event of Default first occurs and (b) pay the Extension Fee, on or before the close of business on the date on which such Event of Default first occurs, on all Notes then Outstanding. Upon the Company's failure to give such notice or to pay the Extension Fee when due, the Notes shall be subject to acceleration as provided in the first paragraph of this Section 5.02. On and after the 91st calendar day after such Event of Default occurs, if such Event of Default is not cured or waived prior to such 91st calendar day, the Notes shall be subject to acceleration as provided in the first paragraph of this Section 5.02. If an Extension Fee is payable under this Section 5.02, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Extension Fee that is payable and (ii) the date on which such Extension Fee 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 the Extension Fee is not payable. If the Extension Fee has been paid by the Company directly to the Holders, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

Notwithstanding the foregoing paragraph, if an Event of Default occurs under any series of the Company's debt securities (other than the Notes) issued subsequent to the Issue Date resulting from the Company's failure to comply with obligations similar to those contained in Section 10.06 or the requirements of Section 314(a)(1) of the Trust Indenture Act, and such Event of Default is not subject to extension on terms similar to those set forth in the foregoing paragraph and results in the principal amount of such debt securities becoming due and payable, then the Extension Right shall no longer apply and the Notes shall be subject to acceleration as provided in the first paragraph of this Section 5.02.

This Section 5.02, however, is subject to the conditions that if, at any time after the Accreted Principal Amount 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 upon all Notes and the Accreted Principal Amount of any and all Notes that shall have become due otherwise than by acceleration (with Interest on installments of accrued and unpaid Interest (to the extent that payment of such Interest is enforceable under applicable law) and on such Accreted Principal Amount at the rate borne by the Notes during the period of such Default) and amounts due to the Trustee pursuant Section 11.01 of the Base Indenture, 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 Supplemental Indenture with respect to such Notes, other than the nonpayment of Accreted Principal Amount of and accrued and unpaid Interest on such Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 5.04, then and in every such case the Holders of a majority in aggregate principal amount of the Outstanding Notes, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon.

Section 5.03. *Unconditional Right of Holders to Receive Principal and Interest and to Convert.*

Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the Accreted Principal Amount of and (subject to Section 3.10) Interest on such Note on the Maturity Date, and to convert such Note in accordance with Article 12, and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder.

Section 5.04. *Waiver of Past Defaults and Rescission of Acceleration.*

With the consent of the Holders of not less than a majority in the aggregate Original Principal Amount of the Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender

offer or exchange offer for, the Notes), any past Default hereunder and its consequences may be waived on behalf of the Holders of all of the Notes, except a Default (a) in the payment of the Accreted Principal Amount of or Interest on any Note or in the delivery of amounts due upon conversion, or (b) in respect of a covenant or provision hereof which under Article 8 cannot be modified or amended without the consent of the Holder of each Outstanding Note affected, and rescind any such acceleration with respect to the Notes and its consequences if (i) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, other than the nonpayment of Accreted Principal Amount of and Interest on the Notes or failure to deliver amounts due upon conversion that have become due solely by such declaration of acceleration, have been cured or waived.

Upon the waiver of any such Default, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of the Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 5.05. *Waiver of Stay, Usury or Extension Laws.*

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

Section 5.06. *Control by Holders.*

The Holders of a majority in aggregate Accreted Principal Amount of the Outstanding Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided* that

(a) such direction shall not be in conflict with any rule of law or with the Indenture;

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and

(c) the Trustee may refuse to follow any direction that conflicts with law or the Indenture, or that the Trustee determines is unduly prejudicial to the rights of any other Holder or would involve the Trustee in personal liability; *provided further* that, prior to taking any action under the Indenture, the Trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

Section 5.07. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The Company covenants that if:

(a) a default is made in the payment of any Interest on any Note when such Interest becomes due and payable and such default continues for a period of 30 days, or

(b) a default is made in the payment of the Accreted Principal Amount of any Note at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for Accreted Principal Amount and Interest, and, to the extent that payment of such Interest shall be legally enforceable, Interest on any overdue Accreted Principal Amount and on any overdue Interest, at the rate borne by the Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

Section 5.08. *Trustee May File Proofs of Claim.*

In case of any judicial proceeding relative to the Company (or any other obligor upon the Notes), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the

making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 11.01 of the Base Indenture.

No provision of the Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 5.09. *Trustee May Enforce Claims Without Possession of Notes.*

All rights of action and claims under the Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered.

Section 5.10. *Application of Money Collected.*

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

FIRST: To the payment of all amounts due the Trustee under Section 11.01 of the Base Indenture; and

SECOND: To the payment of the amounts then due and unpaid for Accreted Principal Amount of and Interest on the Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for Accreted Principal Amount and Interest, respectively.

Section 5.11. *Limitation on Suits.*

Subject to Section 5.03, no Holder of any Note shall have any right to institute any proceeding, judicial or otherwise, with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(b) the Holders of at least 25% in aggregate Original Principal Amount of the Outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee security or indemnity satisfactory to it against any costs, liability or expense;

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

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request has been given to the Trustee during such 60 calendar day period by the Holders of a majority in aggregate Original Principal Amount of the Outstanding Notes;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Supplemental Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under the Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Section 5.12. *Restoration of Rights and Remedies.*

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

Section 5.13. *Rights and Remedies Cumulative.*

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in the last paragraph of Section 3.09, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to

every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.14. *Delay or Omission not Waiver.*

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

Section 5.15. *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under the Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess reasonable costs, including reasonable attorneys' fees and expenses, against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; *provided*, that neither this Section 5.15 nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or in any suit for the enforcement of the right to convert any Note in accordance with Article 12.

ARTICLE 6
[RESERVED.]

ARTICLE 7
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 7.01. *Company May Consolidate, Etc., Only on Certain Terms.*

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

(a) the resulting, surviving or transferee Person, if not the Company, is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia (the "**Successor Company**"), and such Successor Company expressly assumes by supplemental indenture all of the Company's obligations under the Notes and the Indenture;

(b) immediately after giving effect to such transaction, no Default has occurred and is continuing under the Indenture; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 7.02. *Successor Substituted.*

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all of the properties and assets of the Company in accordance with Section 7.01, the Successor Company formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under the Indenture with the same effect as if such Successor Company had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under the Indenture and the Notes.

ARTICLE 8
SUPPLEMENTAL INDENTURES

Section 8.01. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, upon receipt of a Company Order, at any time and from time to time, may enter into one or more indentures supplemental hereto for any of the following purposes:

(a) to cure any ambiguity or correct any omission, manifest error, defect or inconsistency in the Indenture, so long as such action will not adversely affect the interests of Holders of the Notes;

(b) to provide for the assumption by a successor corporation of the Company's obligations under the Indenture;

(c) to add guarantees with respect to the Notes;

(d) to provide for a successor trustee in accordance with the terms of the Indenture or to otherwise comply with any requirement of the Indenture;

(e) to provide for the issuance of Additional Notes, to the extent that the Company and the Trustee deem such amendment necessary or advisable in connection with such issuance; *provided* that no such amendment or supplement may impair the rights or interests of any holder of the Outstanding Notes;

(f) to increase the Conversion Rate;

(g) to secure the Notes;

(h) to add to the covenants of the Company for the benefit of the Holders or to surrender any right or power herein conferred upon the Company;

(i) to provide for the conversion of Notes in accordance with the terms of the Indenture;

(j) to make any change that does not adversely affect the rights of any Holder in any material respect; *provided* that any amendments to conform the terms of this Indenture or the Notes to the "Description of the Notes" section in the Prospectus Supplement shall not be deemed to be adverse to any Holder;

(k) to comply with the requirements of the Trust Indenture Act or the rules and regulations of the Commission thereunder in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act, as contemplated by the Indenture or otherwise; or

(l) to conform the provisions of this Indenture or the Notes to the "Description of the Notes" section in the Prospectus Supplement.

Upon a Company Order, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and subject to and upon receipt by the Trustee of the documents described in Section 3.03 of the Base Indenture, the Trustee shall (subject to Section 14.03 of the Base Indenture) join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Supplemental Indenture and to make any further appropriate agreements and stipulations that may be therein contained.

Section 8.02. *Supplemental Indentures with Consent of Holders.*

With the written consent of the Holders of not less than a majority in aggregate Original Principal Amount of the Outstanding Notes (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for Notes), by the action of said Holders in accordance with Section 8.01 of the Base Indenture, the Company, when authorized by a Board

Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Supplemental Indenture or of modifying in any manner the rights of the Holders under this Supplemental Indenture; *provided*, *however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) reduce the amount of Notes whose Holders must consent to an amendment;

(b) reduce the rate, or extend the stated time for payment, of Interest on any Note, reduce the rate at which the principal amount of the Notes accretes or reduce the amount, or extend the stated time for payment, of the Extension Fee;

(c) reduce the Original Principal Amount or Accreted Principal Amount, or extend the Maturity Date, of any Note;

(d) make any change that adversely affects the conversion rights of any Note;

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

(f) change the place or currency of payment of Accreted Principal Amount, Interest, the Optional Put Repurchase Price, the Fundamental Change Repurchase Price, the Redemption Price or the Extension Fee in respect of any Note;

(g) impair the right of any Holder to receive payment of Accreted Principal Amount of, and Interest on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note;

(h) adversely affect the ranking of the Notes as the Company's senior unsecured indebtedness; or

(i) make any change in the provisions of this Article 8 that require each Holder's consent or in the waiver provisions in Section 5.02 or Section 5.04.

It shall not be necessary for the consent of Holders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance of the proposed supplement indenture.

This Section 8.02 shall be subject to Section 3.03 of the Base Indenture.

Section 8.03. *Notice of Supplemental Indentures.*

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Section 8.02, the Company shall promptly give notice in the manner provided in Section 16.04 of the Base Indenture briefly setting forth in general terms the substance of such supplemental indenture. However, the failure of the Company to give such notice to all Holders, or any defect in the notice, shall not impair or affect the validity of any such supplemental indenture.

Section 8.04. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article 8, this Supplemental Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 8.05. *Conformity with Trust Indenture Act.*

Every supplemental indenture executed pursuant to this Article 8 shall conform to the requirements of the Trust Indenture Act.

ARTICLE 9
HOLDERS LISTS AND BY TRUSTEE AND COMPANY

Section 9.01. *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not more than 15 calendar days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Registrar.

Section 9.02. *Preservation of Information.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 9.01 and the names and addresses of Holders received by the Trustee in its capacity as Registrar. The Trustee may dispose of any list furnished to it as provided in Section 9.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Supplemental 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 Holder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

Section 9.03. *Notices by Trustee on Company's Behalf*. At the Company's request, the Trustee shall give any notice required hereunder to be provided to Holders in the Company's name and at the Company's expense and such delivery shall satisfy the obligation of the Company to deliver such notice under the Indenture; *provided* that (i) the text of such notice shall be prepared by the Company and (ii) such delivery by the Trustee on behalf of the Company shall not override the Company's obligation to publish any such notice in a newspaper of general circulation in the City of New York or publish any such notice on the Company's website or through such other public medium as the Company may use at that time, in each case where such obligation otherwise exists under the Indenture.

ARTICLE 10
COVENANTS

Section 10.01. *Payment of Principal and Interest.*

The Company covenants and agrees that it shall duly and punctually pay the Accreted Principal Amount of and Interest on the Notes in accordance with the terms of the Notes and this Supplemental Indenture. The Company shall deposit or cause to be deposited with the Trustee or its nominee, no later than 1:00 p.m., New York City time, on the Maturity Date of the Notes or no later than 1:00 p.m., New York City time, on the due date for any installment of Interest, all payments so due, which payments shall be in immediately available funds on the date of such Maturity Date or due date, as the case may be.

Section 10.02. *Maintenance of Offices or Agencies.*

The Company shall maintain in an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion or repurchase and where notices and demands to or upon the Company in respect of the Notes and this Supplemental Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. 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.

The Company may at any time and from time to time vary or terminate the appointment of any such agent or appoint any additional agents for any or all of such purposes; *provided*, *however*, that until all of the Notes have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of and Interest on the Notes have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 10.05, the Company shall maintain an office or agency where Notes may be presented or surrendered for payment and conversion, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Notes and this Supplemental Indenture may be served. The Company shall give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 16.04 of the Base Indenture, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

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

Any rights or immunities of the Trustee under the Indenture shall apply to the Trustee when acting under any or all of the aforementioned capacities.

Section 10.03. *Existence.*

Subject to Section 7.01, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 10.04. *Annual Statement by Officers.*

The Company shall deliver to the Trustee, within 120 calendar days after the end of each fiscal year, an Officers' Certificate as to the signing officers' knowledge of the Company's compliance with all conditions and covenants on its part contained in this Supplemental Indenture. For purposes of this Section 10.04, such compliance shall be determined without regard to any grace period or requirement of notice provided under this Supplemental Indenture.

Any notice required to be given under this Section 10.04 shall be delivered to the Trustee at its Corporate Trust Office.

Section 10.05. *Money for Note Payments to Be Held in Trust.*

If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the Accreted Principal Amount of or Interest on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay all amounts payable to the Trustee under Section 11.01 of the Base Indenture and the Accreted Principal Amount or Interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of the Accreted Principal Amount of or Interest on any Notes, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 10.05, that such Paying Agent will (a) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (b) during the continuance of any default by the Company (or any other obligor upon the Notes) in the making of any payment in respect of the Notes, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or Interest on any Note and remaining unclaimed for two years after such Accreted Principal Amount or Interest has become due and payable shall be paid to the Company on Company Order, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a Press Release, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 calendar days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.06. *Reports by Company.*

(a) The Company shall file any documents or reports that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act with the Trustee within 30 calendar days after the same are required to be filed with the Commission. Documents filed by the Company with the Commission via the EDGAR system (or any successor thereto) will be deemed filed with the Trustee as of the time such documents are filed via EDGAR (or any successor thereto).

(b) Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on an Officers' Certificate). Notwithstanding anything to the contrary in this Section 10.06, the Company, to the extent permitted under the Trust Indenture Act, shall not be required to deliver to the Trustee or the Holders any material for which the Company has sought and received confidential treatment by the Commission.

Section 10.07. *[Reserved.]*

Section 10.08. *Tax Treatment of Notes.*

The Company agrees, and by acceptance of a beneficial ownership interest in the Notes each Holder is deemed to have agreed (in the absence of an administrative pronouncement or judicial ruling to the contrary), for United States federal income tax purposes:

(a) to treat the Notes as indebtedness subject to United States Treasury Regulation Section 1.1275-4 (the "**Contingent Payment Debt Regulations**") and, for purposes of the Contingent Payment Debt Regulations, to treat cash and the fair market value of any Common Stock beneficially received by a Holder upon conversion of such Note as a contingent payment under Treasury Regulation Section 1.1275-4(b);

(b) to be bound by the Company's application of the Contingent Payment Debt Regulations to the Notes, including the Company's determination of the comparable yield and projected payment schedule, as defined in the Contingent Payment Debt Regulations, with respect to the Notes. A Holder may obtain the issue price, issue date, comparable yield (which will be treated as the yield to maturity for United States federal income tax purposes) and projected payment schedule by submitting a written request to the Company at Investor Relations, EnerSys, 2366 Bernville Road, Reading, Pennsylvania 19605 or by calling EnerSys Investor Relations directly at (610) 236-4040;

(c) that the comparable yield and the projected payment schedule are not determined for any purpose other than for the purpose of applying Treasury Regulation Section 1.1275-4(b) to the Notes, and the comparable yield and the projected payment schedule do not constitute a projection or representation regarding the actual amounts payable on the Notes;

(d) to use the projected payment schedule referred to in Section 10.08(b) above, as required by United States Treasury Regulations Section 1.1275-4(b)(4)(iv), to determine its interest accruals and adjustments as provided by United States Treasury Regulation Section 1.1275-4(b); and

(e) the Company and each Holder shall not take any position on a tax return inconsistent with (a), (b), (c) or (d), unless otherwise required by applicable law.

ARTICLE 11
REDEMPTION AND REPURCHASE OF NOTES

Section 11.01. *Right to Redeem; Notice to Trustee.*

At any time on or after June 6, 2015, the Company may redeem any or all of the Notes in cash at the Redemption Price, except for the Notes that the Company is required to repurchase pursuant to Section 11.08 and Section 11.09.

The redemption price will equal 100% of the Accreted Principal Amount of the Notes being redeemed, plus accrued and unpaid Interest, if any, to, but not including, the Redemption Date (the "**Redemption Price**"). However, if the Redemption Date falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Company shall pay the full amount of accrued and unpaid Interest payable on such Interest Payment Date to the Holder of record at the close of business on the corresponding Regular Record Date.

If the Company elects to redeem Notes pursuant to this Section 11.01, it shall notify the Trustee no later than the time it gives a Notice of Redemption to all record Holders under Section 11.03 of the Redemption Date and the Accreted Principal Amount of Notes to be redeemed.

Notwithstanding the foregoing, the Company may not redeem any Notes if the Company has failed to pay any Interest due on the Notes and such failure to pay is continuing.

Section 11.02. *Selection of Notes to Be Redeemed.*

If fewer than all of the Outstanding Notes are to be redeemed, the Trustee will select the Notes to be redeemed in Original Principal Amounts of $1,000 or multiples of $1,000 by lot, pro rata or by another method the Trustee considers reasonable. If a portion of a Holder's Notes is selected for redemption and such Holder converts a portion of its Notes, the converted portion will be deemed to be of the portion selected for redemption. Provisions of this Supplemental Indenture that apply to all Notes called for redemption also apply to portions of Notes called for redemption. Notes which have been converted during a selection of Notes to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

Section 11.03. *Notice of Redemption.*

Not more than 60 calendar days but not less than 30 calendar days prior to the Redemption Date, the Company shall give notice (each such notice, a "**Notice of Redemption**") to all record Holders at their addresses set forth in the Securities Register of the Registrar.

The Notice of Redemption shall identify the Notes to be redeemed and shall state:

(a) that the Holder has a right to convert the Notes called for Redemption;

(b) the Conversion Rate then in effect;

(c) the Redemption Date;

(d) the Redemption Price;

(e) the name and address of each Paying Agent and Conversion Agent;

(f) that Notes called for redemption must be presented and surrendered to a Paying Agent to collect the Redemption Price;

(g) that Holders who wish to convert Notes must surrender such Notes for conversion no later than 5:00 p.m., New York City time, on the Scheduled Trading Day immediately preceding the Redemption Date and must satisfy the other requirements set forth in Article 12 (which shall be specified in such notice);

(h) that, unless the Company defaults in making the payment of the Redemption Price, Interest on Notes called for redemption shall cease accruing and/or the principal amount of the Notes shall cease accreting on and after the Redemption Date and subject to the provisions of Section 11.01 and 11.04, the only remaining right of the Holder shall be to receive payment of the Redemption Price upon presentation and surrender to a Paying Agent of the Notes; and

(i) if any Note is being redeemed in part, the portion of the Accreted Principal Amount of such Note to be redeemed and that, after the Redemption Date, upon presentation and surrender of such Note, new Notes in aggregate Accreted Principal Amount equal to the unredeemed portion thereof will be issued.

If any of the Notes to be redeemed is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to redemptions. At the Company's written request, the Trustee shall give the Notice of Redemption in the Company's name and at the Company's expense.

Section 11.04. *Effect of Notice of Redemption.*

Once a Notice of Redemption is mailed, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Notes that are covered in accordance with the terms of this Supplemental Indenture. Upon presentation and surrender to a Paying Agent, Notes called for redemption shall be paid in cash at the Redemption Price stated in the notice and from and after such payment is made on the Redemption Date such Notes shall cease to bear Interest and the principal amount of such Notes shall cease accreting and the rights of the Holders therein shall terminate (other than the right to receive the Redemption Price).

Section 11.05. *Deposit of Redemption Price.*

Prior to 1:00 p.m., New York City time, on the Redemption Date, the Company shall deposit with a Paying Agent (or, if the Company acts as Paying

Agent, shall segregate and hold in trust) an amount of money (in immediately available funds if deposited on such Redemption Date) sufficient to pay the Redemption Price of all Notes to be redeemed on that date, other than Notes or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose or, if such money is then held by the Company in trust and is not required for such purpose, it shall be discharged from the trust.

If the Paying Agent holds on a Redemption Date cash sufficient to pay the Redemption Price payable on that date, then on and after such Redemption Date, such Notes (or portions thereof, as the case may be) shall cease to be Outstanding, the Accreted Principal Amount shall cease to accrete and Interest (if any) on them shall cease to accrue; *provided* that if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

Section 11.06. *Notes Redeemed in Part.*

Upon presentation and surrender of a Note that is redeemed in part, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate and deliver to the Holder, without charge, new Notes of authorized denominations as requested by such Holder in aggregate Accreted Principal Amount equal to the unredeemed portion of the Note surrendered.

Section 11.07. *No Redemption of Notes Upon Default in Payment of Interest.*

Notwithstanding anything herein to the contrary, the Company will not redeem any Notes on any date if the Company has failed to pay any interest due on the Notes and such failure to pay is continuing.

Section 11.08. *Repurchase of Notes at the Option of Holders.*

(a) *Optional Put*. (i) On June 1, 2015, June 1, 2018, June 1, 2023, June 1, 2028 and June 1, 2033 (each, an "**Optional Put Repurchase Date**"), each Holder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion of the Original Principal Amount thereof that is equal to $1,000 or an integral multiple of $1,000, for cash at a repurchase price equal to 100% of the Accreted Principal Amount thereof, together with accrued and unpaid Interest thereon to, but excluding, such Optional Put Repurchase Date (the "**Optional Put Repurchase Price**") (subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 11.08(a)(iii)), unless such Optional Put Repurchase Date falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, in which

case the Company shall pay the full amount of accrued and unpaid Interest payable on such Interest Payment Date to the Holder of record at the close of business on the corresponding Regular Record Date.

(ii) No later than 20 Business Days prior to each Optional Put Repurchase Date, the Company shall give notice of the repurchase right under Section 11.08(a)(i) (an "**Optional Put Repurchase Offer**") to all record Holders at their addresses set forth in the Securities Register of the Registrar and to beneficial owners as required by applicable law. The notice (the "**Optional Put Repurchase Notice**") shall include a form of notice to be completed by the Holder and returned to the Company in the event that the Holder elects such right to such repurchase and shall briefly state, as applicable:

(A) the date by which the Optional Put Repurchase Notice must be delivered to the Paying Agent in order for a Holder to exercise the repurchase right;

(B) the Optional Put Repurchase Date;

(C) the Optional Put Repurchase Price;

(D) the name and address of the Paying Agent and the Conversion Agent;

(E) the Conversion Rate;

(F) the conversion rights, if any, of the Notes;

(G) that the Notes as to which an Optional Put Repurchase Notice has been given may be converted if they are otherwise convertible pursuant to Article 12 only if the Optional Put Repurchase Notice has been withdrawn in accordance with the terms of this Supplemental Indenture;

(H) that the Notes must be surrendered to the Paying Agent to collect payment;

(I) that the Optional Put Repurchase Price for any Note as to which an Optional Put Repurchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Optional Put Repurchase Date and the time of surrender of such Note;

(J) the procedures the Holder must follow to exercise its put right under this Section 11.08(a);

(K) the procedures for withdrawing an Optional Put Repurchase Notice;

(L) that, unless the Company defaults in making payment of such Optional Put Repurchase Price, Interest on Notes surrendered for repurchase by the Company will cease to accrue on and after the Optional Put Repurchase Date; and

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

At the Company's request, the Trustee shall give the Optional Put Repurchase Offer in the Company's name and at the Company's expense; *provided*, *however*, that the Company makes such request at least three Business Days (unless a shorter period shall be satisfactory to the Trustee) prior to the date by which such Optional Put Repurchase Offer must be given to the Holder in accordance with this Section 11.08(a)(ii); *provided*, *further*, that the text of the Optional Put Repurchase Offer shall be prepared by the Company.

(iii) A Holder may exercise its right specified in Section 11.08(a)(i) upon delivery of a properly completed Optional Put Repurchase Notice to the Paying Agent at any time during the period beginning at 9:00 a.m., New York City time, on the date that is 20 Business Days immediately preceding the relevant Optional Put Repurchase Date until the close of business on the Business Day immediately preceding such Optional Put Repurchase Date, stating:

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

(B) the portion of the Original Principal Amount of Notes to be repurchased, which portion must be $1,000 or an integral multiple of $1,000 thereof; and

(C) that the Notes shall be repurchased by the Company pursuant to the applicable provisions of the Notes and this Supplemental Indenture.

The book-entry transfer or delivery of such Note to the Paying Agent with, or at any time after delivery of, the Optional Put Repurchase Notice (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Optional Put Repurchase Price therefor; *provided*, *however*, that such Optional Put Repurchase Price shall be so paid pursuant to this Section 11.08(a) only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Optional Put Repurchase Notice.

The Company shall repurchase from the Holder thereof, pursuant to this Section 11.08(a), a portion of a Note, so long as the Original Principal Amount of such portion is $1,000 Original Principal Amount or an integral multiple of $1,000 Original Principal Amount. Provisions of this Supplemental Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note.

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

(b) *Effect of Optional Put Repurchase Notice*. Upon receipt by the Paying Agent of the Optional Put Repurchase Notice specified in Section 11.08(a)(iii), the Holder of the Note in respect of which such Optional Put Repurchase Notice was given shall (unless such Optional Put Repurchase Notice is withdrawn as specified in the following paragraph) thereafter be entitled to receive solely the Optional Put Repurchase Price with respect to such Note. Such Optional Put Repurchase Price shall be paid to such Holder, subject to receipt of cash by the Paying Agent from the Company, on the later of (i) the Optional Put Repurchase Date with respect to such Note (*provided* that the conditions in Section 11.08(a)(iii) have been satisfied) and (ii) the time of book-entry transfer or delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 11.08(a)(iii). Notes in respect of which an Optional Put Repurchase Notice has been given by the Holder thereof may not be converted pursuant to Article 12 on or after the date of the delivery of such Optional Put Repurchase Notice unless such Optional Put Repurchase Notice has first been validly withdrawn as specified in the following paragraph.

An Optional Put Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Optional Put Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Optional Put Repurchase Date, specifying:

(i) the Original Principal Amount of such Note with respect to which such notice of withdrawal is being submitted;

(ii) if certificated Notes have been issued, the certificate numbers of the withdrawn Notes; and

(iii) the Original Principal Amount, if any, of such Note which remains subject to the Optional Put Repurchase Notice, which portion must be in Original Principal Amounts of $1,000 or an integral multiple of $1,000;

provided, *however*, that with respect to Global Notes, the notice must comply with the Applicable Procedures.

(c) *Deposit of Optional Put Repurchase Price*. Prior to 1:00 p.m., New York City time, on the applicable Optional Put Repurchase Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of any of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 10.05) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Optional Put Repurchase Price of all the Notes or portions thereof which are to be repurchased on such Optional Put Repurchase Date.

If the Paying Agent (other than the Company or an Affiliate of the Company) holds, in accordance with the terms hereof, at 1:00 p.m., New York City time, on the applicable Optional Put Repurchase Date, cash sufficient to pay the Optional Put Repurchase Price of any Notes for which an Optional Put Repurchase Notice has been tendered and not withdrawn pursuant to Section 11.08(b), then, on and after such Optional Put Repurchase Date, such Notes will cease to be outstanding, the Accreted Principal Amount shall cease to accrete and Interest, if any, on such Notes will cease to accrue, whether or not such Notes are delivered to the Paying Agent, and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Optional Put Repurchase Price upon delivery of such Notes, together with any necessary endorsement) and the repurchased Notes shall be cancelled.

(d) *Notes Repurchased in Part*. Any Certificated Note which is to be repurchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and upon receipt of a Company Order the Trustee shall authenticate and deliver to the Holder of such Note, without charge, new Notes, of any authorized denomination as requested by such Holder in aggregate Accreted Principal Amount equal to, and in exchange for, the portion of the Accreted Principal Amount of the Note so surrendered which is not repurchased.

(e) *Covenant to Comply with Securities Laws upon Repurchase of Notes*. In connection with any repurchase of the Notes pursuant to this Section 11.08, the Company shall (in each case to the extent then required by law):

(i) comply with the provisions of Rule 13e-4, Rule 14e-1 (or, in each case, any successor provision) and any other tender offer rules under the Exchange Act that may then be applicable; and

(ii) otherwise comply with all federal and state securities laws.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 11.08, the Company's compliance with such laws and regulations shall not in and of itself cause a breach of its obligations under this Section 11.08.

(f) *Repayment to the Company*. The Paying Agent shall return to the Company any cash that remains unclaimed for two years, together with Interest, if any, thereon, held by it for the payment of the Optional Put Repurchase Price; *provided*, *however*, to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 11.08(c) exceeds the aggregate Optional Put Repurchase Price of the Notes or portions thereof which the Company is obligated to repurchase on the Optional Put Repurchase Date, then, promptly after the Optional Put Repurchase Date, the Paying Agent shall return any such excess to the Company.

(g) *No Repurchase Upon Acceleration*. Notwithstanding anything herein to the contrary, there shall be no purchase of any Notes pursuant to this Section 11.08 if the Accreted Principal Amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Optional Put Repurchase Date (except in the case of an Event of Default resulting from a default by the Company in the payment of the Optional Put Repurchase Price with respect to such Notes).

Section 11.09. *Right to Require Repurchase Upon a Fundamental Change.*

(a) If a Fundamental Change occurs at any time, then each Holder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes, or any portion of the Original Principal Amount thereof that is equal to $1,000 or an integral multiple of $1,000, for cash on a date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 15 days nor more than 35 days after the date of the Fundamental Change Repurchase Right Notice at a repurchase price equal to 100% of the Accreted Principal Amount thereof, together with accrued and unpaid Interest thereon to, but not including, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless such Fundamental Change Repurchase Date falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, in which case the Company shall pay the full amount of accrued and unpaid Interest payable on such Interest Payment Date to the Holder of record at the close of business on the corresponding Regular Record Date.

However, notwithstanding the foregoing, Holders shall not have the right to require the Company to repurchase any Notes under this Section 11.09 based on a Fundamental Change described in clause (1) or (2) of the definition thereof (and the Company shall not be required to deliver the Fundamental Change Repurchase Right Notice incidental thereto) if at least 90% of the consideration paid for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights and cash dividends) in connection with such event consists of shares of common stock traded on any of the New York Stock Exchange, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors) (or that will be so traded immediately following the completion of such merger or consolidation or such other transaction) and, as a result of such transaction or transactions, the Notes become convertible into a combination of cash and shares of such common stock pursuant to Section 12.10 (or entirely cash or entirely shares of such common stock pursuant to Section 12.10, if the Company so elects or has so elected).

Repurchases of Notes under this Section 11.09 shall be made, at the option of the Holder thereof, upon:

(i) if the Notes are held in certificated form, delivery to the Trustee (or other Paying Agent appointed by the Company) by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note or, if the Notes are held in global form, a notice that complies with the Applicable Procedures, prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Company) prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date (together with all necessary endorsements) at the Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company), 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 11.09 only if the Note so delivered to the Trustee (or other Paying Agent appointed by the Company) 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 Original 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 this Supplemental Indenture.

Any purchase by the Company contemplated pursuant to the provisions of this Section 11.09 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Note.

The Trustee (or other Paying Agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof in accordance with the provisions of subsection (c) of this Section 11.09.

Any Note that is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and, upon receipt of a Company Order, the Trustee shall authenticate and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Note so surrendered.

(b) After the occurrence of a Fundamental Change, but on or before the 15th day after the Effective Date of such Fundamental Change, the Company shall provide to all Holders of record of the Notes and the Trustee and Paying Agent a notice (the "**Fundamental Change Repurchase Right Notice**") on the occurrence of such Fundamental Change and of the resulting repurchase right, if any, at the option of the Holders arising as a result thereof.

Each Fundamental Change Repurchase Right Notice shall specify (the "**Fundamental Change Repurchase Notice Information**"):

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the repurchase right, if applicable;

(iv) the Fundamental Change Repurchase Price, if applicable;

(v) the Fundamental Change Repurchase Date, if applicable;

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

(vii) the applicable Conversion Rate and any adjustments to the applicable Conversion Rate, including any Additional Shares, if applicable;

(viii) 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 this Supplemental Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes, if applicable.

Simultaneously with providing the Fundamental Change Repurchase Right Notice, the Company shall publish a notice containing the Fundamental Change Repurchase Notice Information in a newspaper of general circulation in the City of New York or publish the Fundamental Change Repurchase Notice Information on the Company's website or through such other public medium as the Company may use at that time.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 11.09.

(c) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Repurchase Right Notice at any time prior to the close of business on the Business Day prior to the Fundamental Change Repurchase Date, specifying:

(i) the Original Principal Amount of the Notes with respect to which such notice of withdrawal is being submitted;

(ii) if certificated Notes have been issued, the certificate numbers of the withdrawn Notes; and

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

provided, *however*, that if the Notes are not in certificated form, the notice must comply with the Applicable Procedures.

(d) In connection with any repurchase of the Notes pursuant to this Section 11.09, the Company shall (in each case to the extent then required by law):

(i) comply with the provisions of Rule 13e-4, Rule 14e-1 (or, in each case, any successor provision) and any other tender offer rules under the Exchange Act that may then be applicable; and

(ii) otherwise comply with all applicable federal and state securities laws.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 11.09, the Company's compliance with such laws and regulations shall not in and of itself cause a breach of its obligations under this Section 11.09.

(e) On or prior to 1:00 p.m., New York City time, on the Fundamental Change Repurchase Date, the Company shall 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 10.05) an amount of money sufficient to repurchase all of the Notes to be repurchased on such date at the Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company) from the Company or the Holders, as applicable, payment for Notes surrendered for repurchase (and not withdrawn) prior to the close of business on the Business Day prior to the Fundamental Change Repurchase Date shall be made promptly after the later of (x) the Fundamental Change Repurchase Date with respect to such Note (*provided* the Holder has satisfied the conditions to the payment of the Fundamental Change Repurchase Price in this Section 11.09), and (y) 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 this Section 11.09. 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.

(f) Subject to a Holder's right to receive Interest on the related Interest Payment Date where the Fundamental Change Repurchase Date falls between a Regular Record Date and the Interest Payment Date to which it relates, if the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to repurchase on the Fundamental Change Repurchase Date all the Notes or portions thereof that are to be purchased as of the Business Day following the Fundamental Change Repurchase Date, then on and after the Fundamental Change Repurchase Date (i) such Notes shall cease to be outstanding, (ii) the Accreted Principal Amount shall cease to accrete, (iii) Interest shall cease to accrue on such Notes, and (iv) all other rights of the Holders of such Notes shall terminate, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent, other than the right to receive the Fundamental Change Repurchase Price upon delivery of the Notes.

Section 12.01. *Conversion Privilege and Conversion Rate.*

(a) Subject to the conditions described in clauses (i), (ii) and (iii) below, and upon compliance with the provisions of this Article 12, a Holder shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 in Original Principal Amount or an integral multiple thereof) of any Notes at any time prior to the close of business on the Scheduled Trading Day immediately preceding March 1, 2015, into a combination of cash and shares of Common Stock (or, at the election of the Company, entirely cash or entirely shares of Common Stock as described herein) at a rate of 24.6305 shares of Common Stock (subject to adjustment by the Company as provided in Section 12.01(e) and Section 12.04) per $1,000 in Original Principal Amount of the Notes (the "**Conversion Rate**") under the circumstances and during the periods set forth below. On and after March 1, 2015, regardless of the conditions described in clauses (i), (ii) and (iii) below, and upon compliance with the provisions of this Article 12, a Holder shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 in Original Principal Amount or an integral multiple thereof) of any Notes at the applicable Conversion Rate at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Maturity Date.

(i) The Notes shall be convertible prior to March 1, 2015, during the five Business Day period after any five consecutive Trading Day period (as used in this Section 12.01(a)(i), the "**Measurement Period**") in which the Trading Price per $1,000 in Original Principal Amount of the Notes for each Trading Day of such Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock on such Trading Day and the applicable Conversion Rate in effect on such Trading Day, as determined by the Trustee and subject to compliance with the procedures and conditions described below concerning the Trustee's obligation to make such determination (the "**Trading Price Condition**"). If a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 in Original Principal Amount of the Notes would be less than 98% of the product of (a) the applicable Conversion Rate of the Notes and (b) the Last Reported Sale Price at such time, then the Company shall instruct in writing the

Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the date on which the Trading Price per $1,000 in Original Principal Amount of the Notes is greater than or equal to 98% of the product of (a) the applicable Conversion Rate of the Notes and (b) the Last Reported Sale Price (as provided to the Trustee by the Company on each such date). If the Trading Price Condition has been met in accordance with the foregoing, the Company shall so notify the Holders of the Notes and the Trustee. If, at any time after the Trading Price Condition has been met in accordance with the foregoing, the Trading Price per $1,000 in Original Principal Amount of the Notes is greater than 98% of the product of (a) the applicable Conversion Rate of the Notes and (b) the Last Reported Sale Price on such date, the Company shall so notify the Holders of the Notes and the Trustee, and the Trustee shall have no further obligation to determine the Trading Price of the Notes unless requested by the Company to do so again in writing pursuant to this Section 12.01(a)(i). Furthermore, if the Company does not, when obligated to do so pursuant to this clause (i), instruct the Trustee to determine the Trading Price of the Notes, or if the Company so instructs the Trustee, but the Trustee does not make such determination, then the Trading Price per $1,000 in Original Principal Amount of the Notes shall be deemed to be less than 98% of the product of (a) the applicable Conversion Rate of the Notes and (b) the Last Reported Sale Price on such date.

(ii) The Notes shall be convertible prior to March 1, 2015, during any calendar quarter after the calendar quarter ending June 30, 2008 (and only during such calendar quarter), if the Last Reported Sale Price of the Common Stock for 20 or more Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter exceeds 130% of the applicable Conversion Price in effect for the Notes on the last Trading Day of the immediately preceding calendar quarter. For each calendar quarter, the Company, or at the written request of the Company, the Conversion Agent, will determine if the Notes are convertible as the result of the satisfaction of the condition in this Section 12.01(a)(ii) in the preceding calendar quarter and the Company will promptly notify the Holders and the Trustee if this condition was satisfied. To the extent the Company is required to provide notice to the Holders under this Section 12.01(a)(ii), such notice obligation shall be deemed to be satisfied by the Company's delivery of such notice to the Trustee whereupon the Trustee shall promptly notify the Holders on behalf of the Company.

(iii) The Notes shall be convertible prior to March 1, 2015, as provided in subsections (b), (c) and (d) of this Section 12.01.

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

(i) distribute to all or substantially all holders of the Common Stock any rights or warrants entitling them for a period of not more than 45 days after the date of such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the declaration date of such distribution; or

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

the Company shall notify Holders and the Trustee in writing with respect to any distribution referred to in either clause (i) or clause (ii) above and of the resulting conversion right at least 33 Scheduled Trading Days prior to the Ex-Date for such distribution. Once the Company has given such notice, Holders may surrender their Notes for conversion at any time until the earlier of (i) the close of business on the Business Day immediately preceding the Ex-Date for such distribution and (ii) the Company's announcement that such distribution will not take place, even if the Notes are not otherwise convertible at such time. A Holder may not exercise this right if such Holder is permitted to participate (as a result of holding the Notes, and at the same time as holders of the Common Stock participate) in any distribution referred to in clause (i) or clause (ii) above as if such Holder held a number of shares of Common Stock equal to the applicable Conversion Rate, *multiplied by* the Original Principal Amount of Notes held by such Holder *divided by* $1,000, without having to convert its Notes.

(c) If the Company is a party to a combination, merger, recapitalization, reclassification, binding-share exchange or other similar transaction or sale or conveyance of all or substantially all of its properties and assets, in each case pursuant to which the Common Stock would be converted into cash, securities and/or other property, that does not also constitute a Fundamental Change, then the Holders shall have the right to convert Notes at any time beginning 30 Scheduled Trading Days prior to the anticipated effective date of such transaction and ending on the 35th Scheduled Trading Day following the effective date of such transaction. The Company shall use its reasonable best efforts to notify Holders and the Trustee in writing at least 33 Scheduled Trading Days prior to the anticipated effective date of any such transaction, and in any event shall give such notice no later than the actual effective date of any such transaction. In providing such notice, the Company may (but will not be required to) provide any additional

information to such Holders as it deems desirable, including (but not limited to) whether such Holders who have not been "affiliates" of the predecessor or the Successor Company during the 90 days preceding the Conversion Date will be able to immediately resell the Common Stock (or the Reference Property) received upon conversion of their Notes without registration under the Securities Act. The Board of Directors shall determine the anticipated effective date of the transaction, and such determination shall be conclusive and binding on the Holders.

(d) If the Company is a party to any transaction or event described in the definition of Fundamental Change, a Holder may surrender Notes for conversion at any time, after the Company gives the notice referred to in the last sentence of this Section 12.01(d), from the effective date of such event until the later of (i) the Fundamental Change Repurchase Date corresponding to such event and (ii) 35 Scheduled Trading Days following the effective date of such transaction or event. The Company shall notify in writing, in the manner provided for in Section 16.04 of the Base Indenture, each of the Holders and the Trustee of the Fundamental Change on or before the date such event occurs or becomes effective. In providing such notice, the Company may (but will not be required to) provide any additional information to such Holders as it deems desirable, including (but not limited to) whether such Holders who have not been "affiliates" of the predecessor or the Successor Company during the 90 days preceding the Conversion Date will be able to immediately resell the Common Stock (or the Reference Property) received upon conversion of their Notes without registration under the Securities Act.

(e) If a Holder elects to convert its Notes in connection with a Make-Whole Fundamental Change, the Conversion Rate applicable to each $1,000 in Original Principal Amount of Notes so converted shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described below; *provided*, *however* that no increase shall be made in the case of a transaction or event constituting a Fundamental Change described in clauses (1) or (2) of such definition where at least 90% of the consideration for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights and cash dividends) in connection with such transaction consists of shares of common stock traded on any of the New York Stock Exchange, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors) (or that will be so traded or quoted immediately following the transaction) and as a result of such transaction or transactions the Notes become convertible into shares of such common stock. Settlement of Notes tendered for conversion to which Additional Shares shall be added to the Conversion Rate as provided in this subsection (e) shall be settled pursuant to Section 12.02(e). For purposes of this subsection (e), a conversion shall be deemed to be "in connection with" a Make-Whole Fundamental Change if such conversion occurs on or after the Effective Date of such Make-Whole

Fundamental Change and prior to the close of business on the Business Day immediately prior to the related Fundamental Change Repurchase Date. The Company will notify Holders and the Trustee in writing of the Effective Date of any Make-Whole Fundamental Change applicable to this subsection (e) on the Make-Whole Reference Date, and issue a press release on the Effective Date of such Make-Whole Fundamental Change.

(i) The number of Additional Shares by which the Conversion Rate will be increased in the event of a Make-Whole Fundamental Change shall be determined by the Company by reference to the table attached as Schedule A hereto, based on the Make-Whole Reference Date and the Stock Price; *provided* that if the actual Stock Price is between two Stock Price amounts in the table or the Make-Whole Reference Date is between two Make-Whole Reference Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the next higher and next lower Stock Price amounts and the two nearest Make-Whole Reference Dates, as applicable, based on a 365-day year; and *provided*, *further*, that if (1) the Stock Price is greater than $250.00 per share of Common Stock (subject to adjustment in accordance with clause (ii) below), no Additional Shares will be added to the Conversion Rate and (2) the Stock Price is less than $29.00 per share (subject to adjustment in accordance with clause (ii) below), no Additional Shares will be added to the Conversion Rate. Notwithstanding the foregoing, in no event shall the Conversion Rate exceed 34.4827 shares of Common Stock per $1,000 in Original Principal Amount of Notes (subject to adjustment in the same manner as set forth in Section 12.04).

(ii) The Stock Prices set forth in the first column of the table in Schedule A hereto shall be adjusted by the Company as of any date on which the Conversion Rate of the Notes is adjusted (except pursuant to this Section 12.01(e)). The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the applicable Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares within the table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 12.04 (other than by operation of an adjustment to the Conversion Rate by adding Additional Shares).

(f) In the event the Company calls the Notes for redemption pursuant to Section 11.01, the Notes shall be convertible until the close of business on the Business Day preceding the applicable Redemption Date (after which time the Holders' right to convert will expire unless the Company defaults in the payment of the applicable Redemption Price).

Section 12.02. *Exercise of Conversion Privilege.*

(a) The Company shall satisfy the Conversion Obligation by delivering, as applicable:

(i) if the Company elects to settle any conversion entirely in shares of Common Stock, the Company will deliver a number of shares of the Common Stock to the Holder of the Notes on the third Scheduled Trading Day after the relevant Conversion Date (or, in the case of conversions during the Optional Redemption Conversion Period, on the third Scheduled Trading Day after the last Scheduled Trading Day prior to the relevant Redemption Date) equal to (1) (A) the aggregate Original Principal Amount of Notes to be converted, *divided by* (B) $1,000, *multiplied by* (2) the Conversion Rate in effect on the relevant Conversion Date;

(ii) if the Company elects (or is deemed to elect) Combination Settlement or has made the Irrevocable Net Share Settlement Election and, in each case, has not specified the Cash Percentage as 100%, the Company shall settle each $1,000 in Original Principal Amount of Notes being converted by delivering, on the third Scheduled Trading Day immediately following the last day of the related Observation Period, cash and shares of Common Stock, if any, equal to the sum of the Daily Settlement Amounts for each of the 25 VWAP Trading Days during the related Observation Period; *provided* that if the Company is deemed to have elected Combination Settlement, the Company will also be deemed to have elected a Cash Percentage of zero percent (0%); or

(iii) if the Company elects to settle any conversion entirely in cash, the Company shall settle each $1,000 in Original Principal Amount of Notes being converted by delivering, on the third Scheduled Trading Day immediately following the last day of the related Observation Period, an amount of cash equal to the sum of the Daily Conversion Values for each of the 25 VWAP Trading Days during the related Observation Period,

in each case subject, if applicable, to Section 12.02(c) and Section 12.03 hereof. The applicable settlement method for any particular conversion of Notes (pursuant to clause (i), (ii) or (iii) above) shall be determined pursuant to Section 12.02(b).

(b) At any time on or prior to the 30th Scheduled Trading Day prior to the Maturity Date, the Company may elect to settle conversions in respect of the Conversion Obligation pursuant to clause (i), (ii) or (iii) of Section 12.02(a) (or, if the Company has made the Irrevocable Net Share Settlement Election on or prior to the applicable Conversion Date, clause (ii) or (iii) of Section 12.02(a)) by providing notice (a "**Consideration Notice**") to the converting Holders through the Trustee (by requesting in writing that the Trustee provide the Consideration Notice) of the applicable settlement method no later than the Business Day immediately following the related Conversion Date or by making the Irrevocable Net Share Settlement Election on or prior to such Business Day. If the Consideration Notice designates settlement pursuant to clause (ii) of Section 12.02(a), it may specify the Cash Percentage; *provided* that if the Company does not specify the Cash Percentage, the Cash Percentage shall be deemed to be zero percent (0%). If the Company does not provide a Consideration Notice in respect of a conversion and has not made the Irrevocable Net Share Settlement Election on or prior to such Business Day, conversion of the applicable Notes shall be settled pursuant to clause (ii) of Section 12.02(a) and the Cash Percentage shall be deemed to be zero percent (0%).

At any time prior to the 30th Scheduled Trading Day prior to the Maturity Date, the Company may deliver a one-time Consideration Notice to the Holders designating the settlement method (clause (i), (ii) or (iii) of Section 12.02(a) or, if the Company has made the Irrevocable Net Share Settlement Election, clause (ii) or (iii) of Section 12.02(a)) for all conversions that occur on or after the 30th Scheduled Trading Day prior to the Maturity Date; *provided* that if the Company elects Combination Settlement, it shall specify the Cash Percentage for all such conversions, which if not specified shall be deemed to be zero percent (0%). For conversions that occur on or after the 30th Scheduled Trading Day prior to the Maturity Date, if the Company has not delivered a one-time Consideration Notice referred to in this Section 12.02(b) and has not made the Irrevocable Net Share Settlement Election on or prior to the 30th Scheduled Trading Day prior to the Maturity Date, conversion of the applicable Notes shall be settled in accordance with clause (ii) of Section 12.02(a) and the Cash Percentage shall be deemed to be zero percent (0%).

At any time on or prior to the 30th Scheduled Trading Day prior to the Maturity Date, the Company may deliver a one-time irrevocable notice to the Holders electing to settle all conversions of the Notes from the date of such notice pursuant to either clause (ii) or (iii) of Section 12.02(a) (the "**Irrevocable Net Share Settlement Election**"). Upon making the Irrevocable Net Share Settlement Election, settlement pursuant to clause (i) of Section 12.02(a) is no longer permitted. Upon making the Irrevocable Net Share Settlement Election, the Company shall (x) issue a Press Release and post such information on its website or otherwise publicly disclose such information and (y) provide written notice to Holders in the manner contemplated by this Supplemental Indenture, including through the facilities of the DTC, in which such notice the Company may specify the Cash Percentage. If the Company has made the Irrevocable Net Share

Settlement Election and elected to settle all conversions pursuant to clause (ii) of Section 12.02(a), such notice of the Irrevocable Net Share Settlement Election to Holders may state the Cash Percentage applicable to all conversions of such Notes, which if not specified shall be deemed to be zero percent (0%) for all conversions after the Company makes the Irrevocable Net Share Settlement Election.

The Company will settle all conversions by Holders converting on the same Trading Day in the same manner. However, the Company will have no obligation to settle Conversion Obligations arising on different Trading Days in the same manner, except (x) as described in the immediately succeeding paragraph; (y) for all conversions that occur on or after the 30th Scheduled Trading Day prior to the Maturity Date and (z) where the Company has made the Irrevocable Net Share Settlement Election (to the extent such election restricts the method of conversion), in which case all conversions that occur on or after the date of such Irrevocable Net Share Settlement Election shall be settled in the same manner.

If the Company exercises its right to redeem any or all of the Notes under Section 11.01 and the Company has not elected to settle its Conversion Obligation entirely in Common Stock under clause (i) of Section 12.02(a), the consideration due under this Article 12 to Holders that convert within the Optional Redemption Conversion Period shall be calculated by reference to clause (a) of the definition of Observation Period. If the Company has elected to settle its Conversion Obligation in Common Stock under clause (i) of Section 12.02(a), for all conversions occurring during the Optional Redemption Conversion Period, the Company shall deliver a number of shares of Common Stock, as calculated under clause (i) of Section 12.02(a), on the third Scheduled Trading Day following the last Scheduled Trading Day prior to the Redemption Date.

(c) Notwithstanding any of the foregoing to the contrary, in lieu of settling the Conversion Obligation in the manner set forth in Section 12.02(a) above, the Company may, at its election (the "**Exchange Election**"), direct the Conversion Agent in writing to surrender, on or prior to the second Business Day following the Conversion Date, Notes tendered for conversion to a financial institution designated by the Company (the "**Financial Institution**") for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the Financial Institution must agree to timely deliver, in exchange for such Notes, the cash and/or shares of Common Stock that would otherwise be due upon conversion as set forth in Section 12.02(a) (the "**Conversion Consideration**"). If the Company makes the Exchange Election, the Company will, by the close of business on the second Business Day following the relevant Conversion Date, notify Holders surrendering Notes for conversion that the Company has made the Exchange Election and will notify the Financial Institution of the Conversion Consideration to be delivered pursuant to Sections 12.02(a) and (b) and the relevant deadline for delivery of the Conversion Consideration. Any Notes

exchanged by the Financial Institution will remain outstanding. If the Financial Institution agrees to accept Notes for exchange but does not timely deliver the related Conversion Consideration, or if such Financial Institution does not accept such Notes for exchange, the Company will deliver the Conversion Consideration as if the Company had not made the Exchange Election.

(d) 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 12.02(j) and, if required, pay all taxes or duties, if any, in connection therewith and (2) in the case of a Note issued in certificated form, (A) complete and manually sign an irrevocable written notice to the Conversion Agent in the form set forth under Section 2.03 (or a facsimile thereof) (a "**Notice of Conversion**"), (B) deliver the Notice of Conversion, which is irrevocable, to the office of the Conversion Agent and shall state in writing therein the Accreted 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, (C) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), to the office of the Conversion Agent, (D) if required, pay all transfer or similar taxes and (E) 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 12.02(j). As used herein, "**Conversion Date**" shall mean the date that the Holder has complied with the requirements set forth in this subsection (d).

No Notice of Conversion with respect to any Notes may be tendered by a Holder thereof if such Holder has also tendered a Fundamental Change Repurchase Notice or Optional Put Repurchase Notice and not validly withdrawn such Fundamental Change Repurchase Notice or such Optional Put Repurchase Notice, as the case may be, in accordance with the applicable provisions of Section 11.08 or Section 11.09.

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 Original Principal Amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(e) Delivery of the amounts owing in satisfaction of the Conversion Obligation shall be made by the Company in no event later than the date specified in subsection (a) of this Section 12.02, except to the extent specified in subsection (b) of this Section 12.02. The Company shall make such delivery by issuing, or causing to be issued, and delivering to such Holder, or such Holder'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 Holder shall be entitled as part of such Conversion Obligation (together with any cash in lieu of fractional shares).

(f) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall, as provided in 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 Original Principal Amount equal to the unconverted portion of the surrendered Notes.

(g) If a Holder submits a Note for conversion, the Company shall pay all documentary, stamp or similar issue or transfer tax due, if any, which 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 which is due because the Holder requests any shares of Common Stock to be issued in a name other than the Holder's name. The Company 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 Company receives a sum sufficient to pay any tax which 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.

(h) Except as provided in Section 12.04, no adjustment shall be made for dividends on any shares issued upon the conversion of any Note as provided in this Article 12.

(i) 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 Original 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.

(j) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid Interest except as set forth below. The Company's settlement of the Conversion Obligation as described above shall be deemed to satisfy its obligation to pay the principal amount of the Notes and accrued and unpaid Interest to, but not including, the Conversion Date. As a result, accrued and unpaid Interest on the Notes 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 a Regular Record Date, Holders of such Notes as of the close of business on such Regular Record Date shall receive the Interest 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 Regular Record Date to 9:00 a.m., New York City time, on the corresponding Interest Payment Date must be accompanied by payment of an amount in cash equal to the Interest payable on such Interest Payment Date, on the Notes so converted; *provided*, *however*, that no such payment need be made (i) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and prior to the next Scheduled Trading Day following the corresponding Interest Payment Date; (ii) to the extent of any overdue Interest, if any overdue Interest remains unpaid at the time of conversion with respect to such Note; or (iii) in respect of any conversions that occur after the Regular Record Date immediately preceding the Maturity Date. Except as described above, no payment or adjustment shall be made for accrued Interest on converted Notes. The Company shall not be required to convert any Notes that are surrendered for conversion without payment of Interest as required by this Section 12.02(j).

Section 12.03. *Fractions of Shares.*

No fractional shares of Common Stock shall be issued upon conversion of any Note or Notes. If more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate Accreted Principal Amount of the Notes (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any Note or Notes (or specified portions thereof), the Company shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a share) based on the Daily VWAP on (x) the last VWAP Trading Day of the applicable Observation Period in the case of conversions following any conversions settled in accordance with clause (ii) or (iii) of Section 12.02(a) and (y) the Conversion Date (or, if the Conversion Date is not a Trading Day, the next following Trading Day) if the Company elects to settle in accordance with clause (i) of Section 12.02(a).

Section 12.04. *Adjustment of Conversion Rate.*

The Conversion Rate shall be adjusted from time to time by the Company as follows; *provided* that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (as a result of holding the Notes, and at the same time as holders of the Common Stock participate) in any of the transactions described below as if such Holders held a number of shares of Common Stock equal to the applicable Conversion Rate, *multiplied by* the Original Principal Amount (expressed in thousands) of Notes held by such Holders, without having to convert their Notes:

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

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

where,

CR_0 = the Conversion Rate in effect as of the close of business on the day immediately preceding the Ex-Date for such dividend or distribution, or the effective date of such share split or combination, as the case may be;

CR^1 = the Conversion Rate in effect immediately after the opening of business on the Ex-Date for such dividend or distribution, or the effective date of such share split or combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution, or the effective date of such share split or combination, as the case may be; and

OS^1 = the number of shares of Common Stock that would be outstanding immediately after the opening of business on the Ex-Date for such dividend or distribution immediately after giving effect to such dividend or distribution or immediately after the effective date of such share split or combination, as the case may be.

Any adjustment made pursuant to this Section 12.04(a) shall become effective (x) upon the opening of business on the Ex-Date for such dividend or other distribution or (y) the date on which such split or combination becomes effective, as applicable. If any dividend or distribution of the type described in this Section 12.04(a) is declared but not 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.

(b) If the Company distributes to all or substantially all holders of the Common Stock any rights or warrants entitling them for a period of not more than 45 days after the 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 10 consecutive Trading Day period immediately preceding the declaration date for such distribution, the Conversion Rate shall be adjusted based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect as of the close of business on the day immediately preceding the Ex-Date for such distribution;

CR^1 = the Conversion Rate in effect immediately after the opening of business on the Ex-Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such distribution;

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

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants *divided by* the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the declaration date for the issuance of such rights or warrants.

Such adjustment shall be successively made whenever any such rights or warrants are distributed and shall become effective immediately upon the opening of business on the Ex-Date for such distribution. The Company shall not issue any such rights or warrants in respect of shares of the Common Stock held in treasury by the Company. To the extent that shares of the Common Stock are not delivered after the expiration of such rights 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 or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If any right or warrant described in this Section 12.04(b) is not exercised or converted prior to their expiration of the exercisability or convertibility thereof, the Conversion Rate shall be readjusted to the Conversion Rate that would have been in effect if such right or warrant had not been issued.

For purposes of this Section 12.04(b), in determining whether any rights or warrants entitle the holder to subscribe for or purchase shares of Common Stock at less than the applicable price of the Common Stock, and in determining the aggregate exercise or conversion price payable for such Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of any class of Capital Stock of the Company, evidences of the Company's Indebtedness or other assets or property of the Company to all or substantially all holders of the Company's Common Stock, excluding (i) dividends and distributions covered by subsections (a) or (b) of this Section 12.04; (ii) dividends or distributions paid exclusively in cash referred to in subsection (d) of this Section 12.04; and (iii) Spin-Offs described below in this subsection (c) of this Section 12.04 (any of such shares of Capital Stock, Indebtedness, or other asset or property hereinafter in this subsection (c) called the "**Distributed Property**"), then, in each such case, the Conversion Rate shall be adjusted based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect as of the close of business on the day immediately preceding the Ex-Date for such distribution;

CR^1 = the Conversion Rate in effect immediately after the opening of business on the Ex-Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

FMV = the fair market value as determined by the Board of Directors or a committee thereof of the Distributed Property with respect to each outstanding share of Common Stock on the Ex-Date for such distribution.

Such adjustment shall become effective immediately after the opening of business on the Ex-Date for such distribution; *provided* that if "FMV" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder has the right to receive, for each $1,000 in Original 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 Ex-Date for such distribution, without being required to convert the Notes. 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 12.04(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-Date for such distribution.

With respect to an adjustment pursuant to this subsection (c) of this Section 12.04 where there has been a payment of a dividend or other distribution on the Common Stock in shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit (a "**Spin-Off**"), the Conversion Rate in effect immediately before the close of business on the 10th Trading Day immediately following the effective date of the Spin-Off shall be increased based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect immediately before the close of business on the 10th Trading Day immediately following the effective date of the Spin-Off;

CR^1 = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following the effective date of the Spin-Off;

FMV_0 = 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 10 consecutive Trading Day period beginning on, and including, the Trading Day immediately following the effective date of the Spin-Off; and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the first 10 consecutive Trading Day period beginning on, and including, the Trading Day immediately following the effective date of the Spin-Off.

Such adjustment to the Conversion Rate under this subsection (c) shall occur at the close of business on the 10th Trading Day from, and including, the effective date of the Spin-Off; *provided* that in respect of any conversion within the 10 Trading Day period beginning on, and including, the Trading Day immediately following, and including, the effective date of any Spin-Off, references in this subsection (c) with respect to the Spin-Off to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the effective date of such Spin-Off and the Conversion Date in determining the applicable Conversion Rate.

Rights or warrants distributed by the Company to all holders of Common Stock, entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 12.04 (and no adjustment to the Conversion Rate under this Section 12.04 shall 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 subsection (c). If any such rights or warrants are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of Indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights 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 12.04 was made, (1) in the case of any such rights 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 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 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 and warrants had not been issued.

For purposes of this subsection (c) and subsections (a) and (b) of this Section 12.04, any dividend or distribution to which this subsection (c) is applicable that also includes shares of Common Stock to which subsection (a) of this Section 12.04 applies or rights or warrants to subscribe for or purchase shares of Common Stock to which subsection (a) or (b) of this Section 12.04 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 or warrants, to which this subsection (c) applies (and any Conversion Rate adjustment required by this subsection (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 or warrants (and any further Conversion Rate adjustment required by subsections (a) and (b) of this Section 12.04 with respect to such dividend or distribution shall then be made), except (A) the Ex-Date of such dividend or distribution shall under this subsection (c) be substituted as the "Ex-Date" within the meaning of subsection (a) and subsection (b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be" within the meaning of subsection (a) or "outstanding immediately prior to the Ex-Date for such distribution" within the meaning of subsection (b).

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

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

where,

CR_0 = the Conversion Rate in effect as of the close of business on the day immediately preceding the Ex-Date for such dividend or distribution;

CR^1 = the Conversion Rate in effect immediately after the opening of business on the Ex-Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of Common Stock during the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such dividend or distribution; and

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

Such adjustment shall become effective immediately after the opening of business on the Ex-Date for such dividend or distribution; *provided* that if the portion of the cash so distributed applicable to one share of the Common Stock is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall receive on the date on which such cash dividend is distributed to holders of Common Stock, for each $1,000 in Original 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 Ex-Date for such distribution, without being required

to convert the Notes. If such dividend or distribution is declared but not paid or made, the Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender offer or exchange offer for all or any portion of the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period beginning 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 Conversion Rate shall be increased based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect at the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect at the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

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

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period beginning 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 10th Trading Day from the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this subsection (e) with respect to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and the Conversion Date in determining the applicable Conversion Rate. If the Company or its Subsidiary is obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer, but the Company or its Subsidiary is permanently prevented by applicable law from effecting all or any such purchases or all or any portion of 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 only been made in respect of the purchases that had been effected.

If the application of any of the foregoing formulas (other than in respect of a share combination) would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made.

For purposes of this Section 12.04 the term "**record date**" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of shareholders 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).

(f) In addition to those required by subsections (a), (b), (c), (d) and (e) of this Section 12.04, and to the extent permitted by applicable law and the rules of the New York Stock Exchange or any other securities exchange on which the Common Stock is then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 days if the Board of Directors determines that such increase would be in the Company's best interest. If the Company makes such determination, it will be conclusive and the Company will notify the Holders of the Notes and the Trustee of the increased Conversion Rate and the period during which it will be in effect at least 15 days prior to the date the increased Conversion Rate takes effect, and otherwise in accordance with applicable law. 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 a dividend or distribution of shares or rights to acquire shares or similar event.

If the Company has in effect a rights plan upon a conversion of the Notes into Common Stock and the rights have not separated from the Common Stock, Holders will receive, upon a conversion of the Notes in respect of which the

Company is required to deliver shares of Common Stock, in addition to such shares of Common Stock and in lieu of any adjustment to the Conversion Rate, rights under the Company's rights plan. If prior to any conversion, the rights have separated from the Common Stock, the Conversion Rate will be adjusted at the time of separation as if the Company had distributed to all holders of Common Stock, capital stock, evidences of indebtedness or other assets or property pursuant to Section 12.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(g) Except as described in this Section 12.04 or in Section 12.01(e), the Company will not adjust the Conversion Rate. Without limiting the foregoing, no adjustment to the Conversion Rate need be made:

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

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

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

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

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

(vi) for accreted principal in excess of the $1,000 Original Principal Amount of the Notes.

(h) All calculations and other determinations under this Article 12 shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment to the Conversion Rate shall be made unless such adjustment would require a change of at least one percent (1%) in the Conversion Rate then in effect at such time. The Company shall carry forward any adjustments that are less than one percent (1%) of the Conversion Rate and make such carried forward adjustments upon the earliest of (i) any conversion of Notes, (ii) each anniversary of the Issue Date, (iii) each VWAP Trading Day during the period beginning on, and including, the 27th Scheduled Trading Day prior to the Maturity Date and (iv) such time as all adjustment that have not been made prior thereto would have the effect of adjusting the Conversion Rate by at least one percent (1%).

(i) In any case in which this Section 12.04 provides that an adjustment shall become effective immediately after (1) the Ex-Date for an event or (2) the last date on which tenders or exchanges may be made pursuant to any tender or exchange offer pursuant to subsection (e) of this Section 12.04 (each an "**Adjustment Determination Date**"), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the Holder of any Note converted after such Adjustment Determination Date and before the occurrence of such Adjustment Event, the additional cash and, if applicable, shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the amounts deliverable upon such conversion before giving effect to such adjustment and (y) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 12.03. For purposes of this subsection (i), the term "**Adjustment Event**" shall mean:

(i) in any case referred to in clause (1) hereof, the date any dividend or distribution of Common Stock, shares of Capital Stock, evidences of Indebtedness, other assets or property or cash is paid or made, the effective date of any share split or combination or the date of expiration of any rights or warrants, and

(ii) in any case referred to in clause (2) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(j) For purposes of this Section 12.04, 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.

(k) For the avoidance of doubt, if a Holder converts Notes prior to the effective date of a Fundamental Change, and the Fundamental Change does not occur, the Holder shall not be entitled to Additional Shares in connection with such conversion.

(l) With respect to a conversion of Notes pursuant to this Article 12, on the date the Shares issuable upon conversion of the Notes are delivered to the converting Holder pursuant to Section 12.02(a) (the "**Delivery Date**"), the Person in whose name any certificate representing any shares of Common Stock issuable upon such conversion is registered shall be treated as a stockholder of record of the Company on such Delivery Date. On and after the Delivery Date with respect to a conversion of Notes pursuant hereto, all rights of the Holders of such Notes

shall terminate. A Holder of a Note is not entitled, as such, to any rights of a holder of Common Stock unless and until such Holder converts such Note and receives shares of Common Stock in respect of such conversion on the Delivery Date with respect to such conversion.

(m) Whenever any provision of this Article 12 requires a calculation of Last Reported Sale Prices over a span of multiple days, the Company shall make appropriate adjustments 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-Date of the event occurs, at any time during the period from which such calculation is to be calculated; *provided* that such adjustments shall only be made to the Conversion Rate relating to days prior to the date that the adjustment to the Conversion Rate becomes effective.

(n) If the effective date of any adjustment event described in this Section 12.04 occurs during an Observation Period for any Notes, the Company shall make proportional adjustments to the number of Deliverable Shares (in the same manner as the Conversion Rate) for each VWAP Trading Day during the portion of the Observation Period preceding the effective date of such adjustment event.

Section 12.05. *Notice of Adjustments of Conversion Rate.*

Whenever the Conversion Rate is adjusted as herein provided:

(a) the Company shall compute the adjusted Conversion Rate in accordance with Section 12.04 and shall prepare a certificate signed by the Chief Financial Officer of the Company setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall promptly be filed with the Trustee and with each Conversion Agent (if other than the Trustee); and

(b) upon each such adjustment, a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall be required, such notice shall be provided by the Company to all Holders in accordance with Section 16.04 of the Base Indenture.

Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder desiring inspection thereof at its office during normal business hours or in such other manner of inspection as the Trustee deems practicable.

Section 12.06. *Company to Reserve Common Stock.*

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Notes, the full number of shares of Common Stock then issuable upon the conversion of all Outstanding Notes.

Section 12.07. *Taxes on Conversions.*

Except as provided in the next sentence, the Company shall pay all documentary, stamp or similar issue or transfer tax due that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto. The Company shall not, however, be required, and the Holder shall instead be required, to pay any tax or duty that may be payable in respect of (i) income of the Holder, or (ii) any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Note or Notes to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

Section 12.08. *Certain Covenants.*

Before taking any action which would cause an adjustment reducing the Conversion Rate below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company shall take all corporate action, if any, which it reasonably determines may be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock issued upon conversion of Notes shall be fully paid and non-assessable by the Company and free from all liens created by the Company.

Section 12.09. *Cancellation of Converted Notes.*

All Notes delivered for conversion shall be delivered to the Trustee or its agent and canceled by the Trustee as provided in Section 3.11.

Section 12.10. *Provision in Case of Effect of Reclassification, Consolidation, Merger or Sale.*

If there shall occur (i) any Fundamental Change described in clause (2) of the definition of Fundamental Change, (ii) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination), (iii) any consolidation, binding share exchange,

recapitalization, reclassification, merger, combination or other similar event or (iv) any sale or conveyance of all or substantially all of the property and assets of the Company to any other Person, in any 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 their shares of Common Stock (any such event described in clauses (i) through (iv) a "**Merger Event**"), then:

(a) the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee (subject to the Trustee's rights as provided herein) 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 8.01(i) providing for the conversion and settlement of the Notes as set forth in this Supplemental Indenture. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 12 and the Trustee may conclusively rely on the determination by the Company of the equivalency of such adjustments. If, in the case of any Merger Event, the Reference Property includes shares of stock or other securities and assets of a company other than the successor or purchasing company, as the case may be, in such change of control, consolidation, binding share exchange, recapitalization, reclassification, merger, combination, sale or conveyance or Fundamental Change described in clause (b) of the definition of Fundamental Change, then such supplemental indenture shall also be executed by such other company 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 11.

In the event a supplemental indenture is executed pursuant to this Section 12.10, the Company shall promptly file with the Trustee an Officers' Certificate (and the documents and information provided for in Section 3.03 of the Base Indenture) briefly stating the reasons therefore, the kind or amount of cash, securities, property or assets that will constitute 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 Holders, and the Trustee shall be protected in relying on such Officers' Certificate; it being understood that the Trustee shall have no responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to this Section 12.10.

Notwithstanding the provisions of Section 12.02 and Section 12.03, and subject to the provisions of Section 12.01, at the effective time of such Merger Event, the right to convert each $1,000 in Original Principal Amount of Notes shall be changed to a right to convert such Notes by reference to the kind and

amount of cash, securities, or other property that a holder of a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to such transaction would have owned or been entitled to receive (the "**Reference Property**") such that from and after the effective date of such transaction, a Holder shall be entitled thereafter to convert its Notes into the same type (and in the same proportion) of Reference Property, subject to the Company's right to elect to settle conversions, in whole or in part, in a combination of cash and shares of Common Stock (or Reference Property), entirely cash or entirely shares of Common Stock (or Reference Property); *provided* that if the Company makes the Irrevocable Net Share Settlement Election, upon conversion, Holders will receive Reference Property as follows: (x) cash in an amount equal to the Principal Portion and (y) in lieu of the shares of Common Stock otherwise deliverable for the excess, if any, of the Conversion Obligation above the Principal Portion, Reference Property. The amount of consideration, and, consequently, Reference Property, Holders receive upon conversion will be based on the Daily Conversion Values of the Reference Property and the applicable Conversion Rate, as described in Section 12.02. For purposes of determining the constitution of Reference Property, the type and amount of consideration that a holder of Common Stock would have been entitled to in the case of any Merger Event that causes the Common Stock to be converted into the right to receive more than a single type of consideration determined, based in part upon any form of stockholder election, such consideration will be deemed to be (i) if holders of the majority of the shares of Common Stock affirmatively make such an election, the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election, or (ii) if the holders of the majority of the shares of Common Stock do not affirmatively make such an election, the types and amount of consideration actually received by such holders. The Company shall not become a party to any such transaction unless its terms are consistent with the preceding. None of the foregoing provisions shall affect the right of a Holder to convert its Notes in accordance with the provisions of this Article 12 prior to the effective date.

(b) The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at his address appearing on the Securities Register provided for in this Supplemental Indenture, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The above provisions of this Section 12.10 shall similarly apply to successive Merger Events.

Section 12.11. *Company Responsible for Making Calculations.*

Except as otherwise provided herein, the Company will be responsible for making all calculations required under the Notes and this Supplemental Indenture.

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

Section 12.12. *Responsibility of Trustee for Conversion Provisions.*

The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any Notes; and it or they do not make any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion; and the Trustee and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article 12.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

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

ENERSYS

By: /s/ Michael T. Philion
Name: Michael T. Philion
Title: Executive Vice President – Finance and Chief Financial Officer

THE BANK OF NEW YORK,
as Trustee

By: /s/ Mary LaGumina
Name: Mary LaGumina
Title: Vice President

SCHEDULE A

The following table sets forth the "Stock Price," "Make-Whole Reference Date" and the adjustments to the Conversion Rate, expressed as a number of Additional Shares by which the Conversion Rate shall be increased in the event of a Fundamental Change (other than events described in clauses (3) and (4) of the definition of a Fundamental Change), in accordance with the Supplemental Indenture:

	Make-Whole Reference Date							
Stock Price	**May 28, 2008**	**June 1, 2009**	**June 1, 2010**	**June 1, 2011**	**June 1, 2012**	**June 1, 2013**	**June 1, 2014**	**June 6, 2015**
$ 29.00	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522
$ 30.00	9.2954	8.8911	8.7028	8.7028	8.7028	8.7028	8.7028	8.7028
$ 31.00	8.8025	8.3891	8.0321	7.7251	7.6275	7.6275	7.6275	7.6275
$ 32.00	8.3503	7.9298	7.5572	7.2227	6.8920	6.6195	6.6195	6.6195
$ 34.00	7.5514	7.1223	6.7264	6.3492	5.9516	5.5082	4.9981	4.7812
$ 36.00	6.8703	6.4382	6.0280	5.6215	5.1768	4.6560	3.9933	3.1472
$ 40.00	5.7785	5.3524	4.9324	4.4963	4.0012	3.3967	2.5705	0.3695
$ 45.00	4.7745	4.3686	3.9582	3.5199	3.0145	2.3922	1.5442	0.0000
$ 50.00	4.0371	3.6578	3.2692	2.8489	2.3642	1.7740	1.0031	0.0000
$ 60.00	3.0433	2.7201	2.3858	2.0226	1.6102	1.1280	0.5615	0.0000
$ 75.00	2.1812	1.9301	1.6706	1.3909	1.0822	0.7392	0.3712	0.0000
$ 90.00	1.6739	1.4762	1.2730	1.0556	0.8201	0.5642	0.2922	0.0000
$ 120.00	1.1035	0.9736	0.8410	0.7002	0.5489	0.3840	0.2031	0.0000
$ 150.00	0.7885	0.6973	0.6047	0.5062	0.4000	0.2823	0.1503	0.0000
$ 200.00	0.4903	0.4347	0.3789	0.3193	0.2546	0.1814	0.0974	0.0000
$ 250.00	0.3207	0.2844	0.2484	0.2100	0.1686	0.1212	0.0657	0.0000

SCHEDULE B

The following table sets forth the Accreted Principal Amounts as of the specified dates during the period from June 1, 2015 through the Maturity Date.

Date	Accreted Principal Amount
June 1, 2015	$ 1,000.00
December 1, 2015	$ 1,016.88
June 1, 2016	$ 1,034.03
December 1, 2016	$ 1,051.48
June 1, 2017	$ 1,069.23
December 1, 2017	$ 1,087.27
June 1, 2018	$ 1,105.62
December 1, 2018	$ 1,124.28
June 1, 2019	$ 1,143.25
December 1, 2019	$ 1,162.54
June 1, 2020	$ 1,182.16
December 1, 2020	$ 1,202.11
June 1, 2021	$ 1,222.39
December 1, 2021	$ 1,243.02
June 1, 2022	$ 1,264.00
December 1, 2022	$ 1,285.33
June 1, 2023	$ 1,307.02
December 1, 2023	$ 1,329.07
June 1, 2024	$ 1,351.50
December 1, 2024	$ 1,374.31
June 1, 2025	$ 1,397.50
December 1, 2025	$ 1,421.08
June 1, 2026	$ 1,445.06
December 1, 2026	$ 1,469.45
June 1, 2027	$ 1,494.24
December 1, 2027	$ 1,519.46
June 1, 2028	$ 1,545.10
December 1, 2028	$ 1,571.17
June 1, 2029	$ 1,597.69
December 1, 2029	$ 1,624.65
June 1, 2030	$ 1,652.06
December 1, 2030	$ 1,679.94
June 1, 2031	$ 1,708.29
December 1, 2031	$ 1,737.12
June 1, 2032	$ 1,766.43
December 1, 2032	$ 1,796.24
June 1, 2033	$ 1,826.55
December 1, 2033	$ 1,857.38
June 1, 2034	$ 1,888.72
December 1, 2034	$ 1,920.59
June 1, 2035	$ 1,953.00
December 1, 2035	$ 1,985.96
June 1, 2036	$ 2,019.47
December 1, 2036	$ 2,053.55
June 1, 2037	$ 2,088.20
December 1, 2037	$ 2,123.44
June 1, 2038	$ 2,159.28

The accreted principal amount of a note between the dates listed above will include an amount reflecting the additional principal accretion that has accrued as of such date since the immediately preceding date in the table.

Exhibit 10.1

EXECUTION COPY

3,400,000 Shares

ENERSYS

Common Stock (Par Value $0.01 Per Share)

UNDERWRITING AGREEMENT

May 21, 2008

May 21, 2008

Goldman, Sachs & Co.,
Banc of America Securities LLC
As representatives of the several Underwriters
named in Schedule I hereto,
c/o Goldman, Sachs & Co.
85 Broad Street
New York, New York 10004
and
c/o Banc of America Securities LLC
One Bryant Park
New York, New York 10036

Dear Sirs and Mesdames:

The stockholders named in Schedule II hereto (the "**Selling Stockholders**") of EnerSys, a Delaware corporation (the "**Company**"), propose to sell to the underwriters named in Schedule I hereto (the "**Underwriters**"), for which you are acting as representatives (the "**Representatives**"), an aggregate of 3,400,000 shares (the "**Firm Shares**") of common stock, par value $0.01 per share (the "**Common Stock**") of the Company, and at the election of the Underwriters, up to an aggregate of 340,000 additional shares of Common Stock (the "**Optional Shares**") (the Firm Shares and the Optional Shares that the Underwriters elect to purchase pursuant to Section 3(b) hereof are herein collectively called the "**Shares**").

1. *Representations and Warranties*. The Company represents and warrants to and agrees with the Underwriters that:

(a) An "automatic shelf registration statement" as defined under Rule 405 under the Securities Act of 1933, as amended (the "**Securities Act**"), and the rules and regulations (the "**Rules and Regulations**") of the Securities and Exchange Commission (the "**Commission**") has been filed on Form S-3 (File No. 333-151000) in respect of the Shares not earlier than three years prior to the date hereof; such registration statement, and any post-effective amendment thereto, became effective upon filing (the "**Effective Date**"); and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or threatened by the Commission, and no notice of objection of the Commission to the use of such registration statement or any post-effective

amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company (the base prospectus filed as part of such registration statement, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "**Basic Prospectus**"; any preliminary prospectus (including any preliminary prospectus supplement) relating to the Shares filed with the Commission pursuant to Rule 424(b) under the Securities Act is hereinafter called a "**Preliminary Prospectus**"; the various parts of such registration statement, including all exhibits thereto but excluding Form T-1 and including any prospectus supplement relating to the Shares that is filed with the Commission and deemed by virtue of Rule 430B to be part of such registration statement, each as amended at the time such part of the registration statement became effective, are hereinafter collectively called the "**Registration Statement**"; the Preliminary Prospectus, as amended and supplemented immediately prior to the Applicable Time (as defined below) together with the information set forth on Schedule IV and any Issuer Free Writing Prospectus filed or used by the Company on or before the Applicable Time, other than a road show that is an Issuer Free Writing Prospectus under Rule 433 of the Rules and Regulations, is hereinafter called the "**Pricing Disclosure Package**"; the form of the final prospectus relating to the Shares filed with the Commission pursuant to Rule 424(b) under the Securities Act in accordance with Section 5(a) hereof is hereinafter called the "**Prospectus**"; any reference herein to the Basic Prospectus, the Pricing Disclosure Package, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the date of such prospectus; any reference to any amendment or supplement to the Basic Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement relating to the Shares filed with the Commission pursuant to Rule 424(b) under the Securities Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and incorporated therein, in each case after the date of the Basic Prospectus, such Preliminary Prospectus, or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any "issuer free writing prospectus" as defined in Rule 433 under the Securities Act relating to the Shares is hereinafter called an "**Issuer Free Writing Prospectus**"); "**Applicable Time**" means 8:15 p.m. (New York City time) on May 21, 2008.

(b) The Company is not an ineligible issuer as defined under the Securities Act, in each case at the times specified in Rules 164, 405 and 433 of the Rules and Regulations in connection with the offering of the Shares.

(c) (i) The Registration Statement as of the Effective Date did not contain, and any post-effective amendment thereto at the time it becomes effective will not contain, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement, as of the Effective Date, complied and any post-effective amendment thereto at the time it becomes effective will comply, each Preliminary Prospectus complied and the Prospectus complies and, as amended or supplemented, if applicable, will comply in all material respects when filed with the Commission pursuant to Rule 424(b) and on the Closing Date with the Securities Act and the Rules and Regulations and (iii) the Prospectus, as of its date and the Closing Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement or the Prospectus based upon information relating to the Underwriters or any Selling Stockholder furnished to the Company in writing by the Underwriters or such Selling Stockholder, as the case may be, expressly for use therein.

(d) The documents incorporated by reference in any Preliminary Prospectus or the Prospectus (i) conformed, and any further documents so incorporated will conform, when filed with the Commission, in all material respects to the requirements of the Exchange Act or the Securities Act, as applicable, and the rules and regulations of the Commission thereunder and (ii) did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) The Pricing Disclosure Package did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made as to information contained in or omitted from the Pricing Disclosure Package in reliance upon and in conformity with written information furnished to the Company by the Underwriters specifically for inclusion therein.

(f) Each Preliminary Prospectus did not, as of its date, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, *provided* that no representation or warranty is made as to information contained in or omitted from such Preliminary Prospectus in reliance upon and in conformity with written information furnished to the Company by the Underwriters or any Selling Stockholder specifically for inclusion therein.

(g) Each Issuer Free Writing Prospectus (including, without limitation, any road show that is a free writing prospectus under Rule 433), does not conflict with the information contained in the most recent Preliminary Prospectus or the Prospectus and when considered together with the Pricing Disclosure Package as of the Applicable Time, and the price of the Shares and disclosures directly relating thereto included on the cover page of the Prospectus, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) Each Issuer Free Writing Prospectus conformed or will conform in all material respects to the requirements of the Securities Act and the Rules and Regulations on the date of first use, and the Company has complied with any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Rules and Regulations. The Company has not made any offer relating to the Shares that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Underwriters. The Company has retained in accordance with the Rules and Regulations all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Rules and Regulations.

(i) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its property and to conduct its business as described in each of the Pricing Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(j) Each significant subsidiary of the Company within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act (each a "**Significant Subsidiary**", collectively the "**Significant Subsidiaries**") has been duly incorporated or formed, is validly existing as a corporation, limited liability company or limited partnership, as the case may be, in good standing under the laws of the jurisdiction of its incorporation or formation, has the corporate or other power and authority to own its property and to conduct its business as described in each of the Pricing Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock of each Significant Subsidiary of the Company that is a corporation have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or adverse claims, except in the case of shares pledged pursuant to that certain Credit Agreement dated March 17, 2004, among the Company, EnerSys Capital Inc., various lending institutions party thereto, Bank of America, N.A., Morgan Stanley Senior Funding, Inc. and Lehman Commercial Paper Inc., as amended (the "**Credit Agreement**"); all of the issued limited liability company interests of each Significant Subsidiary of the Company that is a limited liability company have been duly and validly authorized and issued and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or adverse claims, except in the case of limited liability company interests pledged pursuant to the Credit Agreement; all of the issued limited partnership interests of each Significant Subsidiary of the Company that is a limited partnership have been duly and validly authorized and issued and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or adverse claims, except in the case of limited partnership interests pledged pursuant to the Credit Agreement.

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

(l) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the Pricing Disclosure Package and the Prospectus.

(m) The shares of Common Stock outstanding prior to the sale of the Shares have been duly authorized and are validly issued, fully paid and non-assessable.

(n) The Shares have been duly authorized and issued, and are fully paid and non-assessable, and after they are delivered against payment therefor as provided herein, the Shares will not be subject to any preemptive or similar rights.

(o) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement will not contravene any provision of (i) applicable law, (ii) the certificate of incorporation or by-laws of the Company, (iii) any agreement or other instrument binding upon the Company or any of its subsidiaries, or (iv) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary except, in the case of the foregoing clauses (i), (iii) or (iv), where such contravention would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required to be obtained by the Company for the performance by the Company of its obligations under this Agreement, except such as have been obtained under the Securities Act or as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares.

(p) There has not occurred any material adverse change, or any development that would reasonably be expected to result in a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in each of the Pricing Disclosure Package and the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement).

(q) There are no legal or governmental proceedings pending or threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that are required to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus and are not so described or any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(r) The Company is not, and after giving effect to the offering and sale of the Shares described in the Pricing Disclosure Package and the Prospectus will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(s) Except as described in the Pricing Disclosure Package and the Prospectus, the Company and its Significant Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(t) Except as described in the Pricing Disclosure Package and the Prospectus, there are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(u) Except as described in the Pricing Disclosure Package and the Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement.

(v) Subsequent to the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) the Company and its subsidiaries have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction not in the ordinary course of business, that in either case is required to be disclosed in the Pricing Disclosure Package or the Prospectus; (ii) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iii) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, except with respect to each of the foregoing clauses (i), (ii), and (iii) as described in the Pricing Disclosure Package and the Prospectus.

(w) The Company and its Significant Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its subsidiaries taken as a whole, in each case free and clear of all liens, encumbrances and defects except such as are described in the Pricing Disclosure Package or which would not, singly or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole; and any real property and buildings held under lease by the Company and its subsidiaries which are material to the business of the Company and its subsidiaries taken as a whole are held by them under valid, subsisting and enforceable leases with such exceptions as would not, singly or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole, except in each case as described in the Pricing Disclosure Package and the Prospectus.

(x) Except as described in the Pricing Disclosure Package and the Prospectus, the Company and its subsidiaries own or possess, or can acquire on reasonable terms, all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names currently employed by them in connection with the business now operated by them, except where the failure to own or possess, or the ability to acquire on reasonable terms, any of the foregoing would not, singly or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, singly or in the aggregate, would reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole.

(y) No material labor dispute with the employees of the Company or any of its Significant Subsidiaries exists, except as described in the Pricing Disclosure Package and the Prospectus, or, to the knowledge of the Company, is imminent.

(z) The Company and each of its Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as in management’s judgment are prudent; neither the Company nor any of its Significant Subsidiaries has

been refused any insurance coverage sought or applied for, except such refusals of coverage relating to directors and officers liability insurance; and neither the Company nor any of its Significant Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Pricing Disclosure Package and the Prospectus and except for such non-renewals of coverage or inability to obtain similar coverage from similar insurers relating to directors and officers liability insurance.

(aa) The Company and its Significant Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities that are necessary to conduct their respective businesses in all material respects, and neither the Company nor any of its Significant Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, would reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Pricing Disclosure Package and the Prospectus.

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

(cc) Except as described in the Pricing Disclosure Package and the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), the Company has not sold, issued or distributed any shares of Common Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(dd) The Company and its Significant Subsidiaries have filed all foreign, federal, state and local tax returns that are required to be filed, or have duly requested extensions thereof, and have paid all taxes required to be paid by them, any other assessment, fine or penalty levied against them, except in each case in which the failure to so file or pay would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(ee) The financial statements incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, included or incorporated by reference in the Registration Statement present fairly in accordance with GAAP the information required to be stated therein. The selected financial data incorporated by reference in the Pricing Disclosure Package and the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements incorporated by reference in the Registration Statement.

(ff) The Company has not distributed and, prior to the later to occur of the Closing Date and completion of the distribution of the Shares, will not distribute any offering material in connection with the offering and sale of the Shares other than any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus to which the Underwriters have consented in accordance with Section 1(g) and or 7(a)(vii).

(gg) There is and has been no failure on the part of the Company and any of the Company's directors or officers, in their capacities as such, to comply in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

(hh) Neither the Company nor any of its Significant Subsidiaries nor, to the best knowledge of the Company, any director, officer, agent,

employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (A) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (B) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (C) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (D) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(ii) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened, except as would not, individually or in the aggregate, reasonably be expected to result in an material adverse effect on the Company and its subsidiaries taken as a whole.

(jj) To the best of the Company's knowledge, none of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(kk) (A) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 under the Act, the Company was a "well-known seasoned issuer" as defined in Rule 405

under the Act; and (B) at the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Act) of the Securities, the Company was not an "ineligible issuer" as defined in Rule 405 under the Act.

2. *Representations and Warranties of the Selling Stockholders.* Each Selling Stockholder, severally and not jointly, represents and warrants that:

(a) Neither such Selling Stockholder nor any person acting on behalf of such Selling Stockholder (other than, if applicable, the Company and the Underwriters) has used or referred to any "free writing prospectus" (as defined in Rule 405), relating to the Shares.

(b) Such Selling Stockholder has, and immediately prior to the Closing Date on which such Selling Stockholder is selling the Shares, such Selling Stockholder will have, good and valid title to or a valid "security entitlement" within the meaning of Section 8-501 of the New York Uniform Commercial Code (the "**UCC**") in respect of, the Shares to be sold by such Selling Stockholder hereunder on such Closing Date free and clear of all liens, encumbrances, equities or claims.

(c) Upon payment for the Shares to be sold by such Selling Stockholder, delivery of such Shares, as directed by the Underwriters, to Cede & Co. ("**Cede**") or such other nominee as may be designated by The Depository Trust Company ("**DTC**"), registration of such Shares in the name of Cede or such other nominee and the crediting of such Shares on the books of DTC to securities accounts of the Underwriters (assuming that neither DTC nor the Underwriters have notice of any adverse claim (within the meaning of Section 8-105 of the UCC) to such Shares), (i) DTC shall be a "protected purchaser" of such Shares within the meaning of Section 8-303 of the UCC, (ii) under Section 8-501 of the UCC, the Underwriters will acquire a valid security entitlement in respect of such Shares and (iii) no action based on any "adverse claim," within the meaning of Section 8-102 of the UCC, to such Shares may be asserted against the Underwriters with respect to such security entitlement. For purposes of this representation, such Selling Stockholder may assume that when such payment, delivery and crediting occur, (A) such Shares will have been registered in the name of Cede or another nominee designated by DTC, in each case on the Company's share registry in accordance with its certificate of incorporation, bylaws and applicable law, (B) DTC will be registered as a "clearing corporation" within the meaning of Section 8-102 of the UCC and (C) appropriate entries to the accounts of the Underwriters on the records of DTC will have been made pursuant to the UCC.

(d) Such Selling Stockholder has full right, power and authority, corporate or otherwise, to enter into this Agreement.

(e) This Agreement has been duly and validly authorized, executed and delivered by or on behalf of such Selling Stockholder.

(f) The execution, delivery and performance of this Agreement by such Selling Stockholder and the consummation by such Selling Stockholder of the transactions contemplated hereby and thereby do not and will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which such Selling Stockholder is a party or by which such Selling Stockholder is bound or to which any of the property or assets of such Selling Stockholder is subject, (ii) result in any violation of the provisions of the charter or by-laws or deed of trust (or similar organizational documents) of such Selling Stockholder, or (iii) result in any violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over such Selling Stockholder or the property or assets of such Selling Stockholder.

(g) No consent, approval, authorization or order of, or filing or registration with, any court or governmental agency or body having jurisdiction over such Selling Stockholder or the property or assets of such Selling Stockholder is required for the execution, delivery and performance of this Agreement by such Selling Stockholder and the consummation by such Selling Stockholder of the transactions contemplated hereby and thereby, except for the registration of the Shares under the Securities Act and such consents, approvals, authorizations, registrations or qualifications as may be required under the Exchange Act and applicable state securities laws in connection with the purchase and sale of the Shares by the Underwriters.

(h) All material information with respect to such Selling Stockholder contained in each of the Registration Statement, the Prospectus and the Pricing Disclosure Package (as amended and supplemented, if the Company shall have filed with the Commission any amendment or supplement thereto) (i) complied and will comply in all material respects with all applicable provisions of the Securities Act and the Rules and Regulations, (ii) contains and will contain all statements of material fact required to be stated therein in accordance with the Securities Act and the Rules and Regulations, and (iii) does not and will not contain an 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 not misleading. Solely with respect to the Metalmark Selling Stockholders (as

defined in Schedule II hereto), such Selling Stockholder is not prompted to sell the Shares by any material non-public information relating to the business, results of operations or prospects of the Company and its subsidiaries of an adverse nature that is required to be disclosed in the Registration Statement, the Pricing Disclosure Package or the Prospectus. For this purpose, information that is set forth or incorporated by reference in the Registration Statement, the Pricing Disclosure Package or the Prospectus or that otherwise has been made publicly available about the Company shall be deemed to be public information, and any opinion or conclusion that a Metalmark Selling Stockholder may hold, or analysis performed by a Metalmark Selling Stockholder, in its capacity as an investor about the business, results of operations or prospects of the Company and its subsidiaries shall not be information that relates to the business, results of operations or prospects of the Company.

(i) Such Selling Stockholder has not taken and will not take, directly or indirectly, any action that is designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(j) The sale of the Shares by such Selling Stockholder does not violate any of the Company's internal policies regarding the sale of stock by its affiliates.

Any certificate signed by any officer of any Selling Stockholder and delivered to the Underwriters or counsel for the Underwriters in connection with the offering of the Shares shall be deemed a representation and warranty by such Selling Stockholder, as to matters covered thereby, to the Underwriters.

3. *Agreements to Sell and Purchase.*

(a) The Selling Stockholders hereby agree, severally and not jointly, to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, to purchase from each of the Selling Stockholders at a purchase price of $27.70 a share (the "**Purchase Price**") the number of Firm Shares (to be adjusted by you so as to eliminate fractional shares) determined by multiplying the aggregate number of Firm Shares to be sold by each Selling Stockholder as set forth in Schedule II hereof opposite its respective name by a fraction, the numerator of which is the aggregate number of Firm Shares to be purchased by such Underwriter as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the aggregate number of Firm Shares to be purchased by all of the Underwriters from all of the Selling Stockholders hereunder.

(b) In the event and to the extent that the Underwriters shall exercise the election to purchase Optional Shares as provided below, each of the Selling Stockholders agrees, severally and not jointly, to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from each of the Selling Stockholders, at the purchase price per share set forth in clause (a) of this Section 3, that portion of the number of Optional Shares as to which such election shall have been exercised (to be adjusted by you so as to eliminate fractional shares) determined by multiplying such number of Optional Shares by a fraction the numerator of which is the maximum number of Optional Shares which such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the maximum number of Optional Shares that all of the Underwriters are entitled to purchase hereunder.

(c) The Selling Stockholders, as and to the extent indicated in Schedule II hereto, hereby grant, severally and not jointly, to the Underwriters the right to purchase at their election up to 340,000 Optional Shares, at the purchase price per share set forth in Section 3(a) above, for the sole purpose of covering sales of shares in excess of the number of Firm Shares. Any such election to purchase Optional Shares shall be made in proportion to the number of Optional Shares to be sold by each Selling Stockholder. Any such election to purchase Optional Shares may be exercised only by written notice from you to the Selling Stockholders, given within a period of 30 calendar days after the date of this Agreement and setting forth the aggregate number of Optional Shares to be purchased and the date on which such Optional Shares are to be delivered, as determined by you but in no event earlier than the First Closing Date (as defined in Section 5 hereof) or, unless you and the Selling Stockholders otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

(d) The Company and each Selling Shareholder hereby agrees that, without the prior written consent of Goldman, Sachs & Co., it will not, during the period ending 75 days after the date of the Prospectus, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock; (ii) file any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable

or exchangeable for Common Stock; or (iii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i), (ii) or (iii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to the issuance by the Company of shares of Common Stock, any option to purchase shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock to directors, officers and employees of the Company and its subsidiaries pursuant to bonus, option, incentive, employee stock purchase or other compensatory plans of the Company existing on the date hereof that are described in the Pricing Disclosure Package or filed as an exhibit to the Registration Statement.

4. *Terms of Public Offering*. The Company and the Selling Stockholders are advised by you that the Underwriters propose to make a public offering of the Firm Shares as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company and the Selling Stockholders are further advised by you that the Firm Shares are to be offered to the public, in one or more transactions, (i) at a fixed price or prices, which may be changed; (ii) at market prices prevailing at the Applicable Time; (iii) at prices related to prevailing market prices; or (iv) at negotiated prices, as the case may be (the "**Public Offering Price**").

5. *Payment and Delivery.* Payment for the Firm Shares shall be made to the Selling Stockholders in Federal or other funds immediately available in New York City against delivery of the Firm Shares for the respective accounts of the Underwriters at 10:00 a.m., New York City time, on May 28, 2008, or at such other time on the same or such other date, not later than June 4, 2008, as shall be designated in writing by you, and with respect to the Optional Shares, 9:30 a.m. New York City time, on the date specified by you in the written notice given by you of the Underwriters' election to purchase such Optional Shares, or such other time and date as the Representatives and the Company may agree upon in writing. The time and date of such payment, with respect to the Firm Shares, is hereinafter referred to as the "**First Closing Date**" , such time and date for delivery of the Optional Shares, if not the First Closing Date, is herein called the "**Second Closing Date**", and each such time and date for delivery are herein called a "**Closing Date**".

The Shares shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date. The Shares shall be delivered to you on the Closing Date for the account of the Underwriters, with any transfer taxes payable in connection with the transfer of the Shares to the Underwriters duly paid, against payment of the Purchase Price therefor.

6. *Conditions to the Underwriters's Obligations*. The obligations of the Underwriters are subject to the following further conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any change, or any development that would reasonably be expected to result in a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the most recent Preliminary Prospectus and the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement) that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the most recent Preliminary Prospectus and the Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 6(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date an opinion, a tax opinion and a negative assurance letter of Skadden, Arps, Slate, Meagher, & Flom LLP, special counsel for the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibits B, C and D.

(d) The Underwriters shall have received on the Closing Date an opinion of Joseph G. Lewis, assistant general counsel for the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibit E.

The opinions of Skadden, Arps, Slate, Meagher, & Flom LLP and Joseph G. Lewis described in Sections 6(c) and 6(d), respectively, above shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(e) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell, counsel for the Underwriters, dated the Closing Date, with respect to the issuance and sale of the Shares, the Registration Statement, the Pricing Disclosure Package, the Prospectus and other related matters as the Underwriters may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(f) The Underwriters shall have received on the Closing Date an opinion of McDermott Will & Emery LLP, counsel for the Selling Stockholders dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibit F.

(g) The Underwriters shall have received, on the date of the Prospectus at a time prior to the execution of this Agreement, at 9:30 a.m., New York City time, on the effective date of any post-effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also on each Closing Date, a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to the Underwriters, from Ernst & Young LLP, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained and incorporated by reference in the Registration Statement, the most recent Preliminary Prospectus and the Prospectus; *provided* that such letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

(h) The "lock-up" agreements, each substantially in the form of Exhibit A hereto, between you and executive officers and directors of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

(i) The Company shall have furnished to you, at the Applicable Time and at each Closing Date, a certificate dated as of such date and signed by the chief financial officer of the Company, to the effect set forth in Exhibit G.

(j) Each Selling Stockholder shall have furnished to the Underwriters on the Closing Date a certificate, dated the Closing Date, signed by, or on behalf of, the Selling Stockholder stating that the representations and warranties of such Selling Stockholder contained herein are true and correct on and as of such Closing Date and that such Selling Stockholder has complied with all its agreements contained herein and has satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date.

7. *Covenants of the Company*. (a) In further consideration of the agreements of the Underwriters herein contained, the Company covenants with the Underwriters as follows:

(i) To prepare the Prospectus in a form approved by the Underwriters and to file such Prospectus pursuant to Rule 424(b) under the Securities Act within the time periods specified by Rule 424(b) (without reliance on Rule 424(b)(8));

(ii) To prepare a final term sheet, in a form attached as Schedule IV hereto and approved by the Underwriters, and to file such term sheet under the Securities Act as soon as possible after the Commission's Electronic Data Gathering, Analysis and Retrieval system (EDGAR) begins accepting filings on the date immediately after the date of this Agreement;

(iii) To file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Shares;

(iv) To advise the Underwriters, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding or examination for any such purpose or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus or for additional information; and, in the event of the

issuance of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus or suspending any such qualification, to use promptly its best efforts to obtain its withdrawal;

(v) To furnish to you, without charge, five (5) signed copies of the Registration Statement (including exhibits thereto) and to furnish to you in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period mentioned in Section 7(a)(vii) below, as many copies of the most recent Preliminary Prospectus, the Prospectus, each Issuer Free Writing Prospectus, any document incorporated by reference in any Preliminary Prospectus or the Prospectus and any supplements and amendments thereto or to the Registration Statement as you may reasonably request;

(vi) Before amending or supplementing the Registration Statement or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule;

(vii) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters the Prospectus is required by law to be delivered in connection with sales by the Underwriters or any dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, the Company shall promptly notify the Underwriters and prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Shares may have been sold by you, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law;

(viii) Not to make any offer relating to the Shares that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Underwriters;

(ix) To retain in accordance with the Rules and Regulations all Issuer Free Writing Prospectuses not required to be filed pursuant to the Rules and Regulations; and if at any time after the date hereof any events shall have occurred as a result of which any Issuer Free Writing Prospectus, as then amended or supplemented, would conflict with the information in the Registration Statement, the most recent Preliminary Prospectus or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or, if for any other reason it shall be necessary to amend or supplement any Issuer Free Writing Prospectus, to notify the Underwriters and, upon its request, to file such document and to prepare and furnish without charge to the Underwriters as many copies as the Underwriters may from time to time reasonably request of an amended or supplemented Issuer Free Writing Prospectus that will correct such conflict, statement or omission or effect such compliance;

(x) To endeavor to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request;

(xi) As soon as practicable after the Effective Date and in any event not later than 16 months after the date hereof, to make generally available to the Company's security holders and to you an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and the Rules and Regulations;

(xii) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (A) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus and amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of

copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (B) all costs and expenses related to the transfer and delivery of the Shares by the Selling Stockholders to the Underwriters, including any transfer or other taxes payable thereon, (C) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 7(a)(x) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (D) the costs and charges of any transfer agent, registrar or depositary, (E) the costs and expenses of the Company and the Selling Stockholders relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, (F) the document production charges and expenses, if any, associated with printing this Agreement, and (G) all other costs and expenses incident to the performance of the obligations of the Company and the Selling Stockholders hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section 7(a)(xii)(C), Section 9 entitled "Indemnity and Contribution", and the last paragraph of Section 12 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of its counsel, stock transfer taxes payable on resale of any of the Shares by it and any advertising expenses connected with any offers it may make. It is further understood that the Company shall be required to pay and cause to be paid fees and disbursements of no more than one counsel for the Selling Stockholders taken as a group. The Selling Stockholders designate McDermott Will & Emery LLP as their counsel for purposes of this Agreement and the fees and disbursements of any other counsel engaged by a Selling Stockholder in connection with the offering of the Shares shall be for the account of the Selling Stockholder engaging such other counsel; and

(xiii) To pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Act.

(b) The Underwriters agree that, without the prior consent of the Company and Goldman, Sachs & Co., other than with respect to one or more term sheets relating to the Securities containing customary information and conveyed to purchasers of Securities and complying with Rule 134 under the Securities Act, they shall not include any "issuer information" (as defined in Rule 433) in any "free writing prospectus" (as defined in Rule 405) used or referred to by the Underwriters without the prior consent of the Company (any such issuer information with respect to whose use the Company has given its consent, "Permitted Issuer Information"); *provided* that (i) no such consent shall be required with respect to any such issuer information contained in any document filed by the Company with the Commission prior to the use of such free writing prospectus and (ii) "issuer information," as used in this Section 7(b), shall not be deemed to include information prepared by the Underwriters on the basis of or derived from issuer information.

8. *Covenants of the Selling Stockholders.* Each Selling Stockholder agrees:

(a) During the period ending 75 days after the date of the Prospectus, such Selling Stockholder will not, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (other than the Shares), (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (3) make any demand for or exercise any right or file or cause to be filed a registration statement, including any amendments, with respect to the registration of any shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock or any other securities of the Company or (4) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of Goldman, Sachs & Co.

(b) Neither such Selling Stockholder nor any person acting on behalf of such Selling Stockholder (other than, if applicable, the Company and the Underwriters) shall use or refer to any "free writing prospectus" (as defined in Rule 405), relating to the Shares; and

(c) To deliver to the Underwriters prior to the Closing Date a properly completed and executed United States Treasury Department Form W-8 (if such Selling Stockholder is a non-United States person) or Form W-9 (if such Selling Stockholder is a United States person).

9. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls each Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of each Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in (i) the Registration Statement or any amendment thereof, any Preliminary Prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), (ii) any Issuer Free Writing Prospectus or in any amendment or supplement thereto, (iii) any Permitted Issuer Information used or referred to in any "free writing prospectus" (as defined in Rule 405) used or referred to by the Underwriters, or (iv) any "road show" (as defined in Rule 433) not constituting an Issuer Free Writing Prospectus (a "**Non-Prospectus Road Show**") or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by the Underwriters through you expressly for use therein, which information consists solely of the statements regarding delivery of Shares by the Underwriters set forth on the cover page of, and the concession and reallowance figures and the paragraph relating to stabilization by the Underwriters appearing under the caption "Underwriting" in the most recent Preliminary Prospectus and the Prospectus.

(b) The Selling Stockholders, severally but not jointly, shall indemnify and hold harmless each Underwriter, each person, if any, who controls each Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of each Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action

or claim) caused by (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any Preliminary Prospectus, the Prospectus (as amended or supplemented), any Issuer Free Writing Prospectus or any amendment or supplement thereto, any Permitted Issuer Information or any Non-Prospectus Road Show, as it relates to such Selling Stockholder, or (ii) the omission or alleged omission to state in any Preliminary Prospectus, Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto or in any Permitted Issuer Information or any Non-Prospectus Road Show, any material fact required to be stated therein or necessary to make the statements therein not misleading, as it relates to such Selling Stockholder, and shall reimburse the Underwriters, each such controlling person and each affiliate promptly upon demand for any legal or other expenses reasonably incurred by the Underwriters, such controlling person and each affiliate in connection with investigating or defending or preparing to defend against any such loss, claim, damage or liability as such expenses are incurred; provided that in the case of (i) and (ii) above only insofar as any such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission of a material fact contained in and in conformity with information furnished in writing by such Selling Stockholder to the Company expressly for use in such Registration Statement, Preliminary Prospectus, Prospectus, Issuer Free Writing Prospectus, Permitted Issuer Information or Non-Prospectus Road Show. The liability of the Selling Stockholder under the indemnity agreement contained in this paragraph shall be limited to an amount equal to the total gross proceeds from the offering of the Shares purchased under the Agreement received by such Selling Stockholder, as set forth in the table on the cover page of the Prospectus. The foregoing indemnity agreement is in addition to any liability that the Selling Stockholders may otherwise have to the Underwriters or any officer, employee or controlling person of the Underwriters.

(c) Each Underwriter agrees to indemnify and hold harmless the Company, the Selling Stockholders, their respective directors, the officers of the Company who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company and the Selling Stockholders to the Underwriters, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter though the Representatives expressly for use in the Registration Statement, any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus or any amendments or supplements thereto.

(d) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 9(a), 9(b) or 9(c), such person (the "**indemnified**

party") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such reasonable fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Underwriters, in the case of parties indemnified pursuant to Section 9(a) and 9(b), and by the Company and the Selling Stockholders, in the case of parties indemnified pursuant to Section 9(c). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, 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 includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(e) To the extent the indemnification provided for in Section 9(a), 9(b) or 9(c) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 9(e)(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 9(e)(i) above but also the relative fault of the Company and the Selling Stockholders on the one hand and of the Underwriters on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other hand in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by the Selling Stockholders and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Shares. The relative fault of the Company and the Selling Stockholders on the one hand and the Underwriters on the other hand 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 information supplied by the Company and the Selling Stockholders or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(f) The Company, the Selling Stockholders and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 9 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 9(e). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9, the Underwriters shall not be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that the Underwriters have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 9 and the representations, warranties and other statements of the Company and the Selling Stockholders contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this

Agreement, (ii) any investigation made by or on behalf of the Underwriters, any person controlling the Underwriters or any affiliate of the Underwriters or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Shares.

10. *Termination*. The Underwriters may terminate this Agreement by notice given to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange or The NASDAQ Stock Market, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it, in your judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Shares on the terms and in the manner contemplated in the Pricing Disclosure Package and the Prospectus.

11. *Defaulting Underwriter*.

(a) If any Underwriter shall default in its obligation to purchase the Shares which it has agreed to purchase hereunder at a Closing Date, you may in your discretion arrange for you or another party or other parties to purchase such Shares on the terms contained herein. If within thirty-six hours after such default by any Underwriter you do not arrange for the purchase of such Shares, then the Company and the Selling Stockholders shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Shares on such terms. In the event that, within the respective prescribed periods, you notify the Company and the Selling Stockholders that you have so arranged for the purchase of such Shares, or the Company and the Selling Stockholders notify you that they have so arranged for the purchase of such Shares, you or the Company and the Selling Stockholders shall have the right to postpone the Closing Date for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments to the Registration Statement or the Prospectus which in your opinion may thereby be made necessary. The term “Underwriter” as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Shares.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you and the Company and the Selling Stockholders as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased does not exceed one-eleventh of the aggregate number of all the Shares to be purchased at such Closing Date, then the Company and the Selling Stockholders shall have the right to require each non-defaulting Underwriter to purchase the number of Shares which such Underwriter agreed to purchase hereunder at such Closing Date and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the principal amount of Shares which such Underwriter agreed to purchase hereunder) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you and the Company and the Selling Stockholders as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased exceeds one-eleventh of the aggregate number of all of the Shares to be purchased at such Closing Date, or if the Company and the Selling Stockholders shall not exercise the right described in subsection (b) above to require non defaulting Underwriters to purchase Shares of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to the Second Closing Date, the obligations of the Underwriters to purchase and of the Selling Stockholders to sell the Optional Shares) shall thereupon terminate, without liability on the part of any non defaulting Underwriter or the Company or the Selling Stockholders, except for the expenses to be borne by the Company and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

12. *Effectiveness*. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If this Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Company or any Selling Stockholder to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason (other than a termination of this Agreement by the Underwriters pursuant to Section 10(i), (iii), (iv) or (v) hereof) the Company or any Selling

Stockholder shall be unable to perform their respective obligations under this Agreement, the Company and the Selling Stockholders will reimburse the Underwriters for all out-of-pocket expenses (including the fees and disbursements of its counsel) reasonably incurred by the Underwriters in connection with this Agreement or the offering contemplated hereunder.

13. *No Fiduciary Duty.* The Company and Selling Stockholders acknowledge and agree that in connection with this offering, sale of the Shares or any other services the Underwriters may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Underwriters: (i) no fiduciary or agency relationship between the Company, Selling Stockholders and any other person, on the one hand, and the Underwriters, on the other, exists with respect to this Offering; (ii) the Underwriters are not acting as an advisor, expert or otherwise, to the Company or the Selling Stockholders, including without limitation, with respect to the determination of the public offering price of the Shares, and such relationship between the Company and the Selling Stockholders, on the one hand, and the Underwriters, on the other, is entirely and solely commercial, based on arms-length negotiations; (iii) any duties and obligations that the Underwriters may have to the Company or Selling Stockholders shall be limited to those duties and obligations specifically stated herein; and (iv) the Underwriters and their affiliates may have interests that differ from those of the Company and the Selling Stockholders. The Company and the Selling Stockholders hereby waive any claims that the Company or the Selling Stockholders may have against the Underwriters with respect to any breach of fiduciary duty in connection with this offering.

14. *Notices.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail or facsimile transmission to you as the Representatives in care of Goldman, Sachs & Co., 85 Broad Street, 20th Floor, New York, New York 10004, Attention: Registration Department and in care of Banc of America Securities LLC, One Bryant Park, New York, New York 10036;

(b) if to the Company, shall be delivered or sent by mail or facsimile transmission to 2366 Bernville Road, Reading, PA 19605, Attention: Richard W. Zuidema (Fax: 610-208-1807);

(c) if to the Metalmark Selling Stockholders (as defined in Schedule II hereto), shall be delivered or sent by mail to such Selling Stockholder at 1221 Avenue of the Americas; New York, NY 10020;

(d) if to the Morgan Stanley Selling Stockholders (as defined in Schedule II hereto), shall be delivered or sent by mail to such Selling Stockholder at 1585 Broadway, New York, NY 10036;

(e) if to the JP Morgan Selling Stockholders (as defined in Schedule II hereto), shall be delivered or sent by mail to such Selling Stockholder c/o J.P. Morgan Investment Management, 522 Fifth Avenue, New York, NY 10036; and

(f) if to First Plaza Group Trust, shall be delivered or sent by mail or facsimile transmission c/o JPMorgan Chase Bank, National Association, 1 Chase Manhattan Plaza, 17th Floor, New York, NY, 10005-1401, Attn: Edward J. Petrow (Fax: 212-552-4535);

(g) if to Performance Direct Investments I, L.P., shall be delivered or sent by mail or facsimile transmission to Performance Equity Management, LLC, C/O PDI I, L.P., Two Pickwick Plaza Suite 310, Greenwich, CT 06830, Attn M. Pinsky (Fax: 203-742-2343).

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company and the Selling Shareholders, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

15. *Counterparts*. This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

16. *Applicable Law*. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

17. *Survival*. The respective indemnities, representations, warranties and agreements of the Company, the Selling Stockholders and the Underwriters contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Shares and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

18. *Headings*. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

Very truly yours,

EnerSys

By: /s/ Michael T. Philion
Michael T. Philion
Executive Vice President—Finance and Chief Financial Officer

Morgan Stanley Dean Witter Capital Partners IV, L.P.

By: MSDW CAPITAL PARTNERS IV, LLC, as General Partner
By: MSDW Capital Partners IV, Inc., as Member
By: METALMARK SUBADVISOR LLC, as attorney-in-fact

By: /s/ Greg Meyers
Name: Greg Meyers
Title: Managing Director

MSDW IV 892 Investors, L.P.

By: MSDW CAPITAL PARTNERS IV, LLC, as General Partner
By: MSDW Capital Partners IV, Inc., as Member
By: METALMARK SUBADVISOR LLC, as attorney-in-fact

By: /s/ Greg Meyers
Name: Greg Meyers
Title: Managing Director

Morgan Stanley Dean Witter Capital Investors IV, L.P.

By: MSDW CAPITAL PARTNERS IV, LLC, as General Partner
By: MSDW Capital Partners IV, Inc., as Member
By: METALMARK SUBADVISOR LLC, as attorney-in-fact

By: /s/ Greg Meyers
Name: Greg Meyers
Title: Managing Director

Morgan Stanley Global Emerging Markets Private Investment Fund, L.P.

By: MSGEM, LLC, as General Partner
By: MORGAN STANLEY GLOBAL EMERGING MARKETS, INC., as Member

By: /s/ Pratish Patel
Name: Pratish Patel
Title: Executive Director

Morgan Stanley Global Emerging Markets Private Investors, L.P.

By: MSGEM, LLC, as General Partner
By: MORGAN STANLEY GLOBAL EMERGING MARKETS, INC., as Member

By: /s/ Pratish Patel
Name: Pratish Patel
Title: Executive Director

J.P. Morgan Direct Corporate Finance Institutional Investors LLC

By: JPMorgan Chase Bank, N.A., as investment advisor

By: /s/ Eduard Beit
Name: Eduard Beit
Title: Managing Director

J.P. Morgan Direct Corporate Finance Private Investors LLC

By: J.P. Morgan Investment Management Inc., as investment advisor

By: /s/ Eduard Beit
Name: Eduard Beit
Title: Managing Director

522 Fifth Avenue Fund, L.P.

By: J.P. Morgan Investment Management Inc., as investment advisor

By: /s/ Eduard Beit
Name: Eduard Beit
Title: Managing Director

JPMorgan Chase Bank, N.A., as Trustee for First Plaza Group Trust

By: /s/ Edward J. Petrow
Name: Edward J. Petrow
Title: Vice President

Performance Direct Investments I, L.P. (f/k/a GM Capital Partners I, L.P.)

By: Performance Equity Management, LLC with respect to its Series Performance Direct Investors I, its general partner

By: /s/ Jeff Barman
Name: Jeff Barman
Title: Managing Director

Accepted as of the date hereof

/s/ Goldman, Sachs & Co.
(GOLDMAN, SACHS & CO.)

Banc of America Securities LLC

By: /s/ Thomas M. Morrison
Name: Thomas M. Morrison
Title: Managing Director

On behalf of each of the Underwriters

SCHEDULE I

Underwriter	Total Number of Firm Shares to be Purchased	Number of Optional Shares to be Purchased if Maximum Option Exercised
Goldman, Sachs & Co.	1,615,000	161,500
Banc of America Securities LLC	680,000	68,000
Jefferies & Company, Inc.	425,000	42,500
Lehman Brothers Inc.	425,000	42,500
William Blair & Company, L.L.C.	255,000	25,500
Total:	3,400,000	340,000

SCHEDULE II

List of Selling Stockholders

Selling Stockholder	Number of Firm Shares to be Sold	Number of Optional Shares to be Sold if Maximum Option Exercised
Morgan Stanley Dean Witter Capital Partners IV, L.P.	2,362,126	236,212
MSDW IV 892 Investors, L.P. (collectively, the "Metalmark Selling Stockholders")	201,271	20,127
Morgan Stanley Dean Witter Capital Investors IV, L.P.	64,556	6,456
Morgan Stanley Global Emerging Markets Private Investment Fund, L.P.	229,816	22,982
Morgan Stanley Global Emerging Markets Private Investors, L.P. (collectively, the "Morgan Stanley Selling Stockholders")	13,988	1,399
J.P. Morgan Direct Corporate Finance Institutional Investors LLC	216,508	21,651
J.P. Morgan Direct Corporate Finance Private Investors LLC	56,554	5,655
522 Fifth Avenue Fund, L.P. (collectively, the "JP Morgan Selling Stockholders")	11,377	1,138
JPMorgan Chase Bank, N.A., as Trustee for First Plaza Group Trust	103,852	10,385
Performance Direct Investments I, L.P.	139,952	13,995
Total:	3,400,000	340,000

SCHEDULE III

List of Company Subsidiaries

EnerSys Capital Inc.
EnerSys European Holding Co.
EnerSys Cayman L.P.
EnerSys Holdings (Luxembourg) Sarl
EnerSys Delaware Inc.
EnerSys SARL
EnerSys Del. LLC I
EnerSys Ltd.
EnerSys Holdings UK Ltd.
Hawker GmbH
EnerSys Energy Products Inc.
EnerSys S.R.L.
EnerSys Cayman Euro L.P. (Cayman 2)
EH Europe GmbH (Switzerland)
Chloride Industrial Batteries Ltd.

SCHEDULE IV

Pricing Term Sheet
dated as of May 21, 2008

Filed pursuant to Rule 433
Registration File No. 333-151000
Supplementing the Preliminary
Prospectus Supplements
dated May 19, 2008 and the
Prospectus dated May 19, 2008

EnerSys
Concurrent Offerings of

3,400,000 Shares of Common Stock, par value $0.01 per share
(the "Common Stock Offering")

and

$150,000,000 aggregate original principal amount of
3.375% Convertible Senior Notes due 2038
(the "Convertible Senior Notes Offering")

This pricing supplement relates only to the concurrent offerings of common stock and 3.375% Convertible Senior Notes due 2038 and should be read together with (1) the preliminary prospectus supplement, dated May 19, 2008, relating to the Common Stock Offering, including the documents incorporated therein by reference, (2) the preliminary prospectus supplement, dated May 19, 2008, relating to the Convertible Senior Notes Offering, including the documents incorporated therein by reference, and (3) the related base prospectus, dated May 19, 2008, each filed pursuant to Rule 424(b) under the Securities Act, Registration Statement No. 333-151000.

Issuer:	EnerSys, a Delaware corporation
Common stock symbol:	NYSE: "ENS"

Common Stock Offering

Title of Securities:	Common stock, par value $0.01 per share, of the Issuer
Shares Offered and Sold:	3,400,000 (3,740,000 if the underwriters exercise in full their option to purchase additional shares) offered and sold by certain stockholders
Public Offering Price per Share:	$29.00

Convertible Senior Notes Offering

Notes:	3.375% Convertible Senior Notes due 2038
Aggregate Original Principal Amount Offered:	$150,000,000
Over-allotment Option:	$22,500,000
Maturity Date:	June 1, 2038
Interest; Accretion:	3.375% per annum, accruing from the Settlement Date (as defined below) through June 1, 2015; principal accretion at 3.375% per annum thereafter

Interest Payment Dates:	June 1 and December 1 of each year, beginning on December 1, 2008 and ending on June 1, 2015
Contingent Interest:	Beginning with the six-month interest period commencing on June 1, 2015, if the trading price of the Notes for each of the five trading days ending on, and including, the second trading day immediately preceding the first day of the applicable six-month interest period equals or exceeds 130% of the accreted principal amount of the Notes, the Issuer will pay contingent interest equal to 0.40% of the average trading price of $1,000 original principal amount of the Notes during such five trading day period.
Initial Price to Public:	100.0% of the principal amount of the Notes
Net Proceeds, before Expenses, to Issuer after Underwriting Discount:	97.5%
Conversion Premium:	Approximately 40% above the Public Offering Price Per Share in the Common Stock Offering
Conversion Price:	Approximately $40.60 per share of Issuer's common stock, subject to adjustment
Conversion Rate:	24.6305 shares of Issuer's common stock per $1,000 in original principal amount of Notes, subject to adjustment
Last Reported Sale Price per Share of the Common Stock on the New York Stock Exchange as of May 21, 2008:	$30.19
Optional Redemption:	Beginning on June 6, 2015, the Issuer may redeem any or all of the outstanding Notes (except for any Notes that the Issuer is required to repurchase as described below opposite the captions "Optional Put by the Holders" and "Fundamental Change Repurchase Right"), for cash at a redemption price equal to 100% of the accreted principal amount of the Notes being redeemed, plus accrued and unpaid interest, if any.
Optional Put by the Holders:	Holders may require the Issuer to repurchase all or part of their Notes on June 1, 2015, June 1, 2018, June 1, 2023, June 1, 2028 and June 1, 2033, provided such holder has properly delivered and not withdrawn a written repurchase notice with respect to such Notes, at a repurchase price equal to 100% of the accreted principal amount of the Notes being repurchased, plus accrued and unpaid interest, if any.
Fundamental Change Repurchase Right:	If a "fundamental change" occurs at any time, each holder of Notes will have the right, at its option, to require the Issuer to repurchase in cash all of such holder's Notes, or any portion of the original principal amount thereof that is equal to $1,000 or an integral multiple of $1,000, on a date (the "fundamental change repurchase date") of the Issuer's choosing that is not less than 15 nor more than 35 days after the date of the "fundamental change repurchase right notice," at a repurchase price equal to 100% of the accreted principal amount of the Notes to be repurchased plus accrued and unpaid interest to, but not including, the fundamental change repurchase date.

Use of Proceeds:	The Issuer estimates that the net proceeds from this offering, after deducting estimated fees and expenses and the underwriters' discounts and commissions, will be approximately $145.8 million (approximately $167.7 million if the underwriters exercise their over-allotment option to purchase additional Notes in full). The Issuer intends to use the net proceeds of this offering (including any proceeds the Issuer receives if the underwriters exercise their overallotment option) to pay down outstanding indebtedness under the Issuer's existing senior secured term loan B, under which $351.4 million in principal amount was outstanding as of May 16, 2008, and which bears interest at a floating rate and matures on March 17, 2011.
Joint Book-Running Managers:	Goldman, Sachs & Co. Banc of America Securities LLC
Co-Managers:	Wachovia Capital Markets, LLC PNC Capital Markets LLC
Pricing Date:	May 21, 2008
Trade Date:	May 22, 2008
Settlement Date:	May 28, 2008
Listing:	None
CUSIP / ISIN:	29275Y AA0 / US29275YAA01
Comparable Yield:	The Issuer has determined that the comparable yield for the Notes is 8.50%, compounded semi-annually.
Adjustment to Conversion Rate Upon a Make-Whole Fundamental Change:	The following table sets forth the adjustments to the conversion rate, expressed as a number of additional shares by which the conversion rate will be increased per $1,000 in original principal amount of the Notes, in connection with a make-whole fundamental change:

	Make-Whole Reference Date							
Stock Price	**May 28, 2008**	**June 1, 2009**	**June 1, 2010**	**June 1, 2011**	**June 1, 2012**	**June 1, 2013**	**June 1, 2014**	**June 6, 2015**
$29.00	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522
$30.00	9.2954	8.8911	8.7028	8.7028	8.7028	8.7028	8.7028	8.7028
$31.00	8.8025	8.3891	8.0321	7.7251	7.6275	7.6275	7.6275	7.6275
$32.00	8.3503	7.9298	7.5572	7.2227	6.8920	6.6195	6.6195	6.6195
$34.00	7.5514	7.1223	6.7264	6.3492	5.9516	5.5082	4.9981	4.7812
$36.00	6.8703	6.4382	6.0280	5.6215	5.1768	4.6560	3.9933	3.1472
$40.00	5.7785	5.3524	4.9324	4.4963	4.0012	3.3967	2.5705	0.3695
$45.00	4.7745	4.3686	3.9582	3.5199	3.0145	2.3922	1.5442	0.0000
$50.00	4.0371	3.6578	3.2692	2.8489	2.3642	1.7740	1.0031	0.0000
$60.00	3.0433	2.7201	2.3858	2.0226	1.6102	1.1280	0.5615	0.0000
$75.00	2.1812	1.9301	1.6706	1.3909	1.0822	0.7392	0.3712	0.0000
$90.00	1.6739	1.4762	1.2730	1.0556	0.8201	0.5642	0.2922	0.0000
$120.00	1.1035	0.9736	0.8410	0.7002	0.5489	0.3840	0.2031	0.0000
$150.00	0.7885	0.6973	0.6047	0.5062	0.4000	0.2823	0.1503	0.0000
$200.00	0.4903	0.4347	0.3789	0.3193	0.2546	0.1814	0.0974	0.0000
$250.00	0.3207	0.2844	0.2484	0.2100	0.1686	0.1212	0.0657	0.0000

The exact stock prices and make-whole reference dates may not be set forth in the table above, in which case:

- If the stock price is between two stock price amounts in the table or the make-whole reference date is between two dates in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 365-day year.
- If the stock price is greater than $250.00 per share, subject to adjustment, no additional shares will be added to the conversion rate.
- If the stock price is less than $29.00 per share, subject to adjustment, no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the conversion rate exceed 34.4827 shares of common stock per $1,000 in original principal amount of Notes, subject to adjustments in the same manner as the conversion rate as set forth under “Description of the Notes—Conversion Rights—Conversion Rate Adjustments” in the preliminary prospectus supplement.

Accreted Principal for the Notes: The following table sets forth the accreted principal amounts for the Notes as of the specified dates during the period from June 1, 2015 through the maturity date:

Date	Accreted Principal Amount
June 1, 2015	$1,000.00
December 1, 2015	$1,016.88
June 1, 2016	$1,034.03
December 1, 2016	$1,051.48
June 1, 2017	$1,069.23
December 1, 2017	$1,087.27
June 1, 2018	$1,105.62
December 1, 2018	$1,124.28
June 1, 2019	$1,143.25
December 1, 2019	$1,162.54
June 1, 2020	$1,182.16
December 1, 2020	$1,202.11
June 1, 2021	$1,222.39
December 1, 2021	$1,243.02
June 1, 2022	$1,264.00
December 1, 2022	$1,285.33
June 1, 2023	$1,307.02
December 1, 2023	$1,329.07
June 1, 2024	$1,351.50
December 1, 2024	$1,374.31
June 1, 2025	$1,397.50
December 1, 2025	$1,421.08
June 1, 2026	$1,445.06
December 1, 2026	$1,469.45
June 1, 2027	$1,494.24
December 1, 2027	$1,519.46
June 1, 2028	$1,545.10
December 1, 2028	$1,571.17
June 1, 2029	$1,597.69
December 1, 2029	$1,624.65
June 1, 2030	$1,652.06
December 1, 2030	$1,679.94
June 1, 2031	$1,708.29
December 1, 2031	$1,737.12

June 1, 2032	$1,766.43
December 1, 2032	$1,796.24
June 1, 2033	$1,826.55
December 1, 2033	$1,857.38
June 1, 2034	$1,888.72
December 1, 2034	$1,920.59
June 1, 2035	$1,953.00
December 1, 2035	$1,985.96
June 1, 2036	$2,019.47
December 1, 2036	$2,053.55
June 1, 2037	$2,088.20
December 1, 2037	$2,123.44
June 1, 2038	$2,159.28

The accreted principal amount of a note between the dates listed above will include an amount reflecting the additional principal accretion that has accrued as of such date since the immediately preceding date in the table.

Exhibit 10.2

EXECUTION COPY

ENERSYS

3.375% Convertible Senior Notes Due 2038

UNDERWRITING AGREEMENT

May 21, 2008

May 21, 2008

Goldman, Sachs & Co.,
Banc of America Securities LLC
As representatives of the several Underwriters
named in Schedule I hereto,
c/o Goldman, Sachs & Co.
85 Broad Street
New York, New York 10004
and
c/o Banc of America Securities LLC
9 West 57th Street
New York, New York 10019

Dear Sirs and Mesdames:

EnerSys, a Delaware corporation (the "**Company**"), proposes, subject to the terms and conditions stated herein, to issue and sell to the underwriters named in Schedule I hereto (the "**Underwriters**"), for which you are acting as representatives (the "**Representatives**"), an aggregate of $150,000,000 principal amount of its 3.375% Convertible Senior Notes due 2038 (the "**Firm Securities**") convertible into shares of common stock of the Company, par value $0.01 per share (the "**Stock**") and at the election of the Underwriters, up to an aggregate of $22,500,000 additional principal amount of 3.375% Convertible Senior Notes due 2038 (the "**Optional Securities**") (the Firm Securities and the Optional Securities that the Underwriters elect to purchase pursuant to Section 2 hereof are herein collectively called the "**Securities**").

1. *Representations and Warranties*. The Company represents and warrants to and agrees with each of the Underwriters that:

(a) An "automatic shelf registration statement" as defined under Rule 405 under the Securities Act of 1933, as amended (the "**Securities Act**"), and the rules and regulations (the "**Rules and Regulations**") of the Securities and Exchange Commission (the "**Commission**") has been filed on Form S-3 (File No. 333-151000) in respect of the Securities not earlier than three years prior to the date hereof; such registration statement, and any post-effective amendment thereto, became effective upon filing (the "**Effective Date**"); and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or threatened by the Commission, and no notice of objection of

the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company (the base prospectus filed as part of such registration statement, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "**Basic Prospectus**"; any preliminary prospectus (including any preliminary prospectus supplement) relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Securities Act is hereinafter called a "**Preliminary Prospectus**"; the various parts of such registration statement, including all exhibits thereto but excluding Form T-1 and including any prospectus supplement relating to the Securities that is filed with the Commission and deemed by virtue of Rule 430B to be part of such registration statement, each as amended at the time such part of the registration statement became effective, are hereinafter collectively called the "**Registration Statement**"; the Preliminary Prospectus, as amended and supplemented immediately prior to the Applicable Time (as defined below) together with the information set forth on Schedule IV and any Issuer Free Writing Prospectus filed or used by the Company on or before the Applicable Time, other than a road show that is an Issuer Free Writing Prospectus under Rule 433 of the Rules and Regulations, is hereinafter called the "**Pricing Disclosure Package**"; the form of the final prospectus relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Securities Act in accordance with Section 5(a) hereof is hereinafter called the "**Prospectus**"; any reference herein to the Basic Prospectus, the Pricing Disclosure Package, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, as of the date of such prospectus; any reference to any amendment or supplement to the Basic Prospectus, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement relating to the Securities filed with the Commission pursuant to Rule 424(b) under the Securities Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and incorporated therein, in each case after the date of the Basic Prospectus, such Preliminary Prospectus, or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any "issuer free writing prospectus" as defined in Rule 433 under the Securities Act relating to the Securities is hereinafter called an "**Issuer Free Writing Prospectus**"); "**Applicable Time**" means 8:15 p.m. (New York City time) on May 21, 2008.

(b) The Company is not an ineligible issuer as defined under the Securities Act, in each case at the times specified in Rules 164, 405 and 433 of the Rules and Regulations in connection with the offering of the Securities.

(c) (i) The Registration Statement as of the Effective Date did not contain, and any post-effective amendment thereto at the time it becomes effective will not contain, any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement, as of the Effective Date, complied and any post-effective amendment thereto at the time it becomes effective will comply, each Preliminary Prospectus complied and the Prospectus complies and, as amended or supplemented, if applicable, will comply in all material respects when filed with the Commission pursuant to Rule 424(b) and on the Closing Date with the Securities Act and the Rules and Regulations and (iii) the Prospectus, as of its date and the Closing Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement or the Prospectus based upon information relating to the Underwriters furnished to the Company in writing by the Underwriters expressly for use therein.

(d) The documents incorporated by reference in any Preliminary Prospectus or the Prospectus (i) conformed, and any further documents so incorporated will conform, when filed with the Commission, in all material respects to the requirements of the Exchange Act or the Securities Act, as applicable, and the rules and regulations of the Commission thereunder and (ii) did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) The Pricing Disclosure Package did not, as of the Applicable Time, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that no representation or warranty is made

as to information contained in or omitted from the Pricing Disclosure Package in reliance upon and in conformity with written information furnished to the Company by the Underwriters specifically for inclusion therein.

(f) Each Preliminary Prospectus did not, as of its date, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, *provided* that no representation or warranty is made as to information contained in or omitted from such Preliminary Prospectus in reliance upon and in conformity with written information furnished to the Company by the Underwriters specifically for inclusion therein.

(g) Each Issuer Free Writing Prospectus (including, without limitation, any road show that is a free writing prospectus under Rule 433), does not conflict with the information contained in the most recent Preliminary Prospectus or the Prospectus and when considered together with the Pricing Disclosure Package as of the Applicable Time, and the price of the Securities and disclosures directly relating thereto included on the cover page of the Prospectus, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) Each Issuer Free Writing Prospectus conformed or will conform in all material respects to the requirements of the Securities Act and the Rules and Regulations on the date of first use, and the Company has complied with any filing requirements applicable to such Issuer Free Writing Prospectus pursuant to the Rules and Regulations. The Company has not made any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Underwriters. The Company has retained in accordance with the Rules and Regulations all Issuer Free Writing Prospectuses that were not required to be filed pursuant to the Rules and Regulations.

(i) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its property and to conduct its business as described in each of the Pricing Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(j) Each significant subsidiary of the Company within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act (each a "**Significant Subsidiary**", collectively the "**Significant Subsidiaries**") has been duly incorporated or formed, is validly existing as a corporation, limited liability company or limited partnership, as the case may be, in good standing under the laws of the jurisdiction of its incorporation or formation, has the corporate or other power and authority to own its property and to conduct its business as described in each of the Pricing Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole; all of the issued shares of capital stock of each Significant Subsidiary of the Company that is a corporation have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or adverse claims, except in the case of shares pledged pursuant to that certain Credit Agreement dated March 17, 2004, among the Company, EnerSys Capital Inc., various lending institutions party thereto, Bank of America, N.A., Morgan Stanley Senior Funding, Inc. and Lehman Commercial Paper Inc., as amended (the "**Credit Agreement**"); all of the issued limited liability company interests of each Significant Subsidiary of the Company that is a limited liability company have been duly and validly authorized and issued and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or adverse claims, except in the case of limited liability company interests pledged pursuant to the Credit Agreement; all of the issued limited partnership interests of each Significant Subsidiary of the Company that is a limited partnership have been duly and validly authorized and issued and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or adverse claims, except in the case of limited partnership interests pledged pursuant to the Credit Agreement.

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

(l) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in each of the Pricing Disclosure Package and the Prospectus.

(m) The shares of Common Stock outstanding prior to the sale of the Securities have been duly authorized and are validly issued, fully paid and non-assessable.

(n) The Securities have been duly authorized and, when issued and delivered pursuant to this Agreement, will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles and entitled to the benefits provided by the indenture dated as of May 28, 2008 (the "**Indenture**") between the Company and The Bank of New York, as trustee (the "**Trustee**"), under which they are to be issued, which is substantially in the form filed as an exhibit to the Registration Statement; the Indenture has been duly authorized and duly qualified under the Trust Indenture Act and, when executed and delivered by the Company and the Trustee, will constitute a valid and legally binding instrument, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and the Securities and the Indenture will conform to the descriptions thereof in the Pricing Disclosure Package and the Prospectus.

(o) Upon the issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible into cash, shares of Stock or a combination thereof in accordance with the terms of the Securities; the Stock reserved for issuance upon conversion of the Securities has been duly authorized and reserved and, when and if issued upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable, and the issuance of such Stock will not be subject to any preemptive or similar rights.

(p) The issue and sale of the Securities, the execution and delivery by the Company of, and the performance by the Company of its obligations under the Securities, the Indenture and this Agreement and the consummation of the transactions herein and therein contemplated, will not contravene any provision of (i) applicable law, (ii) the certificate of incorporation or by-laws of the Company, (iii) any agreement or other instrument binding upon the Company or any of its subsidiaries, or (iv) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary except, in the case of the foregoing clauses (i), (iii) or (iv), where such contravention would not, singly or in the aggregate, have a material adverse effect on the

Company and its subsidiaries, taken as a whole, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required to be obtained by the Company for the performance by the Company of its obligations under this Agreement, the Securities or the Indenture, except as may have been obtained under the Securities Act or as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities.

(q) There has not occurred any material adverse change, or any development that would reasonably be expected to result in a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in each of the Pricing Disclosure Package and the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement).

(r) There are no legal or governmental proceedings pending or threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that are required to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus and are not so described or any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement, the Pricing Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(s) The Company is not, and after giving effect to the offering and sale of the Securities described in the Pricing Disclosure Package and the Prospectus will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(t) Except as described in the Pricing Disclosure Package and the Prospectus, the Company and its Significant Subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(u) Except as described in the Pricing Disclosure Package and the Prospectus, there are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(v) Except as described in the Pricing Disclosure Package and the Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Securities registered pursuant to the Registration Statement.

(w) Subsequent to the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (i) the Company and its subsidiaries have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction not in the ordinary course of business, that in either case is required to be disclosed in the Pricing Disclosure Package or the Prospectus; (ii) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iii) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, except with respect to each of the foregoing clauses (i), (ii), and (iii) as described in the Pricing Disclosure Package and the Prospectus.

(x) The Company and its Significant Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its subsidiaries taken as a whole, in each case free and clear of all liens, encumbrances and defects except such as are described in the Pricing Disclosure Package or which would not, singly or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole; and any real property and buildings held under lease by the Company and its subsidiaries which are material to the business of the Company and its

subsidiaries taken as a whole are held by them under valid, subsisting and enforceable leases with such exceptions as would not, singly or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole, except in each case as described in the Pricing Disclosure Package and the Prospectus.

(y) Except as described in the Pricing Disclosure Package and the Prospectus, the Company and its subsidiaries own or possess, or can acquire on reasonable terms, all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names currently employed by them in connection with the business now operated by them, except where the failure to own or possess, or the ability to acquire on reasonable terms, any of the foregoing would not, singly or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, singly or in the aggregate, would reasonably be expected to result in a material adverse effect on the Company and its subsidiaries, taken as a whole.

(z) No material labor dispute with the employees of the Company or any of its Significant Subsidiaries exists, except as described in the Pricing Disclosure Package and the Prospectus, or, to the knowledge of the Company, is imminent.

(aa) The Company and each of its Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as in management's judgment are prudent; neither the Company nor any of its Significant Subsidiaries has been refused any insurance coverage sought or applied for, except such refusals of coverage relating to directors and officers liability insurance; and neither the Company nor any of its Significant Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Pricing Disclosure Package and the Prospectus and except for such non-renewals of coverage or inability to obtain similar coverage from similar insurers relating to directors and officers liability insurance.

(bb) The Company and its Significant Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities that are necessary to conduct their respective businesses in all material respects, and neither the Company nor any of its Significant Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, would reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Pricing Disclosure Package and the Prospectus.

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

(dd) Except as described in the Pricing Disclosure Package and the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), the Company has not sold, issued or distributed any Securities, or any securities of the same class or a similar class as the Securities, other than the Securities offered or sold to the Underwriters hereunder, or shares of Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(ee) The Company and its Significant Subsidiaries have filed all foreign, federal, state and local tax returns that are required to be filed, or have duly requested extensions thereof, and have paid all taxes required to be paid by them, any other assessment, fine or penalty levied against them, except in each case in which the failure to so file or pay would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(ff) The financial statements incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, included or incorporated by reference in the Registration Statement present fairly in accordance with GAAP the information required to be stated therein. The selected financial data incorporated by reference in the Pricing Disclosure Package and the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements incorporated by reference in the Registration Statement.

(gg) The Company has not distributed and, prior to the later to occur of the Closing Date and completion of the distribution of the Securities, will not distribute any offering material in connection with the offering and sale of the Securities other than any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus to which the Underwriters have consented in accordance with Section 1(g) and or 7(a)(vii).

(hh) There is and has been no failure on the part of the Company and any of the Company's directors or officers, in their capacities as such, to comply in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith.

(ii) Neither the Company nor any of its subsidiaries nor, to the best knowledge of the Company, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its Significant Subsidiaries has (A) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (B) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (C) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (D) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(jj) The operations of the Company and its Significant Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened, except as would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on the Company and its subsidiaries taken as a whole.

(kk) To the best of the Company's knowledge, none of the Company, any of its Significant Subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(ll) (A) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Act) made any offer relating to the Securities in reliance on the exemption of Rule 163 under the Act, the Company was a "well-known seasoned issuer" as defined in Rule 405 under the Act; and (B) at the earliest time after the filing of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Act) of the Securities, the Company was not an "ineligible issuer" as defined in Rule 405 under the Act.

2. *Agreements to Sell and Purchase.* Subject to the terms and conditions herein set forth, (a) the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to

purchase from the Company, at the purchase price set forth in Schedule III hereto, the principal amount of Securities set forth opposite the name of such Underwriter in Schedule I hereto, and (b) in the event and to the extent that the Underwriters shall exercise the election to purchase Optional Securities as provided below, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the same purchase price set forth in clause (a) of this Section 2, that portion of the aggregate principal amount of the Optional Securities as to which such election shall have been exercised (to be adjusted by you so as to eliminate fractions of $1,000), determined by multiplying such aggregate principal amount of Optional Securities by a fraction, the numerator of which is the maximum aggregate principal amount of Optional Securities that such Underwriters is entitled to purchase as set forth opposite the name of such Underwriters in Schedule I hereto and the denominator of which is the maximum aggregate principal amount of Optional Securities that all of the Underwriters are entitled to purchase hereunder.

The Company hereby grants to the Underwriters the right to purchase at their election up to $22,500,000 aggregate principal amount of Optional Securities, at the purchase price set forth in clause (a) of the first paragraph of this Section 2 for the sole purpose of covering sales of Securities in excess of the aggregate principal amount of Firm Securities. Any such election to purchase Optional Securities may only be exercised once, must settle within 12 calendar days after the First Closing Date and must be exercised by written notice from the Representatives to the Company setting forth the aggregate principal amount of Optional Securities to be purchased and the date on which such Optional Securities are to be delivered, as determined by the Representatives which shall in no event be earlier than the First Closing Date (as defined in Section 5 hereof).

The Company hereby agrees that, without the prior written consent of the Underwriters, it will not, during the period ending 75 days after the date of the Prospectus, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any securities of the Company that are substantially similar to the Securities or the Stock or any securities convertible into or exercisable or exchangeable for, or that represent the right to receive, Securities or Stock; (ii) file any registration statement with the Commission relating to the offering of any securities of the Company that are substantially similar to the Securities or the Stock or any securities convertible into or exercisable or exchangeable for, or that represent the right to receive, Securities or Stock; or (iii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Securities or the Stock, whether any such transaction described in clause (i), (ii) or (iii) above is to be settled by delivery of Securities, Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to the issuance by the Company of shares of

Stock, any option to purchase shares of Stock or any securities convertible into or exercisable or exchangeable for Stock to directors, officers and employees of the Company and its subsidiaries pursuant to bonus, option, incentive, employee stock purchase or other compensatory plans of the Company existing on the date hereof that are described in the Pricing Disclosure Package or filed as an exhibit to the Registration Statement.

3. *Terms of Public Offering*. The Company has been advised by you that the Underwriters propose to make a public offering of the Firm Securities as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Firm Securities are to be offered to the public, in one or more transactions, (i) at a fixed price or prices, which may be changed; (ii) at market prices prevailing at the Applicable Time; (iii) at prices related to prevailing market prices; or (iv) at negotiated prices, as the case may be (the "**Public Offering Price**").

The Company hereby confirms its engagement of Goldman, Sachs & Co. as, and Goldman, Sachs & Co. hereby confirms its agreement with the Company to render services as, a "qualified independent underwriter" within the meaning of Rule 2720(b)(15) of the Financial Industry Regulatory Authority "FINRA" (formerly known as National Association of Securities Dealers, Inc. "NASD") with respect to the offering and sale of the Securities. Goldman, Sachs & Co., in its capacity as qualified independent underwriter and not otherwise, is referred to herein as the "QIU". As compensation for the services of the QIU hereunder, the Company agrees to pay the QIU $2,000 on the First Closing Date.

4. *Payment and Delivery.* The Securities to be purchased by each Underwriter hereunder will be represented by one or more definitive global Securities in book-entry form which will be deposited by or on behalf of the Company with The Depository Trust Company ("**DTC**") or its designated custodian. The Company will deliver the Securities to the Representatives, for the account of each Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer to the Company in Federal (same day) funds, by causing DTC to credit the Securities to the account of Goldman, Sachs & Co. at DTC. The Company will cause the certificates representing the Securities to be made available to the Representatives for checking at least twenty-four hours prior to the Closing Date (as defined below) at the office of Davis Polk & Wardwell, 450 Lexington Ave., New York, New York 10017 (the "**Closing Location**"). The time and date of such delivery and payment shall be, with respect to the Firm Securities, 9:30 a.m., New York City time, on May 28, 2008 or such other time and date as the Representatives and the Company may agree upon in writing, and with respect to the Optional Securities, 9:30 a.m. New York City time, on the date specified by you in the written notice given by you of the Underwriters' election to purchase such Optional Securities, or such other time and date as the Representatives and the Company may agree

upon in writing. Such time and date for delivery of the Firm Securities are herein called the "**First Closing Date**", such time and date for delivery of the Optional Securities, if not the First Closing Date, are herein called the "**Second Closing Date**", and each such time and date for delivery are herein called a "**Closing Date**".

The Securities shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date. The Securities shall be delivered to you on the Closing Date for the account of the Underwriters, with any transfer taxes payable in connection with the transfer of the Securities to the Underwriters duly paid, against payment of the Purchase Price therefor.

5. *Conditions to the Underwriters's Obligations*. The obligations of the Underwriters are subject to the following further conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any change, or any development that would reasonably be expected to result in a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the most recent Preliminary Prospectus and the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement) that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Securities on the terms and in the manner contemplated in the most recent Preliminary Prospectus and the Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 5(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date an opinion, a tax opinion and a negative assurance letter of Skadden, Arps, Slate, Meagher, & Flom LLP, special counsel for the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibits B, C and D.

(d) The Underwriters shall have received on the Closing Date an opinion of Joseph G. Lewis, assistant general counsel for the Company, dated the Closing Date, in form and substance reasonably satisfactory to the Underwriters, to the effect set forth in Exhibit E.

The opinions of Skadden, Arps, Slate, Meagher, & Flom LLP and Joseph G. Lewis described in Sections 5(c) and 5(d), respectively, above shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(e) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell, counsel for the Underwriters, dated the Closing Date, with respect to the issuance and sale of the Securities, the Registration Statement, the Pricing Disclosure Package, the Prospectus and other related matters as the Underwriters may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(f) The Underwriters shall have received, on the date of the Prospectus at a time prior to the execution of this Agreement, at 9:30 a.m., New York City time, on the effective date of any post-effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also on each Closing Date, a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to the Underwriters, from Ernst & Young LLP, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained and incorporated by reference in the Registration Statement, the most recent Preliminary Prospectus and the Prospectus; *provided* that such letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

(g) The “lock-up” agreements, each substantially in the form of Exhibit A hereto, between you and executive officers and directors of the Company relating to sales and certain other dispositions of Securities and Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

(h) The Company shall have furnished to you, at the Applicable Time and at each Closing Date, a certificate dated as of such date and signed by the chief financial officer of the Company, to the effect set forth in Exhibit G.

6. *Covenants of the Company*. (a) In further consideration of the agreements of the Underwriters herein contained, the Company covenants with the Underwriters as follows:

(i) To prepare the Prospectus in a form approved by the Underwriters and to file such Prospectus pursuant to Rule 424(b) under the Securities Act within the time periods specified by Rule 424(b) (without reliance on Rule 424(b)(8));

(ii) To prepare a final term sheet, in a form attached as Schedule III hereto and approved by the Underwriters, and to file such term sheet under the Securities Act as soon as possible after the Commission’s Electronic Data Gathering, Analysis and Retrieval system (EDGAR) begins accepting filings on the date immediately after the date of this Agreement;

(iii) To file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities;

(iv) To advise the Underwriters, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding or examination for any such purpose or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or

suspending the use of the Prospectus or any Issuer Free Writing Prospectus or suspending any such qualification, to use promptly its best efforts to obtain its withdrawal;

(v) To furnish to you, without charge, five (5) signed copies of the Registration Statement (including exhibits thereto) and to furnish to you in New York City, without charge, prior to 10:00 a.m. New York City time on the business day next succeeding the date of this Agreement and during the period mentioned in Section 6(a)(vii) below, as many copies of the most recent Preliminary Prospectus, the Prospectus, each Issuer Free Writing Prospectus, any document incorporated by reference in any Preliminary Prospectus or the Prospectus and any supplements and amendments thereto or to the Registration Statement as you may reasonably request;

(vi) Before amending or supplementing the Registration Statement or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule;

(vii) If, during such period after the first date of the public offering of the Securities as in the opinion of counsel for the Underwriters, the Prospectus is required by law to be delivered in connection with sales by the Underwriters or any dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, the Company shall promptly notify the Underwriters and prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Securities may have been sold by you, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law;

(viii) Not to make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus without the prior written consent of the Underwriters;

(ix) To retain in accordance with the Rules and Regulations all Issuer Free Writing Prospectuses not required to be filed pursuant to the Rules and Regulations; and if at any time after the date hereof any events shall have occurred as a result of which any Issuer Free Writing Prospectus, as then amended or supplemented, would conflict with the information in the Registration Statement, the most recent Preliminary Prospectus or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or, if for any other reason it shall be necessary to amend or supplement any Issuer Free Writing Prospectus, to notify the Underwriters and, upon its request, to file such document and to prepare and furnish without charge to the Underwriters as many copies as the Underwriters may from time to time reasonably request of an amended or supplemented Issuer Free Writing Prospectus that will correct such conflict, statement or omission or effect such compliance;

(x) To endeavor to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request;

(xi) As soon as practicable after the Effective Date and in any event not later than 16 months after the date hereof, to make generally available to the Company's security holders and to you an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and the Rules and Regulations;

(xii) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (A) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Securities under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus and amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of

copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (B) all costs and expenses related to the transfer and delivery of the Securities by the Company to the Underwriters, including any transfer or other taxes payable thereon, (C) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Securities under state securities laws and all expenses in connection with the qualification of the Securities or the Stock for offer and sale under state securities laws as provided in Section 6(a)(x) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (D) the costs and charges of the Trustee and any transfer agent, registrar or depositary, (E) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, (F) the document production charges and expenses, if any, associated with printing this Agreement, and (G) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section 6(a)(xii)(C), Section 7 entitled "Indemnity and Contribution", and the last paragraph of Section 11 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of its counsel, stock transfer taxes payable on resale of any of the Securities by it and any advertising expenses connected with any offers it may make;

(xiii) To use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Prospectus under the caption "Use of Proceeds";

(xiv) To reserve and keep available at all times, free of preemptive rights, shares of Stock for the purpose of enabling the Company to satisfy any obligations to issue shares of its Stock upon conversion of the Securities;

(xv) To use its best efforts to list, subject to notice of issuance, the shares of Stock issuable upon conversion of the Securities on the New York Stock Exchange; and

(xvi) To pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the Act.

(b) The Underwriters agree that, without the prior consent of the Company and Goldman, Sachs & Co., other than with respect to one or more term sheets relating to the Securities containing customary information and conveyed to purchasers of Securities and complying with Rule 134 under the Securities Act, they shall not include any "issuer information" (as defined in Rule 433) in any "free writing prospectus" (as defined in Rule 405) used or referred to by the Underwriters without the prior consent of the Company (any such issuer information with respect to whose use the Company has given its consent, "**Permitted Issuer Information**"); *provided* that (i) no such consent shall be required with respect to any such issuer information contained in any document filed by the Company with the Commission prior to the use of such free writing prospectus and (ii) "issuer information," as used in this Section 6(b), shall not be deemed to include information prepared by the Underwriters on the basis of or derived from issuer information.

7. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls each Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of each Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in (i) the Registration Statement or any amendment thereof, any Preliminary Prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), (ii) any Issuer Free Writing Prospectus or in any amendment or supplement thereto, (iii) any Permitted Issuer Information used or referred to in any "free writing prospectus" (as defined in Rule 405) used or referred to by the Underwriters, or (iv) any "road show" (as defined in Rule 433) not constituting an Issuer Free Writing Prospectus (a "**Non-Prospectus Road Show**") or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused

by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by the Underwriters through you expressly for use therein, which information consists solely of the statements regarding delivery of Securities by the Underwriters set forth on the cover page of, the concession and reallowance figures and the paragraph relating to stabilization by the Underwriters appearing under the caption "Underwriting" and the forth sentence of the third from the last paragraph under the caption "Underwriting" (which sentence identifies Goldman, Sachs & Co. as QIU), in each case in the most recent Preliminary Prospectus and the Prospectus.

(b) Each Underwriter agrees to indemnify and hold harmless the Company, its directors, the officers of the Company who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to the Underwriters, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter though the Representatives expressly for use in the Registration Statement, any Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus or any amendments or supplements thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 7(a), or 7(b), such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such reasonable fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Underwriters, in the case of parties indemnified pursuant to Section 7(a) and by

the Company in the case of parties indemnified pursuant to Section 7(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, 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 includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent the indemnification provided for in Section 7(a) or 7(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities or (ii) if the allocation provided by clause 7(d)(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 7(d)(i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Securities (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in Schedule III hereto, bear to the aggregate Public Offering Price of the Securities. The relative fault of the Company on the one hand and the Underwriters on the other hand 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 information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 7 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 7(d). The amount paid or payable

by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, the Underwriters shall not be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that the Underwriters have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. The Underwriters' obligations in this subsection (e) to contribute are several in proportion to their respective underwriting obligations and not joint. 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. The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 7 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Underwriters, any person controlling the Underwriters or any affiliate of the Underwriters or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Securities.

8. *QIU Indemnity*.

(a) The Company will indemnify and hold harmless Goldman, Sachs & Co., in its capacity as QIU, against any losses, claims, damages or liabilities, joint or several, to which the QIU may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement or the Prospectus, or any amendment or supplement thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any act or omission to act or any alleged act or omission to act by Goldman, Sachs & Co. as QIU in connection with any transaction contemplated by this Agreement or undertaken in preparing for the purchase, sale and delivery of the Securities, except as to this clause (iii) to the extent that any such loss, claim, damage or liability results from the gross negligence or bad faith of Goldman, Sachs & Co. in performing the services as QIU, and will reimburse the QIU for any legal or other expenses reasonably incurred by the QIU in connection with investigating or defending any such action or claim as such expenses are incurred.

(b) Promptly after receipt by the QIU under subsection (a) above of notice of the commencement of any action, the QIU shall, if a claim in respect thereof is to be made against the Company under such subsection, notify the Company in writing of the commencement thereof; but the omission so to notify the Company shall not relieve it from any liability which it may have to the QIU otherwise than under such subsection. In case any such action shall be brought against the QIU and it shall notify the Company of the commencement thereof, the Company shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to the QIU (who shall not, except with the consent of the QIU, be counsel to the Company), and, after notice from the indemnifying party to the QIU of its election so to assume the defense thereof, the indemnifying party shall not be liable to the QIU under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by the QIU, in connection with the defense thereof other than reasonable costs of investigation. The Company shall not, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the QIU is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the QIU from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of QIU.

(c) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless Goldman, Sachs & Co., in its capacity as QIU, under subsection (a) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then the Company shall contribute to the amount paid or payable by the QIU as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the QIU on the other from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the QIU failed to give the notice required under subsection (b) above, then the Company shall contribute to such amount paid or payable by the QIU in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the QIU on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the QIU on the other shall be deemed to be in the

same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company, as set forth in the table on the cover page of the Prospectus, bear to the fee payable to the QIU pursuant to Section 3 hereof. 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 information supplied by the Company on the one hand or the QIU on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the QIU agree that it would not be just and equitable if contributions pursuant to this subsection (c) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (c). The amount paid or payable by the QIU as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (c) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(d) The obligations of the Company under this Section 8 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the QIU within the meaning of the Securities Act.

9. *Termination*. The Underwriters may terminate this Agreement by notice given to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange or The NASDAQ Stock Market, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it, in your judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Securities on the terms and in the manner contemplated in the Pricing Disclosure Package and the Prospectus.

10. *Defaulting Underwriter*.

(a) If any Underwriter shall default in its obligation to purchase the Securities which it has agreed to purchase hereunder at a Closing Date, you may in your discretion arrange for you or another party or other parties to purchase such Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter you do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Securities on such terms. In the event that, within the respective prescribed periods, you notify the Company that you have so arranged for the purchase of such Securities, or the Company notifies you that they have so arranged for the purchase of such Securities, you or the Company shall have the right to postpone the Closing Date for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments to the Registration Statement or the Prospectus which in your opinion may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Securities.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate number of such Securities which remains unpurchased does not exceed one-eleventh of the aggregate number of all the Securities to be purchased at such Closing Date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Securities which such Underwriter agreed to purchase hereunder at such Closing Date and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the principal amount of Securities which such Underwriter agreed to purchase hereunder) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by you and the Company as provided in subsection (a) above, the aggregate number of such Securities which remains unpurchased exceeds one-eleventh of the aggregate number of all of the Securities to be purchased at such Closing Date, or if the Company shall not exercise the right described in subsection (b) above to require non defaulting Underwriters to purchase Securities of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to the Second Closing Date, the obligations of the Underwriters to purchase and of the Company to sell the Optional Securities) shall thereupon terminate, without liability on the part of any non defaulting Underwriter or the Company, except for the expenses to be borne by

the Company and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

11. *Effectiveness*. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If this Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason (other than a termination of this Agreement by the Underwriters pursuant to Section 9(i), (iii), (iv) or (v) hereof) the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Underwriters for all out-of-pocket expenses (including the fees and disbursements of its counsel) reasonably incurred by the Underwriters in connection with this Agreement or the offering contemplated hereunder.

12. *No Fiduciary Duty.* The Company acknowledges and agree that in connection with this offering, sale of the Securities or any other services the Underwriters may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Underwriters: (i) no fiduciary or agency relationship between the Company and any other person, on the one hand, and the Underwriters, on the other, exists with respect to this Offering; (ii) the Underwriters are not acting as an advisor, expert or otherwise, to the Company, including without limitation, with respect to the determination of the public offering price of the Securities, and such relationship between the Company, on the one hand, and the Underwriters, on the other, is entirely and solely commercial, based on arms-length negotiations; (iii) any duties and obligations that the Underwriters may have to the Company shall be limited to those duties and obligations specifically stated herein; and (iv) the Underwriters and their affiliates may have interests that differ from those of the Company. The Company hereby waives any claims that the Company may have against the Underwriters with respect to any breach of fiduciary duty in connection with this offering.

13. *Notices.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail or facsimile transmission to you as the Representatives in care of Goldman, Sachs & Co., 85 Broad Street, 20th Floor, New York, New York 10004, Attention: Registration Department and in care of Banc of America Securities LLC, 9 West 57th Street, New York, New York 10019; and

(b) if to the Company, shall be delivered or sent by mail or facsimile transmission to 2366 Bernville Road, Reading, PA 19605, Attention: Richard W. Zuidema (Fax: 610-208-1807).

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

14. *Counterparts*. This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

15. *Applicable Law*. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

16. *Survival.* The respective indemnities, representations, warranties and agreements of the Company and the Underwriters contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

17. *Headings*. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

Very truly yours,

EnerSys

By: /s/ Michael T. Philion
Michael T. Philion
Executive Vice President—Finance and Chief Financial Officer

Accepted as of the date hereof

/s/ Goldman, Sachs & Co.
(GOLDMAN, SACHS & CO.)

Banc of America Securities LLC

By: /s/ Thomas M. Morrison
Name: Thomas M. Morrison
Title: Managing Director

On behalf of each of the Underwriters

SCHEDULE I

Underwriter	Total Principal Amount of Firm Securities to be Purchased	Total Principal Amount of Optional Securities to be Purchased if Maximum Option Exercised
Goldman, Sachs & Co.	$ 60,000,000	$ 9,000,000
Banc of America Securities LLC	$ 53,100,000	$ 7,965,000
Wachovia Capital Markets, LLC	$ 33,600,000	$ 5,040,000
PNC Capital Markets LLC	$ 3,300,000	$ 495,000
Total:	$150,000,000	$ 22,500,000

SCHEDULE II

List of Company Subsidiaries

EnerSys Capital Inc.
EnerSys European Holding Co.
EnerSys Cayman L.P.
EnerSys Holdings (Luxembourg) Sarl
EnerSys Delaware Inc.
EnerSys SARL
EnerSys Del. LLC I
EnerSys Ltd.
EnerSys Holdings UK Ltd.
Hawker GmbH
EnerSys Energy Products Inc.
EnerSys S.R.L.
EnerSys Cayman Euro L.P. (Cayman 2)
EH Europe GmbH (Switzerland)
Chloride Industrial Batteries Ltd.

SCHEDULE III

Pricing Term Sheet
dated as of May 21, 2008

Filed pursuant to Rule 433
Registration File No. 333-151000
Supplementing the Preliminary
Prospectus Supplements
dated May 19, 2008 and the
Prospectus dated May 19, 2008

EnerSys
Concurrent Offerings of

3,400,000 Shares of Common Stock, par value $0.01 per share
(the "Common Stock Offering")

and

$150,000,000 aggregate original principal amount of
3.375% Convertible Senior Notes due 2038
(the "Convertible Senior Notes Offering")

This pricing supplement relates only to the concurrent offerings of common stock and 3.375% Convertible Senior Notes due 2038 and should be read together with (1) the preliminary prospectus supplement, dated May 19, 2008, relating to the Common Stock Offering, including the documents incorporated therein by reference, (2) the preliminary prospectus supplement, dated May 19, 2008, relating to the Convertible Senior Notes Offering, including the documents incorporated therein by reference, and (3) the related base prospectus, dated May 19, 2008, each filed pursuant to Rule 424(b) under the Securities Act, Registration Statement No. 333-151000.

Issuer:	EnerSys, a Delaware corporation
Common stock symbol:	NYSE: "ENS"

Common Stock Offering

Title of Securities:	Common stock, par value $0.01 per share, of the Issuer
Shares Offered and Sold:	3,400,000 (3,740,000 if the underwriters exercise in full their option to purchase additional shares) offered and sold by certain stockholders
Public Offering Price per Share:	$29.00

Convertible Senior Notes Offering

Notes:	3.375% Convertible Senior Notes due 2038
Aggregate Original Principal Amount Offered:	$150,000,000
Over-allotment Option:	$22,500,000
Maturity Date:	June 1, 2038

Interest; Accretion:	3.375% per annum, accruing from the Settlement Date (as defined below) through June 1, 2015; principal accretion at 3.375% per annum thereafter
Interest Payment Dates:	June 1 and December 1 of each year, beginning on December 1, 2008 and ending on June 1, 2015
Contingent Interest:	Beginning with the six-month interest period commencing on June 1, 2015, if the trading price of the Notes for each of the five trading days ending on, and including, the second trading day immediately preceding the first day of the applicable six-month interest period equals or exceeds 130% of the accreted principal amount of the Notes, the Issuer will pay contingent interest equal to 0.40% of the average trading price of $1,000 original principal amount of the Notes during such five trading day period.
Initial Price to Public:	100.0% of the principal amount of the Notes
Net Proceeds, before Expenses, to Issuer after Underwriting Discount:	97.5%
Conversion Premium:	Approximately 40% above the Public Offering Price Per Share in the Common Stock Offering
Conversion Price:	Approximately $40.60 per share of Issuer’s common stock, subject to adjustment
Conversion Rate:	24.6305 shares of Issuer’s common stock per $1,000 in original principal amount of Notes, subject to adjustment
Last Reported Sale Price per Share of the Common Stock on the New York Stock Exchange as of May 21, 2008:	$30.19
Optional Redemption:	Beginning on June 6, 2015, the Issuer may redeem any or all of the outstanding Notes (except for any Notes that the Issuer is required to repurchase as described below opposite the captions “Optional Put by the Holders” and “Fundamental Change Repurchase Right”), for cash at a redemption price equal to 100% of the accreted principal amount of the Notes being redeemed, plus accrued and unpaid interest, if any.
Optional Put by the Holders:	Holders may require the Issuer to repurchase all or part of their Notes on June 1, 2015, June 1, 2018, June 1, 2023, June 1, 2028 and June 1, 2033, provided such holder has properly delivered and not withdrawn a written repurchase notice with respect to such Notes, at a repurchase price equal to 100% of the accreted principal amount of the Notes being repurchased, plus accrued and unpaid interest, if any.

Fundamental Change Repurchase Right:	If a "fundamental change" occurs at any time, each holder of Notes will have the right, at its option, to require the Issuer to repurchase in cash all of such holder's Notes, or any portion of the original principal amount thereof that is equal to $1,000 or an integral multiple of $1,000, on a date (the "fundamental change repurchase date") of the Issuer's choosing that is not less than 15 nor more than 35 days after the date of the "fundamental change repurchase right notice," at a repurchase price equal to 100% of the accreted principal amount of the Notes to be repurchased plus accrued and unpaid interest to, but not including, the fundamental change repurchase date.
Use of Proceeds:	The Issuer estimates that the net proceeds from this offering, after deducting estimated fees and expenses and the underwriters' discounts and commissions, will be approximately $145.8 million (approximately $167.7 million if the underwriters exercise their over-allotment option to purchase additional Notes in full). The Issuer intends to use the net proceeds of this offering (including any proceeds the Issuer receives if the underwriters exercise their overallotment option) to pay down outstanding indebtedness under the Issuer's existing senior secured term loan B, under which $351.4 million in principal amount was outstanding as of May 16, 2008, and which bears interest at a floating rate and matures on March 17, 2011.
Joint Book-Running Managers:	Goldman, Sachs & Co. Banc of America Securities LLC
Co-Managers:	Wachovia Capital Markets, LLC PNC Capital Markets LLC
Pricing Date:	May 21, 2008
Trade Date:	May 22, 2008
Settlement Date:	May 28, 2008
Listing:	None
CUSIP / ISIN:	29275Y AA0 / US29275YAA01
Comparable Yield:	The Issuer has determined that the comparable yield for the Notes is 8.50%, compounded semi-annually.
Adjustment to Conversion Rate Upon a Make-Whole Fundamental Change:	The following table sets forth the adjustments to the conversion rate, expressed as a number of additional shares by which the conversion rate will be increased per $1,000 in original principal amount of the Notes, in connection with a make-whole fundamental change:

Stock Price	Make-Whole Reference Date							
	May 28, 2008	June 1, 2009	June 1, 2010	June 1, 2011	June 1, 2012	June 1, 2013	June 1, 2014	June 6, 2015
$29.00	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522	9.8522
$ 30.00	9.2954	8.8911	8.7028	8.7028	8.7028	8.7028	8.7028	8.7028
$ 31.00	8.8025	8.3891	8.0321	7.7251	7.6275	7.6275	7.6275	7.6275
$ 32.00	8.3503	7.9298	7.5572	7.2227	6.8920	6.6195	6.6195	6.6195
$ 34.00	7.5514	7.1223	6.7264	6.3492	5.9516	5.5082	4.9981	4.7812
$ 36.00	6.8703	6.4382	6.0280	5.6215	5.1768	4.6560	3.9933	3.1472
$ 40.00	5.7785	5.3524	4.9324	4.4963	4.0012	3.3967	2.5705	0.3695
$ 45.00	4.7745	4.3686	3.9582	3.5199	3.0145	2.3922	1.5442	0.0000
$ 50.00	4.0371	3.6578	3.2692	2.8489	2.3642	1.7740	1.0031	0.0000
$ 60.00	3.0433	2.7201	2.3858	2.0226	1.6102	1.1280	0.5615	0.0000
$ 75.00	2.1812	1.9301	1.6706	1.3909	1.0822	0.7392	0.3712	0.0000
$ 90.00	1.6739	1.4762	1.2730	1.0556	0.8201	0.5642	0.2922	0.0000
$ 120.00	1.1035	0.9736	0.8410	0.7002	0.5489	0.3840	0.2031	0.0000
$ 150.00	0.7885	0.6973	0.6047	0.5062	0.4000	0.2823	0.1503	0.0000
$ 200.00	0.4903	0.4347	0.3789	0.3193	0.2546	0.1814	0.0974	0.0000
$ 250.00	0.3207	0.2844	0.2484	0.2100	0.1686	0.1212	0.0657	0.0000

The exact stock prices and make-whole reference dates may not be set forth in the table above, in which case:

- If the stock price is between two stock price amounts in the table or the make-whole reference date is between two dates in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 365-day year.
- If the stock price is greater than $250.00 per share, subject to adjustment, no additional shares will be added to the conversion rate.
- If the stock price is less than $29.00 per share, subject to adjustment, no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the conversion rate exceed 34.4827 shares of common stock per $1,000 in original principal amount of Notes, subject to adjustments in the same manner as the conversion rate as set forth under “Description of the Notes—Conversion Rights—Conversion Rate Adjustments” in the preliminary prospectus supplement.

Accreted Principal for the Notes: The following table sets forth the accreted principal amounts for the Notes as of the specified dates during the period from June 1, 2015 through the maturity date:

Date	Accreted Principal Amount
June 1, 2015	$1,000.00
December 1, 2015	$1,016.88
June 1, 2016	$1,034.03
December 1, 2016	$1,051.48
June 1, 2017	$1,069.23
December 1, 2017	$1,087.27
June 1, 2018	$1,105.62
December 1, 2018	$1,124.28
June 1, 2019	$1,143.25
December 1, 2019	$1,162.54
June 1, 2020	$1,182.16
December 1, 2020	$1,202.11
June 1, 2021	$1,222.39
December 1, 2021	$1,243.02
June 1, 2022	$1,264.00
December 1, 2022	$1,285.33
June 1, 2023	$1,307.02
December 1, 2023	$1,329.07
June 1, 2024	$1,351.50
December 1, 2024	$1,374.31
June 1, 2025	$1,397.50
December 1, 2025	$1,421.08
June 1, 2026	$1,445.06
December 1, 2026	$1,469.45
June 1, 2027	$1,494.24
December 1, 2027	$1,519.46
June 1, 2028	$1,545.10
December 1, 2028	$1,571.17
June 1, 2029	$1,597.69
December 1, 2029	$1,624.65
June 1, 2030	$1,652.06
December 1, 2030	$1,679.94
June 1, 2031	$1,708.29
December 1, 2031	$1,737.12
June 1, 2032	$1,766.43
December 1, 2032	$1,796.24
June 1, 2033	$1,826.55
December 1, 2033	$1,857.38
June 1, 2034	$1,888.72
December 1, 2034	$1,920.59
June 1, 2035	$1,953.00
December 1, 2035	$1,985.96
June 1, 2036	$2,019.47
December 1, 2036	$2,053.55
June 1, 2037	$2,088.20
December 1, 2037	$2,123.44
June 1, 2038	$2,159.28

The accreted principal amount of a note between the dates listed above will include an amount reflecting the additional principal accretion that has accrued as of such date since the immediately preceding date in the table.

The Issuer has filed a registration statement (including a prospectus dated as of May 19, 2008 and preliminary prospectus supplements dated May 19, 2008) with the Securities and Exchange Commission, or SEC, for the offerings to which this communication relates. Before you invest, you should read the relevant preliminary prospectus supplement, the accompanying prospectus and the other documents the Issuer has filed with the SEC for more complete information about the Issuer and the offering. You may get these documents for free by visiting EDGAR on the SEC web site at www.sec.gov. Alternatively, copies may be obtained by calling Goldman, Sachs & Co. toll-free at 866-471-2526 or by mail to Banc of America Securities LLC, Capital Markets Operations, 100 West 33rd Street, 3rd Floor, New York, NY 10001.

This communication should be read in conjunction with the preliminary prospectus supplements dated May 19, 2008 and the accompanying prospectus. The information in this communication supersedes the information in the relevant preliminary prospectus supplement and the accompanying prospectus to the extent inconsistent with the information in such preliminary prospectus supplement and the accompanying prospectus.

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