
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended June 28, 2002

OR

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

Commission File Number: 001-14543

LABOR READY, INC.

(Exact name of Registrant as specified in its charter)

Washington
(State or other jurisdiction of
incorporation or organization)

91-1287341
(IRS Employer
Identification No.)

**1015 A Street
Tacoma, Washington 98402**
(Address of principal executive offices, including zip code)

(253) 383-9101
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes No

As of August 5, 2002, the Registrant had 41,256,666 shares of Common Stock outstanding.

Documents incorporated by reference: None.

LABOR READY, INC.

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LABOR READY, INC.
CONSOLIDATED BALANCE SHEETS

In Thousands

ASSETS

	June 28, 2002 (Unaudited)	December 31, 2001
CURRENT ASSETS:		
Cash and cash equivalents	\$ 102,507	\$ 48,865
Marketable securities	1,612	—
Accounts receivable	6,281	3,902
Accounts receivable pledged under securitization agreement	76,671	64,659
Allowance for doubtful accounts	(6,120)	(5,649)
Prepaid expenses, deposits and other	10,383	11,183
Income tax receivable	—	1,537
Deferred income taxes	10,614	9,031
Total current assets	201,948	133,528
PROPERTY AND EQUIPMENT:		
Buildings and land	15,210	15,119
Computers and software	27,511	31,792
Cash dispensing machines	14,245	13,443
Furniture and equipment	1,687	1,639
	58,653	61,993
Less accumulated depreciation	24,462	25,099
Property and equipment, net	34,191	36,894
OTHER ASSETS:		
Restricted cash	46,534	33,357
Deferred income taxes	12,491	9,189
Other assets	3,049	1,062
Total other assets	62,074	43,608
Total assets	\$ 298,213	\$ 214,030

See accompanying notes to consolidated financial statements.

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LIABILITIES AND SHAREHOLDERS' EQUITY

	June 28, 2002 (Unaudited)	December 31, 2001
CURRENT LIABILITIES:		
Accounts payable	\$ 17,451	\$ 14,160
Accrued wages and benefits	10,659	9,542
Income tax payable	2,642	—
Current portion of workers' compensation claims reserve	29,621	27,238
Current maturities of long-term debt	2,052	1,845
Total current liabilities	62,425	52,785
LONG-TERM LIABILITIES:		
Long-term debt, less current maturities	69,605	4,998
Workers' compensation claims reserve	42,793	36,554
Total long-term liabilities	112,398	41,552
Total liabilities	174,823	94,337
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Preferred stock, \$0.131 par value, 20,000 shares authorized; No shares issued and outstanding	—	—
Common stock, no par value, 100,000 shares authorized; 41,239 and 40,602 shares issued and outstanding	53,900	50,665
Cumulative foreign currency translation adjustment	141	(467)
Retained earnings	69,349	69,495

Total shareholders' equity	123,390	119,693
Total liabilities and shareholders' equity	<u>\$ 298,213</u>	<u>\$ 214,030</u>

See accompanying notes to consolidated financial statements.

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LABOR READY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

In Thousands (Except Per Share Amounts)

(Unaudited)

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	June 28, 2002	June 29, 2001	June 28, 2002	June 29, 2001
Revenues from services	\$ 219,100	\$ 240,004	\$ 389,208	\$ 442,740
Cost of services	156,141	168,555	277,487	310,917
Gross profit	62,959	71,449	111,721	131,823
Selling, general and administrative expenses	54,347	65,198	106,629	128,363
Depreciation and amortization	2,672	2,128	4,791	4,196
Income (loss) from operations	5,940	4,123	301	(736)
Interest and other income (expense), net	(330)	520	(541)	604
Income (loss) before income taxes	5,610	4,643	(240)	(132)
Income tax (benefit)	2,160	1,773	(94)	—
Net income (loss)	<u>\$ 3,450</u>	<u>\$ 2,870</u>	<u>\$ (146)</u>	<u>\$ (132)</u>
Basic net income per common share	0.08	\$ 0.07	\$ (0.00)	\$ 0.00
Diluted net income per common share	0.08	\$ 0.07	\$ (0.00)	\$ (0.00)
Weighted average shares outstanding:				
Basic	41,133	40,508	40,927	40,624
Diluted	42,161	40,559	40,927	40,624

See accompanying notes to consolidated financial statements.

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LABOR READY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

In Thousands

(Unaudited)

	Twenty-Six Weeks Ended	
	June 28, 2002	June 29, 2001
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (146)	\$ (132)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	4,791	4,188
Amortization of loan fees and other	102	—
Provision for doubtful accounts	4,937	8,908
Deferred income taxes	(4,885)	(1,321)
Tax benefit related to stock options	633	—
Loss (Gain) on disposal of property and equipment	162	(763)
Changes in operating assets and liabilities:		
Accounts receivable	(18,857)	(2,066)
Workers' compensation claims reserve	8,622	5,336
Other current assets	5,609	(8)
Other current liabilities	4,684	(118)
Net cash provided by operating activities	<u>5,652</u>	<u>14,024</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of marketable securities	(1,612)	—
Capital expenditures	(1,436)	(4,916)

Restricted cash	(13,177)	(1,230)
Intangible assets and other	(250)	(632)
Proceeds from sale of property and equipment	—	1,809
Net cash used in investing activities	(16,475)	(4,969)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from options exercised	2,223	24
Proceeds from sale of stock through employee benefit plans	332	503
Purchase and retirement of common stock	(230)	(2,973)
Net repayments on short-term borrowings	—	(879)
Proceeds from issuance of convertible Notes	65,000	—
Payments for offering costs	(2,447)	—
Payments on long-term debt	(952)	(7,040)
Net cash provided by (used in) financing activities	63,926	(10,365)
Effect of exchange rates on cash	539	42
Net increase (decrease) in cash and cash equivalents	53,642	(1,268)
CASH AND CASH EQUIVALENTS, beginning of period	48,865	36,048
CASH AND CASH EQUIVALENTS, end of period	\$ 102,507	\$ 34,780

See accompanying notes to consolidated financial statements.

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Item 1. Notes to Consolidated Financial Statements

ACCOUNTING PRINCIPLES AND PRACTICES

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and rules and regulations of the Securities and Exchange Commission. Accordingly, certain information and footnote disclosures usually found in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. The unaudited consolidated financial statements reflect all adjustments, including normal recurring adjustments, which in the opinion of management, are necessary to fairly state the financial position, results of operations and cash flows for the interim periods presented. These financial statements should be read in conjunction with the consolidated financial statements and related notes included in our annual report on Form 10-K for the year ended December 31, 2001. Certain amounts in the consolidated balance sheet at December 31, 2001 have been reclassified to conform to the 2002 presentation. Operating results for the twenty-six week period ended June 28, 2002 are not necessarily indicative of the results that may be expected for the year ending December 31, 2002.

Revenue recognition. Revenue from the sale of services is recognized at the time the service is performed. A portion of our income is derived from cash dispensing machine fees, which are immaterial for all periods presented. Revenue attributable to sales involving coupons or other incentives are reserved in the period redeemed.

MARKETABLE SECURITIES

Management determines the appropriate classification, pursuant to Statement of Financial Accounting Standards 115, *Accounting for Certain Investments in Debt and Equity Securities*, of its investments in debt and equity securities ("Marketable Securities") at the time of purchase and re-evaluates such determination at each balance sheet date. Marketable Securities consist of revenue bonds and other municipal obligations. The aggregate cost and fair values of our Marketable Securities is \$1.6 million at June 28, 2002. At June 28, 2002, those securities are classified as available-for-sale and stated at fair value as reported by the Company's investment brokers, with the unrealized holding gains and losses reported as a separate component of shareholder's equity. Since the investments were purchased on the last days of the quarter, there were no material unrealized holding gains and losses at June 28, 2002. The specific identification method is used for computing realized gains and losses on the sale of available-for-sale securities. For the quarter ended June 28, 2002, there were no sales of available-for-sale securities.

RESTRICTED CASH

We have cash deposits with independent financial institutions for the purpose of securing our obligations in connection with our workers' compensation program and for cross collateralization of our Accounts Receivable Facility. These deposits may be released as workers' compensation claims are paid or when the letters of credit are released.

At June 28, 2002 and December 31, 2001, we had \$19.5 million and \$18.4 million, respectively, of restricted cash securing our obligations in connection with workers' compensation programs and \$27.0 million and \$15.0 million, respectively, cross collateralizing our Accounts Receivable Facility.

LONG-TERM DEBT

In June 2002, the Company issued 6.25% Convertible Subordinated Notes due 2007 (the "Notes") in the aggregate principal amount of \$65 million. Subsequent to June 28, 2002, the initial purchasers exercised their over-allotment option and purchased an additional \$5 million in aggregate principal amount of Notes. Interest is payable on the Notes on June 15 and December 15 of each year, beginning December 15, 2002. Holders may convert the Notes into shares of Company common stock at any time prior to the maturity date at a conversion price of \$7.26 per share (equivalent to an initial conversion rate of approximately 137.741 shares per \$1,000 principal amount of Notes), subject to certain adjustments. The Notes are unsecured subordinated obligations and rank junior in right of payment to all existing and future debt that would constitute senior debt under the indenture, including letters of credit and surety bonds. On or after June 20, 2005, the Company may redeem some or all of the Notes at 100% of their principal amount plus accrued interest if the market value of our common stock equals or exceeds 125% of the conversion price for at least 20 trading days in any consecutive 30 trading day period.

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WORKERS' COMPENSATION INSURANCE

	(Amounts in Thousands)			
	Workers' Compensation Claims Reserve			
	December 31, 2001	Workers' Compensation Expenses	Payments	June 28, 2002
Non-monopolistic states reserve	\$ 61,435	\$ 29,308	\$ (20,711)	\$ 70,032

Monopolistic states payable	2,357	1,260	(1,235)	2,382
Total Workers' Compensation Claims Reserve	\$ 63,792	\$ 30,568	\$ (21,946)	\$ 72,414

We provide workers' compensation insurance to our temporary workers and regular employees. For workers' compensation claims originating in the majority of states (which we refer to as non-monopolistic states), we have purchased high deductible insurance policies from independent, third-party carriers, which results in our being substantially self-insured. Under our workers' compensation insurance program, we maintain "per occurrence" insurance, which covers any claims for a particular event above a set deductible. We have also historically maintained "aggregate stop loss" insurance coverage that would allow us to recover from an insurer if the aggregate amount of deductible payments incurred by us in a given year exceeded a dollar threshold. In order to manage our overall insurance costs under our policy covering the 2002 plan year, we have significantly increased our per occurrence insurance deductible and dropped our aggregate stop loss coverage. Should any single occurrence exceed the deductible amount per occurrence, all losses and expenses beyond the deductible amount are paid by the insurance carrier.

We establish a reserve for the deductible portion of our workers' compensation claims using actuarial estimates of the future cost of claims and related expenses that have been reported but not settled, and that have been incurred but not reported. Adjustments to the claims reserve are charged or credited to expense in the periods in which they occur. Included in the accompanying consolidated balance sheets as of June 28, 2002 and December 31, 2001 are workers' compensation claims reserves in the non-monopolistic states of \$70.0 million and \$61.4 million, respectively, and in the monopolistic states of \$2.4 million and \$2.4 million, respectively. The claims reserves were computed using a discount rate of 6.0%. The selection of this discount rate is based on returns on "A" grade bonds with maturities comparable to the average life of our workers' compensation claims.

Workers' compensation expense totaling \$17.5 million and \$15.3 million was recorded as a component of cost of services in the thirteen weeks ended June 28, 2002 and June 29, 2001, respectively. Workers' compensation expense totaling \$30.6 million and \$28.0 million was recorded as a component of cost of services in the twenty-six weeks ended June 28, 2002 and June 29, 2001, respectively.

For workers' compensation claims originating in Washington, Ohio, West Virginia, Canada and Puerto Rico (the "monopolistic states") we pay workers' compensation insurance premiums as required by government administered programs. The insurance premiums are established by each jurisdiction, generally based upon the job classification of the insured workers and our previous claims experience. For workers' compensation claims originating in the United Kingdom, we have purchased an employers' liability insurance policy. This policy carries a 25 million GBP limit.

COMMITMENTS AND CONTINGENCIES

Accounts Receivable Facility

In March 2001, we entered into a line of credit facility and accounts receivable securitization facility (the "Accounts Receivable Facility") with certain unaffiliated financial institutions that expires in February of 2006. The Accounts Receivable Facility provides loan advances through the sale of substantially all of our eligible domestic accounts receivable to a wholly owned and consolidated subsidiary, Labor Ready Funding Corporation. The Accounts Receivable Facility includes a corporate guarantee by us and requires that we meet certain financial covenants. Among other things, these covenants require us to maintain certain earnings and net worth levels and a certain ratio of earnings to fixed expenses. Subject to certain availability requirements, the Accounts Receivable Facility allows us to borrow a maximum of \$100 million, up to \$80 million of which may be used to obtain letters of credit. The amounts we may borrow (borrowing capacity) under this agreement are largely a function of the levels of our accounts receivable, from time to time, supplemented by pledged and restricted cash.

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At June 28, 2002, we had a total available borrowing capacity of \$87.2 million under the Accounts Receivable Facility comprised of \$61.5 million of eligible accounts receivable available in our calculated borrowing base and \$25.7 million of restricted cash, representing the eligible portion of our \$27.0 million total restricted cash. Of this \$87.2 million available, we had committed \$68.8 million for letters of credit to our insurance carriers, leaving \$18.4 million available for future borrowing or letters of credit.

We are required by our insurance carriers and certain state workers' compensation programs to collateralize a portion of our workers' compensation obligation with irrevocable letters of credit and surety bonds. At June 28, 2002, we had provided our insurance carriers and those states with letters of credit totaling \$68.8 million and \$43.2 million of surety bonds in support of these obligations. The letters of credit bear fluctuating fees which were approximately .78% of the principal amount of the letters of credit as of June 28, 2002. The surety bonds bear fees based on a percentage of the bond, which is determined by each independent surety carrier but does not exceed 2% of the bond amount.

Subsequent to quarter end, we increased our letters of credit by \$6.0 million and decreased our surety bonds by \$9.0 million resulting in a total collateral decrease of \$3.0 million. We expect to provide an additional \$5.0 million of letters of credit by the end of 2002.

Legal Contingencies

From time to time we are party to litigation and other legal proceedings in the ordinary course of our business. Our Form 10-K for the year ended December 31, 2001 describes certain material proceedings to which we are party. We intend to vigorously defend each of these proceedings, and we believe that none of these proceedings, individually or in the aggregate, will have a material adverse impact on our financial condition or results of operations, although we can make no assurances in this regard. Following is an update concerning material litigation and other legal proceedings.

On March 25, 2002, the plaintiffs in the Yarbrough Litigation (hereafter referred to as the "Ramirez Litigation") removed Allen Yarbrough as a plaintiff. On July 12, 2002, the court in the Ramirez Litigation certified classes of plaintiffs in connection with claims relating to waiting time, travel time and equipment charges for the period of February 1998 to present. The court declined to certify classes of plaintiffs in connection with claims relating to transportation expenses and unfair competition.

On June 25, 2002, the court in the Wilkerson Litigation certified a class of plaintiffs consisting of all workers who used Labor Ready's optional cash dispensing machines (CDMs) from 1998 to present. The court declined to certify a class of plaintiffs in connection with claims relating to unfair competition.

On July 3, 2002, the Office of the Arizona Attorney General filed an action against Labor Ready in Arizona State Court, Pima County. The suit alleges that Labor Ready violated Arizona's "check cashers" statute in connection with fees charged by Labor Ready for the use of its optional cash dispensing machines. The suit seeks an injunction prohibiting such fees, as well as restitution of the fees and civil penalties for each use of the CDMs since July, 2000. We do not believe the Attorney General's position is valid, and we intend to vigorously defend this lawsuit.

On July 22, 2002, the plaintiffs in the Kindle Litigation sought to amend their complaint by dropping all allegations concerning transportation charges, equipment rental fees and hazardous chemicals exposure; by removing Levoyd William, Quinton McGee and Jimmy Stringer as plaintiffs; and by adding Gary Weems as a plaintiff.

NET INCOME (LOSS) PER SHARE

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the period. Diluted net income per share is computed by dividing net income by the weighted average number of common shares and common share equivalents outstanding during the period. Common share equivalents include the dilutive effect of outstanding options and conversion features of the Notes, except where their inclusion would be anti-dilutive. For the thirteen weeks ended June 28, 2002 and June 29, 2001 we had 2,170 and 5,130 anti-dilutive options, respectively. There were 885 anti-dilutive shares associated with the Notes for the thirteen weeks ended June 28, 2002 and none for the thirteen weeks ended June 29, 2001.

SUPPLEMENTAL CASH FLOW INFORMATION

	Twenty-Six Weeks Ended	
	June 28, 2002	June 29, 2001
	(Amounts in Thousands)	
Cash paid during the period for:		
Interest	\$ 566	\$ 696
Income taxes (refunds)	\$ (148)	\$ 1,597
Non-cash investing and financing activities:		
Assets acquired with capital lease obligations	\$ 766	\$ —
Contribution of common stock to 401(k) plan	\$ 277	\$ 284

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Item 2. Management's Discussion And Analysis Of Financial Condition And Results of Operations

This Form 10-Q contains forward-looking statements. These statements relate to our expectations for future events and future financial performance. Generally, the words, "anticipate," "expect," "intend" and similar expressions identify forward-looking statements. Forward-looking statements involve risks and uncertainties, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements. These statements are only predictions. Actual events or results may differ materially. Factors which could affect our financial results are described in Item 3, Item 7 and Item 7A of Part 1 of our Form 10-K for the year ended December 31, 2001 and in the "Risk Factors" included in this Form 10-Q and in our Report on Form 8-K as filed with the Commission on June 6, 2002. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. We are under no duty to update any of the forward-looking statements after the date of this report to conform such statements to actual results or to changes in our expectations.

Overview

Labor Ready is a provider of temporary manual labor. Our customers are businesses in the freight handling, warehousing, hospitality, landscaping, construction, light manufacturing, retail, wholesale, sanitation and printing industries. We have dispatch offices in markets throughout the United States, Canada, United Kingdom and Puerto Rico. Our annual revenues were \$917.0 million in 2001, and were \$389.2 million and \$442.7 million for the twenty-six weeks ended June 28, 2002 and June 29, 2001, respectively. Revenues from international operations for the twenty-six weeks ended June 28, 2002 were approximately 5.2% of our total revenues.

We had 753 operating branch offices as of June 28, 2002 after opening 3 branch offices and closing 2 during the quarter. During the balance of 2002, we do not expect any material change in the number of branches that we operate. We are focused on increasing the revenues and profitability of each dispatch office through the implementation of measures designed to improve customer satisfaction, marketing effectiveness and retention and training of our dispatch office staff. We have also actively sought to reduce expenses at the branch level and actively monitor under-performing offices.

Our business includes an element of seasonal fluctuation. Construction and landscaping businesses and, to a lesser degree, other customer businesses typically increase activity in spring, summer and early fall months and decrease activity in late fall and winter months. Inclement weather can slow construction and landscaping activities in such periods. As a result, we have generally experienced a significant increase in temporary labor demand in the spring, summer and early fall months, and lower demand in the late fall and winter months.

Gross profit reflects the difference between our revenues from services and the cost of services. Cost of services includes the wages and related payroll taxes of temporary workers, workers' compensation expense, unemployment compensation insurance and transportation. Gross profit has historically been affected by numerous factors, including competitive pressures on billing rates, wage rate increases and increases in workers' compensation charges. Although we have implemented policies and procedures to monitor pay rates and other components of cost of services, as well as billing rates, we may experience fluctuations in our gross profit margin from time to time.

We have cash dispensing machines (CDMs) in most of our dispatch offices that enable us to provide our workers with the choice of being paid each day in cash. For those who choose to receive cash, the CDM dispenses their net pay less the change and a \$1 transaction fee for use of the CDM. Revenues from services includes revenues earned on services provided by our temporary workers as well as those fees generated by our CDMs. Revenues from the CDMs are not material and are substantially offset by the direct and indirect costs of the CDM program which include depreciation, taxes, cash delivery and servicing, maintenance, supplies, insurance and back office salaries and overhead. CDMs from closed branch offices are securely stored for subsequent use in newly opened offices or to replace damaged or worn-out machines. The acquisition cost of each CDM used in the United States and Canada was approximately \$15,000 while the acquisition cost of the CDMs used in the United Kingdom was approximately \$30,000 per machine.

Summary of Critical Accounting Policies. Management's Discussion and Analysis of Financial Condition and Results of Operations discusses our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments, including those related to workers compensation claims, bad debts, and

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contingencies and litigation. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Management believes the following critical accounting policies, among others, affect its more significant judgments and estimates used in the preparation of our consolidated financial statements. We maintain reserves for workers' compensation claims using actuarial estimates of the future cost of claims and related expenses that have been reported but not settled, and that have been incurred but not reported. This reserve, which reflects potential liabilities that span several years, is discounted for net present value using a discount rate of 6%. The selection of this discount rate is based on returns on "A" grade bonds with maturities comparable to the average life of our workers' compensation claims. We evaluate the accrual rates for our reserves regularly throughout the year and make adjustment as needed. If the actual cost of such claims and related expenses exceeds the amounts estimated, or if the discount rate represents an inflated estimate of our return on capital over time, actual losses for these claims may exceed

reserves and/or additional reserves may be required. We also establish an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required. We have also established reserves for contingent legal and regulatory liabilities, based on management's current best estimates and judgments of the scope and likelihood of such liabilities. If the actual outcome of these matters is less favorable than expected, an adjustment would be charged to income in the period the estimate changes.

Results of Operations

Thirteen Weeks Ended June 28, 2002 Compared to Thirteen Weeks Ended June 29, 2001

The following table compares the operating results for the thirteen weeks ended June 28, 2002 and June 29, 2001 (in thousands):

	Thirteen Weeks Ended		
	June 28, 2002	June 29, 2001	Percent Change
Revenues from services	\$ 219,100	\$ 240,004	(8.7)
Cost of services	156,141	168,555	(7.4)
Selling, general and administrative expenses	54,347	65,198	(16.6)
Depreciation and amortization	2,672	2,128	25.6
Interest and other income (expense), net	(330)	520	(163.5)
Income before taxes	5,610	4,643	20.8
Net income	\$ 3,450	\$ 2,870	20.2

Revenues from Services

The decline in revenues from services is due to the fact that we had approximately 7.3% fewer operating offices and the average revenue generated by those offices was 1.4% less than in the quarter ended June 29, 2001. The number of offices declined to 753 at June 28, 2002 from 812 locations at June 29, 2001, a net decrease of 59 dispatch offices.

Cost of Services

The decrease in cost of services is largely due to the decline in revenue, partially offset by an increase in workers compensation costs of 1.6% of revenue. Cost of services was 71.3% of revenue for the thirteen weeks ended June 28, 2002 compared to 70.2% of revenue for the same period in 2001, an increase of 1.1% of revenue.

Selling, General and Administrative Expenses

The decrease in selling, general and administrative ("SG&A") expenses is largely commensurate with the decrease in number of dispatch offices and it was positively impacted by the cost reductions discussed below.

SG&A expenses were 24.8% of revenues for the second quarter of 2002 as compared to 27.2% of revenues in the second quarter of 2001. A significant portion of our savings has been in salaries and wages, along with reductions in bad debt expense and advertising costs. Salaries and wages were down approximately 13% or \$4 million for the quarter, as compared to the same quarter a year ago. At the end of the second quarter we had 2,764 employees as compared to 3,170 a year earlier. As a percent of

revenue, bad debt expense was 1.2% for the quarter, as compared to 2% a year ago, representing a \$2.3 million reduction. During the past year, we have refocused our advertising and marketing efforts into more direct sales. This shift in focus has reduced advertising costs by \$1.9 million, or 48%, as compared to the same quarter a year ago. We expect that SG&A expenses as a percentage of revenues may fluctuate in future periods as we may adjust our staffing at the dispatch offices as well as our operating and administrative capabilities.

Depreciation and Amortization

The increase in depreciation and amortization expense is largely the result of a one-time adjustment for a change in the estimated useful lives of certain assets.

Interest and Other Income (Expense), Net

The increase in net interest and other expense was the result of a decrease in other income. There were no significant gains or losses on sales of assets during the thirteen week period ended June 28, 2002 while we had gain on the sale of a building of \$.8 million for the thirteen week period ended June 29, 2001.

Tax Provision

The increase in the tax provision for the quarter is commensurate with the increase in income from operations on a quarter over quarter basis. Our effective tax rate was 38.5% in the second quarter of 2002 as compared to 38.2% for the same period in 2001. The principal difference between the statutory federal income tax rate and our effective income tax rate results from state income taxes, certain non-deductible expenses and the valuation allowance as discussed below.

We had a net deferred tax asset of approximately \$23.1 million at June 28, 2002, resulting primarily from workers' compensation deposits, credits and reserves. Due to the uncertainty of the realization of certain tax planning measures related to our foreign losses, we have established a valuation allowance against this net deferred tax asset, which was \$2.2 million as of June 28, 2002.

Twenty-Six Weeks Ended June 28, 2002 Compared to Twenty-Six Weeks Ended June 29, 2001

The following table compares the operating results for the twenty-six weeks ended June 28, 2002 and June 29, 2001 (in thousands):

	Twenty-Six Weeks Ended		
	June 28, 2002	June 29, 2001	Percent Change
Revenues from services	\$ 389,208	\$ 442,740	(12.1)
Cost of services	277,487	310,917	(10.8)
Selling, general and administrative expenses	106,629	128,363	(16.9)
Depreciation and amortization	4,791	4,196	14.2
Interest and other income (expense), net	(541)	604	(189.6)
Loss before taxes	(240)	(132)	(81.8)
Net loss	\$ (146)	\$ (132)	(10.6)

Revenues from Services

The decline in revenues from services is due to the fact that we had approximately 7% fewer operating offices and the average revenue generated by those offices was approximately 5% less than in the twenty-six weeks ended June 29, 2001. The number of offices declined to 753 at June 28, 2002 from 812 locations at June 29, 2001, a net decrease of 59 dispatch offices.

Cost of Services

The decrease in cost of services is largely due to the decline in revenue, partially offset by an increase in workers compensation costs of 1.5% of revenue. Cost of services was 71.3% of revenue for the twenty-six weeks ended June 28, 2002 compared to 70.2% of revenue for the same period in 2001, an increase of 1.1% of revenue.

Selling, General and Administrative Expenses

The decrease in selling, general and administrative ("SG&A") expenses is largely commensurate with the decrease in number of dispatch offices and it was positively impacted by the cost reductions discussed below.

SG&A expenses were 27.4% of revenues for the first half of 2002 as compared to 29.0% of revenues in the first half of 2001. A significant portion of our savings has been in salaries and wages, along with reductions in bad debt expense and advertising costs. Salaries and wages were down approximately 14.5%, or \$9 million year-to-date, as compared to the same period a year ago. At the end of the second quarter we had 2,764 employees as compared to 3,170 a year earlier. As a percent of revenue, bad debt expense was 1.3% for the first half of the year, as compared to 2% a year ago, representing a \$3.9 million reduction. During the past year, we have refocused our advertising and marketing efforts into more direct sales. This shift in focus has reduced advertising expense by \$3.6 million, or 45%, as compared to the same period a year ago. We expect that SG&A expenses as a percentage of revenues may fluctuate in future periods as we may adjust our staffing at the dispatch offices as well as our operating and administrative capabilities.

Depreciation and Amortization

The increase in depreciation and amortization expense is largely the result of a one-time adjustment for a change in the estimated useful lives of certain assets.

Interest and Other Income (Expense), Net

The increase in net interest and other expense was the result of the decrease in other income. There were no significant gains or losses on sales of assets during the twenty six week period ended June 28, 2002 while we had a gain on the sale of a building of \$8 million for the twenty-six week period ended June 29, 2001.

Tax Benefit on Loss

The increase in the tax benefit for the current period is commensurate with the increase in loss from operations on a year over year basis. Our effective tax rate was 39.2% in the first two quarters of 2002 as compared to 38.2% for the same period in 2001. The principal difference between the statutory federal income tax rate and our effective income tax rate results from state income taxes, certain non-deductible expenses and the valuation allowance as discussed below.

We had a net deferred tax asset of approximately \$23.1 million at June 28, 2002, resulting primarily from workers' compensation deposits, credits and reserves. Due to the uncertainty of the realization of certain tax planning measures, we have established a valuation allowance against this net deferred tax asset which was \$2.2 million as of June 28, 2002.

Liquidity and Capital Resources

Net cash provided by operating activities was \$5.6 million for the twenty-six week period ended June 28, 2002 compared to \$14.0 million for the same period ended June 29, 2001. Improved collection efforts first implemented in the twenty-six week period ended June 29, 2001 resulted in increased cash inflows for that period. Those improved collection efforts have remained in place since that time and, therefore, no similar benefit was realized in the twenty-six week period ended June 28, 2002. This decrease was partially offset by the increase in our workers' compensation reserve. We typically pay our temporary workers on a daily basis, and collect from our customers on a monthly basis. Consequently, from time to time we may experience negative cash flow from operations and investment activities.

We used net cash in investing activities of \$16.5 million in the first half of 2002, compared to \$5.0 million in the first half of 2001. The increase in cash used in investing activities in 2002 as compared to 2001 is due primarily to the increase in restricted cash (which was partially offset by a decrease in capital expenditures during the period), which was necessitated by the unavailability of eligible accounts receivable. At June 28, 2002 and December 31, 2001, we had \$19.5 million and \$18.4 million, respectively, of restricted cash securing our obligations in connection with workers' compensation programs and \$27.0 million and \$15.0 million, respectively, cross collateralizing our Accounts Receivable Facility. As discussed below, this increase is due to higher collateralization requirements imposed by our insurance carriers and certain state workers' compensation programs. We expect that these amounts will continue to increase in 2002.

Net cash provided by (used in) financing activities was \$63.9 million for the period ended June 28, 2002 and (\$10.4) million for the period ended June 29, 2001. The increase in cash provided by financing activities in 2002 as compared to cash used in financing activities in 2001 is largely the result of proceeds received from the issuance of the Notes as well as the decrease in payments on long-term debt and a reduction of share repurchases in connection with our stock repurchase program.

In March 2001, we entered into a letter of credit facility and an accounts receivable securitization facility (the "Accounts Receivable Facility") with certain unaffiliated financial institutions that expires in February of 2006. The Accounts Receivable Facility provides loan advances through the sale of substantially all of our eligible domestic accounts receivable to a wholly owned and consolidated subsidiary, Labor Ready Funding Corporation. The Accounts Receivable Facility includes a corporate guarantee by us and requires that we meet certain financial covenants. Among other things, these covenants require us to maintain certain earnings and net worth levels and a certain ratio of earnings to fixed charges. Subject to certain availability requirements, the Accounts Receivable Facility allows us to borrow a maximum of \$100 million, up to \$80 million of which may be used to obtain letters of credit. The amounts we may borrow (borrowing capacity) under this agreement are largely a function of the levels of our accounts receivable, from time-to-time, supplemented by pledge and restricted cash.

At June 28, 2002, we had a total available borrowing capacity of \$87.2 million under the Accounts Receivable Facility comprised of \$61.5 million of eligible accounts receivable available in our calculated borrowing base and \$25.7 million of restricted cash, representing the eligible portion of our \$27.0 million total restricted cash. Of this \$87.2 million available, we had committed \$68.8 million for letters of credit to our insurance carriers, leaving \$18.4 million available for future borrowing or issuing letters of credit. We expect to provide an additional \$5.0 million in letters of credit by the end of 2002. We are currently in compliance with all covenants related to the Accounts Receivable Facility.

In January 2002 we entered into a revolving credit facility with Wells Fargo Bank (the "Revolving Credit Facility"). As of July 31, 2002 the available borrowing amount was \$9.7 million with interest at the fluctuating rate per annum of 0.75% below the Prime Rate or 1.85% above the London Inter-Bank Rate. The available borrowing amount under the Revolving Credit Facility will be reduced by \$125,000 each quarter through January of 2006 at which time the facility expires. The Revolving Credit Facility bears fees of 0.35% of the unused amount, and is secured by a first deed of trust on our corporate headquarters building. The Revolving Credit Facility contains a cross-default provision with respect to our Accounts Receivable Facility which obligates us, among other things, to maintain certain earnings and net worth levels and a certain ratio of earnings to fixed expenses. We currently do not have any outstanding borrowings on the Revolving Credit Facility and are in compliance with all covenants.

We provide workers' compensation insurance to our temporary workers and regular employees. For workers' compensation claims originating in the majority of states (which we refer to as non-monopolistic states), we have purchased high deductible insurance policies from independent, third-party carriers, which results in our being substantially self-insured. Under our workers' compensation insurance program, we maintain "per occurrence" insurance, which covers any claims for a particular event above a set deductible. We have also historically maintained "aggregate stop loss" insurance coverage that would allow us to recover from an insurer if the aggregate amount of deductible payments incurred by us in a given year exceeded a dollar threshold. In order to manage our overall insurance costs under our policy covering the 2002 plan year, we have significantly increased our per occurrence insurance deductible and dropped our aggregate stop loss coverage. Should any single occurrence exceed the deductible

amount per occurrence, all losses and expenses beyond the deductible amount are paid by the insurance carrier.

We establish a reserve for the deductible portion of our workers' compensation claims using actuarial estimates of the future cost of claims and related expenses that have been reported but not settled, and that have been incurred but not reported. We are required by our insurance carriers and certain state workers' compensation programs to collateralize a portion of our workers' compensation liability with irrevocable letters of credit or surety bonds. Our insurance carriers annually assess the amount of collateralization they will require from us related to the workers' compensation liability for which they are responsible. Such amounts can increase or decrease independent of our assessments and reserves. At June 28, 2002, we had provided our insurance carriers and certain states with letters of credit totaling \$68.8 million and \$43.2 million of surety bonds compared to \$54.9 million and \$43.2 million respectively, at December 31, 2001. The letters of credit bear fluctuating fees which were approximately .78% of the principal amount of the letters of credit as of June 28, 2002.

Our surety bonds are issued by independent insurance companies on our behalf and bear annual fees based on a percentage of the bond, which is determined by each surety carrier but does not exceed 2% of the bond amount. The terms of these bonds are subject to annual review and renewal and the bonds can be canceled by the sureties with as little as 60 days notice. We have received notice from certain providers of our surety bonds who have indicated that, due to current conditions in insurance markets, they intend to cancel these bonds unless we provide them with additional collateral. As the availability of these bonds declines, we will likely be required to replace them with letters of credit or similar obligations for which we would likely be required to pledge cash or other collateral.

Subsequent to quarter end, we increased our letters of credit by \$6.0 million and decreased our surety bonds by \$9.0 million resulting in a total collateral decrease of \$3.0 million. We expect to provide an additional \$5.0 million of letters of credit by the end of 2002.

Our workers' compensation reserve for estimated claims increases as temporary labor services are provided and decreases as payments are made on these claims. Although the estimated claims are expensed as incurred, the claims payments are made over a period of several years. Collateral for our workers' compensation program is posted with various state workers' compensation programs and insurance carriers based upon our reserves. Due to the timing difference between the recognition of expense and claim payments as described above, both our reserves and our collateral obligations will continue to grow. Additionally, but to a lesser extent, our collateral is being impacted by the fact that some of our insurers have not made timely release of collateral which was posted in connection with claims which have subsequently been paid.

In June 2002, the Company issues 6.25% Convertible Subordinated Notes due 2007 (the "Notes") in the aggregate principal amount of \$65 million. Subsequent to June 28, 2002, the initial purchasers exercised their over-allotment option and purchased an additional \$5 million in aggregate principal amount of Notes. Interest is payable on the Notes on June 15 and December 15 of each year, beginning December 15, 2002. Holders may convert the Notes into shares of Company common stock at any time prior to the maturity date at a conversion price of \$7.26 per share (equivalent to an initial conversion rate of approximately 137.741 shares per \$1,000 principal amount of Notes), subject to certain adjustments. The Notes are unsecured subordinated obligations and rank junior in right of payment to all existing and future debt that would constitute senior debt under the indenture, including letters of credit and surety bonds. On or after June 20, 2005, the Company may redeem some or all of the Notes at 100% of their principal amount plus accrued interest if the market value of our common stock equals or exceeds 125% of the conversion price for at least 20 trading days in any consecutive 30 trading day period.

We have used \$1.7 million and intend to additionally use \$5.0 million of the proceeds of the Notes to collateralize a portion of our outstanding workers' compensation obligations that are currently secured by surety bonds. If deemed necessary or appropriate based on future events, we may use up to an additional \$28.8 million of these proceeds to further collateralize such obligations. The balance of the proceeds is available for working capital and general corporate purposes.

Included in cash and cash equivalents at June 28, 2002 is cash held within dispatch office CDMs for payment of temporary payrolls in the amount of approximately \$16.8 million as compared to \$17.9 million at June 29, 2001.

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Our capital expenditures for the years ended December 31, 2001, 2000 and 1999 were, \$6.5 million, \$18.4 million and \$12.4 million, respectively. For the twenty-six weeks ended June 28, 2002, our capital expenditures totaled \$1.4 million and, for the remainder of 2002, we anticipate that our capital expenditures will approximate \$1.1 million.

The following table represents a summary of outstanding debt related to our credit facilities, the Notes and our capital leases as of June 28, 2002 and December 31, 2001.

	Outstanding debt as of	
	June 28, 2002	December 31, 2001
	(Amounts in Thousands)	
Accounts receivable line of credit	\$ —	\$ —
Revolving credit facility	—	—
Convertible Subordinated Notes	65,000	—
Capital leases	6,657	6,843
Total	\$ 71,657	\$ 6,843

We will be required to make interest-only payments on the Notes on June 15 and December 15 of each year, beginning December 15, 2002 at a rate of 6.25%. The entire principal of the Notes is due in June 2007.

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Item 3. Qualitative and Quantitative Disclosures About Market Risk

We are exposed to market risk related to changes in interest rates, and to a minor extent, foreign currency exchange rates, each of which could adversely affect the value of our investments. We do not currently use derivative financial instruments. At June 28, 2002, our purchased investments had maturities of less than 90 days. As such, an increase in interest rates immediately and uniformly by 10% from levels at June 28, 2002 would not have a material effect upon our cash and cash equivalent balances.

Because of the relative short maturities of the investments we hold, we do not expect our operating results or cash flows to be affected to any significant degree by a sudden change in market interest rates on our cash and cash equivalents portfolio.

We have a minor amount of assets and liabilities denominated in certain foreign currencies related to our international operations. We have not hedged our translation risk on these currencies and we have the ability to hold our foreign-currency denominated assets indefinitely and do not expect that a sudden or significant change in foreign exchange rates will have a material impact on future net income or cash flows.

Risk Factors: Issues and Uncertainties

Investing in our securities involves a high degree of risk. The following risk factors, issues and uncertainties should be considered in evaluating our future prospects. In particular, keep these risk factors in mind when you read "forward-looking" statements elsewhere in this report. Forward-looking statements relate to our expectations for future events and time periods. Generally, the words "anticipate," "expect," "intend" and similar expressions identify forward-looking statements. Forward-looking

statements involve risks and uncertainties, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements. Any of the following risks could harm our business, operating results or financial condition and could result in a complete loss of your investment. Additional risks and uncertainties that are not yet identified or that we currently think are immaterial may also harm our business and financial condition in the future.

Competition for customers in our industry is intense, and if we are not able to effectively compete, our financial results could be harmed and the price of our securities could decline.

The short-term, light industrial niche of the temporary services industry is highly competitive, with limited barriers to entry. Several very large full-service and specialized temporary labor companies, as well as small local operations, compete with us in the staffing industry. Competition in some markets is intense, particularly for provision of light industrial personnel, and these competitive forces limit our ability to raise prices to our customers. For example, competitive forces have historically limited our ability to raise our prices to immediately fully offset increased costs of doing business, including increased labor costs and increased costs for workers' compensation insurance. As a result of these forces, we have in the past faced pressure on our operating margins. This margin pressure has been particularly severe during the past three quarters and we expect it to remain severe throughout the balance of 2002. We cannot assure you that we will not continue to face pressures on our margins. If we are not able to effectively compete in our targeted markets, our operating margins and other financial results will be harmed and the price of our securities could decline.

We have recently experienced a decline in revenues and profits, and this trend may continue, which could cause the price of our securities to decline.

Our revenues were \$917.0 million in 2001 compared to \$976.6 million in 2000. The decline in revenues in 2001 was primarily due to our consolidation of dispatch offices and a decrease in average revenues per dispatch office during the recent economic downturn. Our net income has also decreased in each of 2001 and 2000 compared to the levels realized in 1999 due to the recent economic downturn. We cannot assure you that these declining revenues and net income trends will not continue or that our revenues and profits will not continue to be adversely affected by unfavorable economic conditions. Any continuation of these trends could cause the price of our securities to decline.

If we are not able to obtain workers' compensation insurance on commercially reasonable terms, our financial condition or results of operations may suffer.

We are required to pay workers' compensation benefits for our temporary workers and regular employees. We have seen a tightening insurance market that has resulted in significantly increased insurance costs and higher deductibles, including workers' compensation insurance. Under our workers' compensation insurance program, we maintain "per occurrence" insurance, which covers any claims for a particular event above a set deductible. We have also historically maintained "aggregate stop loss" insurance coverage that would allow us to recover from an insurer if the aggregate amount of deductible payments incurred by us in a given year exceeded a dollar threshold. In order to manage our overall insurance costs under our policy covering the 2002 plan year, we have significantly increased our per occurrence insurance deductible and dropped our aggregate stop loss coverage, which means there is no aggregate limit to our potential liability other than on a per occurrence basis. In addition, while we have renewed our workers' compensation insurance for 2002, we cannot be certain that this insurance will always be available or will be available with reasonable terms at a reasonable cost.

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We expect that the amount of collateral that we are required to post to support our workers' compensation obligations will increase, which will reduce the capital we have available to grow and support our operations.

We are required to maintain commitments such as standby letters of credit and surety bonds to secure repayment to our insurance companies (or in some instances, the state) of the deductible portion of all open workers' compensation claims. Historically, we have been required to pledge cash or other assets in order to obtain standby letters of credit. However, we have also been able to obtain surety bonds while posting no or very little collateral. The amounts and costs of our surety bonds are subject to annual review and renewal, and they generally can be cancelled by the issuer with 60 days notice. We have received notice from certain providers of our surety bonds that they intend to cancel these bonds unless we provide them with additional collateral. As the availability of these bonds declines, we will likely be required to replace them with letters of credit or similar commitments, for which we also would likely be required to pledge cash or other collateral. We sometimes face difficulties in recovering our collateral from insurers, particularly where those insurers were themselves in financial distress, and we cannot guarantee that our collateral for past claims will be released in a timely manner as we pay down claims. As a result, we expect that the amount of collateral required to secure our commitments to our insurance carriers will increase. We believe that our current sources of liquidity will satisfy our immediate needs for these obligations; however, our currently available sources of collateral for these commitments are limited and we could be required to seek additional sources of capital in the future. These additional sources of financing may not be available on commercially reasonable terms. Even if they are available, these financings could result in dilution to our existing shareholders.

Our reserves for workers' compensation claims, allowance for doubtful accounts, and other expenses may be inadequate, and we may incur additional charges if the actual costs of these claims exceed the amounts estimated.

We maintain a reserve for workers' compensation claims using actuarial estimates of the future cost of claims and related expenses that have been reported but not settled, and that have been incurred but not reported. This reserve, which reflects potential liabilities that span several years, is discounted for net present value using a discount rate of 6%. We evaluate the accrual rates for our reserves regularly throughout the year and make adjustments as needed. If the actual cost of such claims and related expenses exceed the amounts estimated, or if the discount rate represents an inflated estimate of our return on capital over time, actual losses for these claims may exceed reserves and/or additional reserves may be required. We cannot assure you that our reserves for workers' compensation claims, allowance for doubtful accounts, and other expenses are adequate. We may incur additional charges if the actual costs of these claims exceed the amounts estimated. We also establish an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required. We have also established reserves for contingent legal and regulatory liabilities, based on management's current best estimates and judgments of the scope and likelihood of these liabilities. If the actual outcome of these matters is less favorable than expected, an adjustment would be charged to income in the period the estimate changes.

Determinations that we have misclassified the jobs performed by our workers for workers' compensation insurance purposes, even if the misclassifications are inadvertent, could result in us owing penalties to government regulators or having to increase our workers' compensation reserves.

In three states, Canada and Puerto Rico, we pay workers' compensation insurance premiums directly to the government in amounts based in part on the classification of jobs performed by our workers. From time to time, we are subject to audits by various state regulators regarding our classifications of jobs performed by our workers. An audit conducted by the Washington Department of Labor and Industries resulted in assessments of \$734,000 for 1998, and the Department has subsequently assessed \$235,000 for the first quarter of 1999 and \$257,000 for the second quarter of 1999. While our actual claims experience has to date indicated that we in fact over-paid (as opposed to underpaid) workers' compensation premiums in Washington for the periods in question, we cannot assure you that we will not be subject to additional inquiries, or that additional deficiencies and/or penalties will not be assessed. In addition, the classification of jobs performed by our workers is one of many factors taken into account by our actuaries in helping us determine the adequacy of our financial reserves for our workers' compensation exposure. To date, our third-party actuaries have not challenged or raised any material objections to our job classifications and our historical claims experience has indicated that our reserves are appropriate to cover our potential exposure in this area. Nevertheless, if it is determined that we have materially misclassified a number of our workers, we could be required to increase our financial reserves for our workers' compensation liability, which could harm our results of operations and could cause the price of our securities to decline.

Some insurance companies with which we have previously done business are in financial distress. If our insurers do not fulfill their obligations, we could experience significant losses.

We have purchased annual insurance policies in connection with our workers' compensation obligations from three primary carriers. Kemper Insurance Company provides coverage for occurrences in 2001 and the current year and, prior to 2001, Legion Insurance Company and Reliance Insurance Company provided coverage to us. Many insurance carriers are experiencing unfavorable claims experience and loss of their own reinsurance coverage. As a result, many of these carriers are in substantially weakened financial condition, including Legion and Reliance. To the extent that we experience claims that exceed our deductible limits and our insurers do not satisfy their coverage obligations, we may be forced to satisfy a portion of those claims directly; this in turn could harm our

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financial condition or results of operations. In addition, our insurance policies must be reviewed annually, and we cannot guarantee that we will be able to successfully renew such policies for the coming year or any year thereafter.

Our credit facilities require that we meet certain levels of financial performance. In the event we fail either to meet these requirements or have them waived, we may be subject to penalties and we could be forced to seek additional financing.

Our credit facilities contain strict financial covenants. Among other things, these covenants require us to maintain certain earnings and net worth levels and a certain ratio of earnings to fixed expenses. In the past we have negotiated amendments to these covenants to ensure our continued compliance with their restrictions. We cannot assure you that our lender would consent to such amendments on commercially reasonable terms in the future if we once again required such relief. In the event that we do not comply with the covenants and the lender does not consent to such non-compliance, we will be in default of our agreement, which could subject us to penalty rates of interest and accelerate the maturity of the outstanding balances. Moreover, the indenture governing our Notes and a number of our smaller loan arrangements contain cross-default provisions, which accelerate our indebtedness under these arrangements in the event we default under our credit facilities. Accordingly, in the event of a default under our credit facilities, we could be required to seek additional sources of capital to satisfy our liquidity needs. These additional sources of financing may not be available on commercially reasonable terms. Even if they are available, these financings could result in dilution to our existing shareholders.

A significant portion of our revenues is derived from operations in a limited number of markets. Recessions in these markets have harmed and could continue to harm our operations.

A significant portion of our revenues is derived from our operations in a limited number of states. Revenues generated from operations in California, Texas and Florida, in the aggregate, accounted for approximately 32.4% and 35.2% of our overall revenues in 2000 and 2001, respectively. According to numerous published reports, the California economy has been particularly hard-hit by the most recent economic recession. California is our largest market and continued economic weakness in this region or our other key markets could harm our business.

Any significant economic downturn could result in our clients using fewer temporary employees, which could harm our business.

During 2001, the slowdown in the U.S. economy significantly impacted the light industrial labor markets, which in turn reduced our revenues significantly. Because demand for personnel services and recruitment services is sensitive to changes in the level of economic activity, our business may suffer during economic downturns. As economic activity slows down, companies tend to reduce their use of temporary employees and recruitment services before undertaking layoffs of their regular employees, resulting in decreased demand for our personnel. As a result, any significant economic downturn could harm our business, financial condition or results of operations.

Labor unions have attempted to harm our business.

A department of one of the largest labor unions in the country has been engaged in an ongoing campaign to disrupt our business. This union has backed legislation designed to adversely impact our business, coordinated legal actions directed at our activities and engaged in a public relations campaign to discredit members of our management team and influence our customers. This union has repeatedly issued press releases that contain false and misleading statements, including claims that we inappropriately account for our workers' compensation obligations and that our public reporting is not otherwise in compliance with SEC requirements. We cannot assure you that this union's activities will not harm our business or the price of our securities.

Our business would suffer if we could not attract enough temporary workers.

We compete with other temporary personnel companies to meet our customer needs and we must continually attract reliable temporary workers to fill positions. We have in the past experienced short-term worker shortages and we may continue to experience such shortages in the future. If we are unable to find other temporary workers to fulfill the needs of our customers over a long period of time, we could lose customers and our business could suffer.

We may be exposed to employment-related claims and costs that could harm our business, financial condition or results of operations.

We are in the business of employing people and placing them in the workplaces of other businesses. As a result, we are subject to a large number of federal and state regulations relating to employment. This creates a risk of potential claims of discrimination and harassment, violations of health and safety and wage and hour laws, criminal activity and other claims. From time to time we are subject to audit by various state and governmental authorities to determine our compliance with a variety of these regulations. We have in the past been found, and may in the future be found, to have violated regulations or other regulatory requirements applicable to our operations. We may, from time to time, incur fines and other losses or negative publicity with respect to any such violation. In addition, some or all of these claims may give rise to litigation, which could be time-consuming for our management team and costly and could harm our business. We cannot assure you that we will not experience these problems in the future or that our insurance will be sufficient in amount or scope to cover any of these types of liabilities.

Our dismissal of Arthur Andersen LLP together with Andersen's uncertain future could impair our ability to make timely SEC filings.

Arthur Andersen LLP served as our independent auditor from 1997 until May 3, 2002, when our board of directors dismissed Andersen due to recent events that have cast doubt on Andersen's future. As a result of our termination of Andersen, we have retained the accounting firm of PricewaterhouseCoopers LLP to serve as our new independent accountants. We have a limited history with PricewaterhouseCoopers and cannot guarantee that our new independent accountants can adequately fulfill our needs in connection with the preparation of our audit. Moreover, the SEC has said that it will only continue accepting financial statements audited by Andersen so long as Andersen is able to make certain representations to its clients. We have been informed by Andersen that our former engagement partner and the other members of our audit team are no longer employed by Andersen. As a result, Andersen has indicated that it is no longer willing to provide us with representations relating to our historical financial statements for the year ending on December 31, 2001 and prior years. We cannot predict the impact of Andersen's failure to make the required representations and cannot assure you that our ability to make timely SEC filings will not be impaired. Furthermore, relief that may be available to investors under the federal securities laws against auditing firms may not be available as a practical matter against Andersen in the event that Andersen fails, does not otherwise continue in business or seeks protection from creditors.

The cost of compliance with government regulations is significant and could harm our operating results.

We incur significant costs to comply with all applicable federal and state laws and regulations relating to employment, including occupational safety and health provisions, wage and hour requirements (including minimum wages), workers' compensation and unemployment insurance. We cannot assure you that we will be able to increase fees charged to our customers to offset increased costs relating to these laws and regulations. If we incur additional costs to comply with these regulations and we are not able to increase the rates we charge our customers to fully cover any such increase, our margins and operating results will be harmed.

We are continually subject to the risk of new regulation, which could harm our business.

In 2001 and 2002, a number of bills were introduced in Congress and various state legislatures - which, if enacted, would impose conditions which could harm our business. This proposed legislation, much of which is backed by labor unions, has included provisions such as a requirement that our temporary workers receive the same pay and benefits as our customers' regular employees, prohibition on fees charged in connection with our CDMs and a requirement that our customers provide workers' compensation insurance for our temporary workers. We take a very active role and incur expense in opposing proposed legislation adverse to our business and in informing policy makers as to the social and economic benefits of our business. However, we cannot guarantee that any of these bills will not be enacted, in which event demand for our service may suffer.

Organized labor has sought to enact legislation in the State of California, our largest market. For example, legislation has been introduced into the California state legislature that would modify the current rules governing workers' compensation insurance in that state. Although the exact impact of this legislation on our business is unclear, the successful implementation of this or other similar legislation in California or our other large markets could significantly increase our costs of doing business or decrease the value of our services to our customers. Either result could harm our results of operations.

Our business depends extensively on recruiting and retaining qualified dispatch office managers. If we are not able to attract a sufficient number of qualified dispatch office managers, our future growth and financial performance may suffer.

We rely heavily on the performance and productivity of our dispatch office managers, who manage the operation of the dispatch offices, including recruitment and daily dispatch of temporary workers, marketing and providing quality customer service. We have historically experienced a high degree of turnover among our branch managers. As a result, we must continue to recruit a sufficient number of managers to staff new offices and to replace managers lost through attrition or termination. Our future growth and financial performance depend on our ability to hire, train and retain qualified managers from a limited pool of qualified candidates who frequently have no prior experience in the temporary employment industry.

We have recently experienced significant management turnover. The loss of any of our key personnel could harm our business.

In 2000 and 2001, we experienced significant turnover in our executive officers, including a Chief Executive Officer in each of those two years. We must successfully integrate all new management and other key positions within our organization in order to achieve our operating objectives. Our future financial performance will depend to a significant extent on our ability to motivate and retain key management personnel. Competition for qualified management personnel is intense and in the event we experience further turnover in our senior management positions, we cannot assure you that we will be able to recruit suitable replacements. Even if we are successful, turnover in key management positions will temporarily harm our financial performance and results of operations as new management becomes familiar with our business. We do not maintain key person life insurance on any of our executive officers.

We are subject to a number of challenges and uncertainties that could limit our ability to grow our business.

We intend to grow our business through improvement of our average sales per dispatch office, expansion of our share of the market niche in which we compete, development of new service lines and expansion of our operations abroad, all of which are subject to uncertainties. Our ability to grow is dependent upon such factors as our ability to attract and retain sufficient qualified management

personnel to manage multiple and individual dispatch offices, the availability of sufficient temporary workers to meet customer needs, our ability to deal with increasing workers' compensation costs, effective collection of accounts receivable and availability of working capital.

Our operations expose us to the risk of litigation, which we try to manage but could lead to significant potential liability.

From time to time we are party to litigation in the ordinary course of our business. Moreover, certain labor unions have coordinated legal actions directed at us designed to further their own interests. The claimants in two current proceedings have aggregated claims as class actions. The costs of defense and the risk of loss in connection with class action suits are incrementally greater than in standard commercial litigation. We cannot assure you that such litigation will not disrupt our business or impact our financial results, due to the costs of defending against such litigation, any judgments that may be awarded against us and the loss of significant management time devoted to such litigation.

Establishment and expansion of our international operations will burden our resources and may fail to generate a substantial increase in sales.

As of June 28, 2002, we had 35 dispatch offices in the United Kingdom, 31 in Canada and four in Puerto Rico. We currently anticipate opening additional dispatch offices in the United Kingdom in 2003. Establishing, maintaining and expanding our international operations expose us to a number of risks and expenses, including:

- substantially increased costs of operations;
- temporary diversion of existing management resources;
- establishment of an efficient and self-reliant local infrastructure;
- ability to deal effectively with local labor organizations and trade unions;
- ability to attract, hire and train qualified local sales and administrative personnel;
- compliance with additional local regulatory requirements;
- fluctuations in the value of foreign currencies;
- longer payment cycles;
- expansion of our information and control systems to manage expanded global operations; and
- the additional expense and risks inherent in operations in geographically and culturally diverse locations.

We cannot assure you that we will effectively deal with the challenges of expanding our foreign operations and our attempts to do so could harm our financial performance or results of operations.

We have significant working capital requirements.

We require significant working capital in order to operate our business. While our cash flow was positive in 2001, we have historically experienced periods of negative cash flow from operations and investment activities, especially during seasonal peaks in revenue experienced in the third and fourth quarter of the year. We invest significant cash into the opening and operations of new dispatch offices until they begin to generate revenue sufficient to cover their operating costs. We also pay our temporary personnel on a daily basis and bill our customers on a weekly basis. As a result, we must maintain cash reserves to pay our temporary personnel prior to receiving payment from our customers. In addition, we are required to pledge amounts to secure letters of credit that collateralize certain of our workers' compensation obligations, and these amounts may increase in future periods. Any such increase in pledged amounts would decrease amounts available for working capital purposes. As a result of these factors, if our available cash balances and borrowing base under our existing credit facilities do not grow commensurate with the growth in our working capital requirements, we would explore alternative sources of financing to satisfy our liquidity needs, including the issuance of additional equity or debt securities. Any such issuances could result in dilution to existing shareholders.

Our information and computer processing systems are critical to the operations of our business and any failure could cause significant problems.

Our management information systems, located at our headquarters, are essential for data exchange and operational communications with dispatch offices throughout the country. Any interruption, impairment or loss of data integrity or malfunction of these systems could severely hamper our business and could require that we commit significant additional capital and management resources to

rectify the problem. We are currently undertaking a substantial upgrade to our software systems. If we experience unforeseen difficulties or delays in connection with this implementation our business and results of operations will be harmed.

Part II. Other Information

Item 1. Legal proceedings

From time to time we are party to litigation and other legal proceedings in the ordinary course of our business. Our Form 10-K for the year ended December 31, 2001 describes certain material proceedings to which we are party. We intend to vigorously defend each of these proceedings, and we believe that none of these proceedings, individually or in the aggregate, will have a material adverse impact on our financial condition or results of operations, although we can make no assurances in this regard. Following is an update concerning material litigation and other legal proceedings.

In February 2001, the Washington Department of Labor and Industries ("L&I") conducted an audit of our workers compensation premiums for 1998. Upon conclusion of the audit, L&I issued an assessment against us for \$498,000 claimed to be owing for 1998 premiums, plus \$236,000 in interest and penalties. In April 2002, L&I issued an assessment for unpaid workers compensation premiums for the first quarter of 1999 in the amount of \$151,000 plus \$84,000 in interest and penalties. In July 2002, L&I issued an assessment for unpaid premiums for the second quarter of 1999 in the amount of \$165,000 plus \$92,000 in interest and penalties. We are pursuing an appeal of these assessments, and have also filed a complaint in Washington Superior Court, Thurston County, seeking declaratory and injunctive relief with respect to the 1999 assessments.

On March 25, 2002, the plaintiffs in the Yarbrough Litigation (hereafter referred to as the "Ramirez Litigation") removed Allen Yarbrough as a plaintiff. On July 12, 2002, the court in the Ramirez Litigation certified classes of plaintiffs in connection with claims relating to waiting time, travel time and equipment charges for the period of February 1998 to present. The court declined to certify classes of plaintiffs in connection with claims relating to transportation expenses and unfair competition.

On June 25, 2002, the court in the Wilkerson Litigation certified a class of plaintiffs consisting of all workers who used Labor Ready's optional cash dispensing machines (CDMs) from 1998 to present. The court declined to certify a class of plaintiffs in connection with claims relating to unfair competition.

On July 3, 2002, the Office of the Arizona Attorney General filed an action against Labor Ready in Arizona State Court, Pima County. The suit alleges that Labor Ready violated Arizona's "check cashers" statute in connection with fees charged by Labor Ready for the use of its optional cash dispensing machines. The suit seeks an injunction prohibiting such fees, as well as restitution of the fees and civil penalties for each use of the CDMs since July, 2000. We do not believe the Attorney General's position in this suit is valid; and we intend to vigorously defend this lawsuit.

On July 22, 2002, the plaintiffs in the Kindle Litigation sought to amend their complaint by dropping all allegations concerning transportation charges, equipment rental fees and hazardous chemicals exposure; by removing Levoyd William, Quinton McGee and Jimmy Stringer as plaintiffs; and by adding Gary Weems as a plaintiff.

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Item 2. Changes in Securities and Use of Proceeds

Recent Sales of Unregistered Securities

During the quarter ended June 28, 2002, we issued the following securities without registration under the Securities Act of 1933, as amended (the "Securities Act"):

On June 19, 2002, we issued \$65.0 million principal amount of convertible subordinated notes ("Notes") in a private placement to Lehman Brothers, Wells Fargo Securities, LLC and Gerard Klauer Mattison, as the Initial Purchasers. Subsequent to the quarter-end, on July 17, 2002, we issued an additional \$5.0 million principal amount of Notes to the Initial Purchasers upon exercise of their over-allotment option. The Initial Purchasers resold the Notes to certain qualified institutional buyers pursuant to Rule 144A under the Securities Act. We received proceeds of approximately \$67 million from the sale of the Notes, net of the initial purchasers' discount of \$2.2 million and estimated offering expenses. The Notes mature on June 19, 2007 and are redeemable at our option on or after June 20, 2005 if the price of our common stock exceeds specified levels. In addition, the holders of the Notes may require us to repurchase the Notes if we undergo a change in control.

The offer and sale of the Notes to the Initial Purchasers was exempt from registration with the Securities and Exchange Commission pursuant to Section 4(2) of the Securities Act because of the nature of the purchasers and the circumstances of the offering. The Notes were resold by the Initial Purchasers upon reliance on Rule 144A. Each Initial Purchaser made representations to us that it was an "accredited investor," as defined in Rule 501 under the Securities Act, and as to its compliance with Rule 144A. In addition, appropriate legends were affixed to the Notes issued in the transaction described above.

The Notes are convertible at any time through maturity into shares of our common stock at the rate of 137.741 shares per \$1,000 principal amount of the Notes, subject to adjustment, for an aggregate of 9,641,870 shares (the "Shares"). The Notes and the Shares are subject to transfer restrictions; provided, that we have agreed to file a Registration Statement with the Securities and Exchange Commission to register the resale of the Notes and Shares. Upon such registration, we will not receive any proceeds from the resale by the holders of the Notes and Shares.

Item 4. Submission of Matters to a Vote of Security Holders

(a) At the Annual Meeting of Shareholders held on June 19, 2002, the following proposals were adopted by the margins indicated:

(b) PROPOSAL 1: Annual Election of Directors. The nominees for election as directors were Robert J. Sullivan, Joseph P. Sambataro, Jr., Mark R. Beatty, Gates McKibbin, Thomas E. McChesney, Carl W. Schafer, and William W. Steele. The seven director positions were filled based upon the seven receiving the most votes:

Nominees	For	Withheld
Robert J. Sullivan	38,405,253	143,663
Joseph P. Sambataro, Jr.	38,346,108	202,808
Mark R. Beatty	38,400,135	148,781
Gates McKibbin	38,395,855	153,061
Thomas E. McChesney	38,176,323	372,593
Carl W. Schafer	38,407,790	141,126
William W. Steele	38,411,715	137,201

(c) PROPOSAL 2: Shareholder Proposal On Non-Audit Services. A proposal was submitted by the Amalgamated Bank LongView SmallCap 600 Fund to prohibit Labor Ready's outside auditors from providing any non-audit services. The results for voting on this proposal were as follows:

For	Against	Abstain	Non-Voted
8,617,117	20,673,388	385,127	8,873,284

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits:

Exhibit 4.1 Indenture, between the Company and The Bank of New York, as Trustee, dated June 19, 2002

Exhibit 4.2 Amendment to Rights Plan and Confirmation of Appointment as Successor Rights Agent, dated June 13, 2002

Exhibit 4.3 Resale Registration Rights Agreement between the Company and the Initial Purchasers of the Notes, dated June 13, 2002

Exhibit 10.56 Consent of Wells Fargo, dated June 12, 2002

Exhibit 10.57 Fourth Amendment to Securitization Agreements, dated June 12, 2002

Exhibit 10.58 Second Amendment to Letter of Credit Agreements, dated June 12, 2002

Exhibit 10.59 First Amendment to Credit Agreement, dated July 31, 2002.

Exhibit 99.1 Certification of Chief Executive Officer

Exhibit 99.2 Certification of Chief Financial Officer

(b) Reports on Form 8-K

We filed a Current Report on Form 8-K on June 14, 2002 reporting under Item 5—Other Events, information regarding our press release dated June 14, 2002, which stated that we had completed the offering and pricing of \$65 million aggregate principal amount of convertible subordinated notes due 2007.

We filed a Current Report on Form 8-K on June 6, 2002 reporting under Item 5—Other Events, information regarding our press release dated June 6, 2002, which stated that we announced our intention to issue convertible subordinated notes due 2007 and, under Item 9—Regulation FD Disclosure, certain risk factors contained in our confidential offering memorandum related to the offering of the convertible subordinated notes.

We filed a Current Report on Form 8-K on May 7, 2002 reporting under Item 4—Change in Registrant’s Certifying Accountant, information related to our dismissal of Arthur Andersen LLP as our independent auditor and the appointment of PricewaterhouseCoopers as our new independent auditor.

We filed a Current Report on Form 8-K on April 25, 2002 reporting under Item 5—Other Events and Regulation FD Disclosure, information relating to the exercise of options and certain related transactions by our Chief Executive Officer, Joseph P. Sambataro, Jr.

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, thereunto duly authorized, on this 12th day of August, 2002.

LABOR READY, INC.

/s/ Joseph P. Sambataro, Jr.

By: Joseph P. Sambataro, Jr., Chief Executive
Officer and President

/s/ Steven C. Cooper

By: Steven C. Cooper, Chief Financial Officer
and Executive Vice President

LABOR READY, INC.

6.25% Convertible Subordinated Notes due 2007

 INDENTURE

Dated as of June 19, 2002

 The Bank of New York

 TRUSTEE

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INDENTURE dated as of June 19, 2002 between LABOR READY, INC., a Delaware corporation (“Company”), and THE BANK OF NEW YORK, a New York banking corporation (“Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s 6.25% Convertible Subordinated Notes due 2007:

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

“144A Global Security” means a permanent Global Security in the form of the Security attached hereto as Exhibit A, and that is deposited with and registered in the name of the Depository, representing Securities sold in reliance on Rule 144A under the Securities Act.

“Additional Amounts” shall have the meaning ascribed to it in the Registration Rights Agreement.

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

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

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

“Board Resolution” means a resolution of the Board of Directors.

“Business Day” means, with respect to any Security, a day that in the City of New York, is not a day on which banking institutions are authorized by law or regulation to close.

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

“Certificated Securities” means Securities that are in the form of the Securities attached hereto as Exhibit B.

“Common Stock” shall mean the Common Stock, \$0.01 par value per share, of the Company existing on the date of this Indenture or any other shares of Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

“Company” means the party named as the “Company” in the first Section of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by any two Officers.

“Conversion Price” means initially \$7.26, subject to adjustment as set forth herein.

“Corporate Trust Office” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Trustee 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 office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

“Default” means an event which, with the giving of notice or the lapse of time, or both, would become an Event of Default.

“Designated Senior Debt” shall mean any and all Indebtedness arising under (i) the Company’s Credit Agreement dated as of January 4, 2002 between the Company and Wells Fargo Bank, National Association, (ii) the Company’s Letter of Credit Agreement dated as of March 1, 2001, as amended, between the Company and General Electric Capital Corporation, and (iii) the Company’s Senior Debt which, at the date of determination, has an aggregate amount outstanding of, or under which, at the date of determination, the holders thereof are committed to lend up to, at least \$15 million and is specifically designated in the instrument evidencing or governing that Senior Debt as “Designated Senior Debt” for purposes of this Indenture. However, the instrument may place limitations and conditions on the right of that Senior Debt to exercise the rights of Designated Senior Debt.

“Ex-Dividend Time” means, with respect to any issuance or distribution on shares of Common Stock, the first date on which the shares of Common Stock trade regular way on the principal securities market on which the shares of Common Stock are then traded without the right to receive such issuance or distribution.

“Global Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A, and that are registered in the register of Securities in the name of a

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Depository or a nominee thereof, and to the extent that such Securities are required to bear the Legend required by Section 2.6, such Securities will be in the form of a 144A Global Security.

“Holder” or “Securityholder” means a Person in whose name a Security is registered on the Registrar’s books.

“Indebtedness” means:

(i) all indebtedness, obligations and other liabilities (contingent or otherwise) of that Person for borrowed money (including obligations in respect of overdrafts, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, notes, notes or other instruments for the payment of money, or incurred in connection with the acquisition of any property, services or assets (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof), other than any accounts payable or other accrued current liability or obligation to trade creditors incurred in the ordinary course of business in connection with the obtaining of materials or services;

(ii) all reimbursement obligations and other liabilities (contingent or otherwise) of that Person with respect to letters of credit, bank guarantees, bankers’ acceptances, surety bonds, performance bonds or other guaranty of contractual performance;

(iii) all obligations and liabilities (contingent or otherwise) in respect of (A) leases of such Person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person, and (B) any leases or related documents (including a purchase agreement) in connection with the lease of real property which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the landlord and the obligations of such Person under such lease or related document to purchase or to cause a third party to purchase the leased property;

(iv) all obligations of such Person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement;

(v) all direct or indirect guaranties or similar agreements by that Person in respect of, and obligations or liabilities (contingent or otherwise) of that Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (i) through (iv) above;

(vi) any indebtedness or other obligations described in clauses (i) through (iv) above secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and

(vii) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (i) through (vi) above.

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“Indenture” means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

“Issue Date” of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

“NYSE” means The New York Stock Exchange, Inc..

“Officer” means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, the Treasurer, the Controller, or the Secretary or any Assistant Treasurer or Assistant Secretary of the Company.

“Officers’ Certificate” means a written certificate containing the information specified in Sections 12.4 and 12.5, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers’ Certificate given pursuant to Section 4.3 or Section 5.5 shall be signed by the principal executive Officer, principal financial Officer or principal accounting Officer of the Company but need not contain the information specified in Sections 12.4 and 12.5.

“Opinion of Counsel” means a written opinion containing the information specified in Sections 12.4 and 12.5, from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of, or counsel to, the Company or the Trustee.

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

“Redemption Date” or “redemption date” shall mean the date specified in a notice of redemption on which the Securities may be redeemed in accordance with the terms of the Securities and this Indenture.

“Redemption Price” or “redemption price” shall have the meaning set forth in Section 5 of the Securities.

“Registration Rights Agreement” means the Resale Registration Rights Agreement, dated as of the date hereof, among the Company, Lehman Brothers Inc., Wells Fargo Securities, LLC and Gerard Klauer Mattison, Inc.

“Representative” shall mean, with respect to any Designated Senior Debt, a trustee or other authorized representative under any agreement or other instrument pursuant to which such Designated Senior Debt was issued.

“Responsible Officer” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall

be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Restricted Security" means a Security required to bear the restrictive legend set forth in the form of Security set forth in Exhibits A and B of this Indenture.

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

"Sale Price" of a security on any date of determination means:

- (i) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security (regular way) on the New York Stock Exchange on such date;
- (ii) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;
- (iii) if such security is not listed on a U.S. national or regional securities exchange, the closing sales price as reported by the Nasdaq National Market;
- (iv) if such security is not so reported, the last price quoted by Interactive Data Corporation for such security on such date or, if Interactive Data Corporation is not quoting such price, a similar quotation service selected by the Company;
- (v) if such security is not so quoted, the average of the mid-point of the last bid and ask prices for such security on such date from at least two dealers recognized as market-makers for such security selected by the Company for this purpose; or
- (vi) if such security is not so quoted, the average of that last bid and ask prices for such security on such date from a dealer engaged in the trading of convertible securities selected by the Company for this purpose.

"SEC" means the Securities and Exchange Commission.

"Securities" means any of the Company's 6.25% Convertible Subordinated Notes due 2007, as amended or supplemented from time to time, issued under this Indenture.

"Securityholder" or "Holder" means a Person in whose name a Security is registered on the Registrar's books.

"Senior Debt" means:

- (i) the principal of, premium, if any, interest (including all interest and additional amounts, if any, accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), and rent payable on or termination payments with respect to or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company, whether outstanding on the date of this Indenture or subsequently created, incurred, assumed, guaranteed or in effect guaranteed by the Company; and
- (ii) all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing;

unless in the case of any particular Indebtedness, the instrument creating or evidencing such Indebtedness or the assumption or guarantee thereof expressly provides that the Indebtedness shall not be senior in right of payment to the Securities or expressly provides that such Indebtedness is equal with or junior to the Securities. However, the term "Senior Debt" shall not include: (i) the Indebtedness owed by the Company to any Subsidiary, (ii) any liability for federal, state, local or other taxes owed or owing by the Company, (iii) any trade payables and (iv) the Securities.

"Significant Subsidiary" shall have the meaning ascribed to such term in Rule 405 of the Securities Act.

"Stated Maturity", when used with respect to any Security, means June 15, 2007.

"Subsidiary" means any Person of which at least a majority of the outstanding Voting Stock shall at the time directly or indirectly be owned or controlled by the Company or by one or more Subsidiaries or by the Company and one or more Subsidiaries.

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

"Trading Day" means a day during which trading in securities generally occurs on the NYSE or, if the Common Stock is not listed on the NYSE, on the principal other national or regional securities exchange on which the Common Stock then is listed or, if the Common Stock is not listed on a national or regional securities exchange, on the National Association of Securities Dealers Automated Quotation System or, if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotation System, on the principal other market on which the Common Stock is then traded or quoted.

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

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

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“Reference Period”	11.3(d)
“Registrar”	2.3
“Rule 144A Information”	4.6
“Securities Act”	2.6(f)
“Spin-Off”	11.3(d)
“transfer”	2.12(d)
“Trigger Event”	11.3(d)

Section 1.3 Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made

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a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

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

“obligor” on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

Section 1.4 Rules of Construction. Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with U.S. generally accepted accounting principles as in effect from time to time;
- (3) “or” is not exclusive;
- (4) “including” means including, without limitation; and
- (5) words in the singular include the plural, and words in the plural include the singular.

Section 1.5 Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company, as described in Section 12.2. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying

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that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The principal amount and serial number of any Security and the ownership of Securities shall be proved by the register for the Securities.

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

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

ARTICLE II

THE SECURITIES

Section 2.1 Form and Dating. The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibits A and B, which are a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company). The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication.

(a) 144A Global Securities. Securities offered and sold within the United States to qualified institutional buyers as defined in Rule 144A ("QIBs") in reliance on Rule 144A shall be issued initially in the form of a 144A Global Security, which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for the Depository (as defined below) and

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registered in the name of The Depository Trust Company ("DTC") or the nominee thereof (DTC, or any successor thereto, and any such nominee being hereinafter referred to as the "Depository"), duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the 144A Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository as hereinafter provided.

(b) Global Securities in General. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, repurchases and conversions.

Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depository.

(c) Book-Entry Provisions. This Section 2.1(c) shall apply only to Global Securities deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(c), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depository, (b) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instructions and (c) shall be substantially in the form of Exhibit A attached hereto; provided that the Legend (other than the first and second paragraphs thereof) may be removed from such Global Security on satisfaction of the conditions specified in this Indenture.

(d) Certificated Securities. Securities not issued as interests in the Global Securities will be issued in certificated form substantially in the form of Exhibit B attached hereto; provided that the Legend may be removed from such Securities on satisfaction of the conditions specified in this Indenture.

Section 2.2 Execution and Authentication. The Securities shall be executed on behalf of the Company by any Officer. The signature of the Officer on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at the time of the execution of the Securities Officers 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 Securities or did not hold such offices at the date of authentication of such Securities.

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

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substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee shall authenticate and deliver the Securities for original issue in an aggregate principal amount of up to \$75,000,000 upon one or more Company Orders without any further action by the Company (other than as contemplated in Section 12.4 and Section 12.5 hereof). The aggregate principal amount of the Securities due at the Stated Maturity thereof outstanding at any time may not exceed the amount set forth in the foregoing sentence.

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

Section 2.3 Registrar, Paying Agent and Conversion Agent. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("Registrar"), an office or agency where Securities may be presented for purchase or payment ("Paying Agent") and an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent, including any named pursuant to Section 4.5. The term Conversion Agent includes any additional conversion agent, including any named pursuant to Section 4.5.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar (in each case, if such Registrar, agent or co-registrar is a Person other than the Trustee). 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 any such agent. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 8.7. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Conversion Agent and Paying Agent in connection with the Securities.

Section 2.4 Paying Agent to Hold Money and Securities in Trust. Except as otherwise provided herein, on or prior to each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money (in immediately available funds if deposited on the due date) sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money held by it as Paying

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Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds and Common Stock disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money.

Section 2.5 Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on January 1 and July 1 a listing of Securityholders dated within 15 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

Section 2.6 Transfer and Exchange. (a) Subject to Section 2.12 hereof, upon surrender for registration of transfer of any Security, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at the office or agency of the Company designated as Registrar or co-registrar pursuant to Section 2.3, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination or denominations, of a like aggregate principal amount. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Securities from the Securityholder requesting such transfer or exchange.

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate principal amount upon surrender of the Securities to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or any Securities in respect of which a Change of Control Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be purchased in part, the portion thereof not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

(b) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depository, (i) transfers of beneficial interests in a Global Security, in whole or in part, may be effected only through a book entry system maintained by the Holder of such Global Security (or its agent) in accordance with Applicable Procedures, (ii) ownership of a beneficial interest in the Security shall be required to be reflected in book entry and (iii) transfers of Global Securities or beneficial interests in Global

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Securities shall be made only in accordance with Section 2.12 and this Section 2.6(b). Transfers of a Global Security shall be limited to transfers of such Global Security in whole or in part, to the Depository, to nominees of the Depository or to a successor of the Depository or such successor's nominee.

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

(d) Any Registrar appointed pursuant to Section 2.3 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.

(e) No Registrar shall be required to make registrations of transfer or exchange of Securities during any periods designated in the text of the Securities or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

(f) If Securities are issued upon the transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends set forth on the forms of Security attached hereto as Exhibits A and B setting forth such restrictions (collectively, the "Legend"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an opinion of counsel, as may be reasonably required by the Company and the Registrar and the Trustee (if not the same Person as the Trustee), that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act of 1933, as amended ("Securities Act") or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon (i) provision of such satisfactory evidence, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Security that does not bear the Legend. If the Legend is removed from the face of a Security and the Security is subsequently held by the Company or an Affiliate of the Company, the Legend shall be reinstated.

In the event Rule 144(k) as promulgated under the Securities Act is amended to shorten the two-year period under Rule 144(k), then, the references in the Legend to "TWO YEARS", and in the corresponding transfer restrictions described above, will be deemed to refer to such shorter period, from and after receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel to that effect. As soon as practicable after the Company knows of the effectiveness of any such amendment to shorten the two-year period under Rule 144(k), unless such changes would otherwise be prohibited by, or would cause a violation of, the federal securities laws applicable at the time, the Company will provide to the Trustee an Officers' Certificate and an Opinion of Counsel as to the effectiveness of such amendment and the effectiveness of such change to the restrictive legends and transfer restrictions.

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Until the Legend on any Restricted Security has been removed in compliance with this Section 2.6(f), all shares of Common Stock (or other securities issuable upon conversion as a result of the provisions of this Indenture) issued upon conversion of such Restricted Security shall bear a legend substantially in the form of the Legend (the "Common Stock Restrictive Legend") and shall be subject to the same restrictions on transfer as such Restricted Security. At any time following the time when the restrictions on transfer set forth in the Common Stock Restrictive Legend shall have expired in accordance with their terms or shall have terminated under applicable law, the holder of such Common Stock may, upon a surrender of the certificate representing such Common Stock exchange to the Company's transfer agent in accordance with such agent's customary procedures (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an opinion of counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Common Stock has been made in compliance with Rule 144 or such successor provision), may receive a new certificate representing such Common Stock, in like amount, which shall not bear the Common Stock Restrictive Legend.

Section 2.7 Replacement Securities. If (a) any mutilated Security is surrendered to the Trustee, or (b) 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 such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a certificate number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section 2.7, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.7 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.

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Section 2.8 Outstanding Securities; Determinations of Holders' Action. Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it, those paid pursuant to Section 2.7, those delivered to it for cancellation and those described in this Section 2.8 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; provided, however, that in determining whether the Holders of the requisite principal amount of Securities have given or concurred in any request, demand, authorization, direction, notice, consent, waiver, or other Act hereunder, Securities owned by the Company or any other obligor upon the Securities 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 request, demand, authorization, direction, notice, consent, waiver or other Act, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 7 and 10).

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following a Change of Control Purchase Date, or on Stated Maturity, money sufficient to pay Securities payable on that date, then immediately after such Redemption Date, Change of Control Purchase Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and interest, including Additional Amounts, if any, on such Securities shall cease to accrue; provided, that if such Securities 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.

If a Security is converted in accordance with Article 11, then from and after the time of conversion on the date of conversion, such Security shall cease to be outstanding and interest, including Additional Amounts, if any, shall cease to accrue on such Security.

Section 2.9 Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued 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.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.3, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and

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deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10 Cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the

indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation. All Securities surrendered for payment, purchase by the Company pursuant to Article 3, conversion, redemption or registration of transfer or exchange 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 Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 11. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with the Trustee's customary procedure.

Section 2.11 Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of the Security or the payment of any Redemption Price or Change of Control Purchase Price in respect thereof, and interest thereon, for the purpose of conversion 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.

Section 2.12 Global Securities. (a) Notwithstanding any other provisions of this Indenture or the Securities, (A) transfers of a Global Security, in whole or in part, shall be made only in accordance with Section 2.6 and Section 2.12(a)(i), (B) transfers or exchanges of a beneficial interest in a Global Security for an interest in the same or another Global Security shall comply with Section 2.6 and Section 2.12(a)(ii) below, (C) transfers of a beneficial interest in a Global Security for a Certificated Security shall comply with Section 2.6, Section 2.12(a)(ii) below and Section 2.12(e)(1) below, and (D) transfers of a Certificated Security shall comply with Section 2.6 and Sections 2.12(a)(iv) and (v) below.

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

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(ii) Transfer or Exchange of a Beneficial Interest in a Global Security for a Beneficial Interest in the Same or Another Global Security.

(x) A beneficial interest in a Global Security may not be transferred or exchanged for a beneficial interest in another Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a request to transfer or exchange of a beneficial interest in a Global Security in accordance with Applicable Procedures for a beneficial interest in another Global Security, together with:

(A) so long as the Securities are Restricted Securities, certification in the form set forth in Exhibit C;

(B) written instructions to the Trustee to make, or direct the Registrar to make, in the case of a transfer or exchange of a beneficial interest in a Global Security for a beneficial interest in another Global Security, an adjustment on its books and records with respect to such Global Securities to reflect a decrease and increase in the aggregate principal amount of the Securities represented by such Global Securities, such instructions to contain information regarding the Depository accounts to be credited with such decrease and increase; and

(C) if the Company or the Trustee so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the Legend,

then the Trustee, (1) shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depository and the Registrar, the aggregate principal amount of the Securities represented by the appropriate Global Security to be decreased by the aggregate principal amount that the other Global Security is increased and (2) in accordance with the standing instructions and procedures existing between the Depository and the Registrar and Applicable Procedures, shall debit and credit or cause to be debited or credited, as appropriate, to the accounts of the persons specified in such instructions a beneficial interest in the Global Security or Global Securities, as appropriate, equal to the amount of the beneficial interests so transferred or exchanged.

(y) Beneficial interests in a Global Security may be transferred to Persons who take delivery in the same Global Security in accordance with the Applicable Procedures and, if the Global Security is a Restricted Security, in accordance with the transfer restrictions set forth in the Legend. No written orders or instructions shall be required to be delivered to the Registrar or the Trustee to effect the transactions described in this Section 2.12(a)(ii)(y).

(z) Other than transfers to the Company or to an Affiliate of the Company, beneficial interests in a Global Security that is not a Restricted Security

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may not be transferred to Person who takes delivery thereof in the form a beneficial interest in a Global Security that is a Restricted Security.

(iii) Transfer or Exchange of a Beneficial Interest in a Global Security for a Certificated Security. A beneficial interest in a Global Security may not be exchanged for a Certificated Security except upon satisfaction of the requirements set forth below and in Section 2.12(e)(1) below. Upon receipt by the Trustee of a transfer of a beneficial interest in a Global Security in accordance with Applicable Procedures for a Certificated Security in the form satisfactory to the Trustee, together with:

(A) so long as the Securities are Restricted Securities, certification in the form set forth in Exhibit C;

(B) written instructions to the Trustee to make, or direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect a decrease in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such decrease; and

(C) if the Company or the Trustee so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the Legend,

then the Trustee shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depository and the Registrar, the aggregate principal amount of the Securities represented by the Global Security to be decreased by the aggregate principal amount of the Certificated Security to be issued, shall issue such Certificated Security and shall debit or cause to be debited to the account of the person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Certificated Security so issued.

(iv) Transfer and Exchange of Certificated Securities. When Certificated Securities are presented to the Registrar with a request:

(y) to register the transfer of such Certificated Securities; or

(z) to exchange such Certificated Securities for an equal principal amount of Certificated Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Securities surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing; and

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(2) so long as such Securities are Restricted Securities, such Securities are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Certificated Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(B) if such Certificated Securities are being transferred to the Company, a certification to that effect; or

(C) if such Certificated Securities are being transferred pursuant to an exemption from registration, (i) a certification to that effect (in the form set forth in Exhibit C, if applicable) and (ii) if the Company so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the Legend.

(v) Transfer of a Certificated Security for a Beneficial Interest in a Global Security. A Certificated Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below.

Upon receipt by the Trustee of a Certificated Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

(I) so long as the Securities are Restricted Securities, certification, in the form set forth in Exhibit C, that such Certificated Security is being transferred to a QIB in accordance with Rule 144A, or to an institutional accredited investor within the meaning of Rule 501(a)(1), (2), (3) or (7) of Regulation D of the Securities Act; and

(II) written instructions directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such increase, then the Trustee shall cancel such Certificated Security and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depository and the Registrar, the aggregate principal amount of Securities represented by the Global Security to be increased by the aggregate principal amount of the Certificated Security to be exchanged, and shall credit or cause to be credited to the account of the Person

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specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Certificated Security so cancelled. If no Global Securities are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Security in the appropriate principal amount.

(b) Subject to the succeeding Section (c), every Security shall be subject to the restrictions on transfer provided in the Legend including the delivery of an opinion of counsel, if so provided. Whenever any Restricted Security is presented or surrendered for transfer or for exchange, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit C, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such transfer or exchange any Security not so accompanied by a properly completed certificate.

(c) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an opinion of counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the restrictive Legend. The Company shall inform the Trustee of the effective date of any registration statement registering the Securities under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned opinion of counsel or registration statement.

(d) As used in the preceding two paragraphs of this Section 2.12, the term "transfer" encompasses any sale, pledge, transfer, loan, hypothecation, or other disposition of any interest in any Security.

(e) The provisions of clauses (1), (2), (3) and (4) below shall apply only to Global Securities:

(1) Notwithstanding any other provisions of this Indenture or the Securities, a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depository or one or more nominees thereof, provided that a Global Security may be exchanged for Securities registered in the names of any Person designated by the

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Depository in the event that (i) the Depository has notified the Company that it is unwilling or unable to continue as Depository for such Global Security or such Depository has ceased to be a "clearing agency" registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and a successor Depository is not appointed by the Company within 90 days or (ii) an Event of Default has occurred and is continuing with respect to the Securities. Any Global Security exchanged pursuant to clause (i) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (ii) above may be exchanged in whole or from time to time in part as directed by the Depository. Any Security issued in exchange for a Global Security or any portion thereof shall be a Global Security; provided that any such Security so issued that is registered in the name of a Person other than the Depository or a nominee thereof shall not be a Global Security.

- (2) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depository shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depository to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depository or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depository or an authorized representative thereof.
- (3) Subject to the provisions of clause (5) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (as defined below) and Persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Securities.
- (4) In the event of the occurrence of any of the events specified in clause (1) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.
- (5) Neither any members of, or participants in, the Depository (collectively, the "Agent Members") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depository or any nominee

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thereof, or under any such Global Security, and the Depository or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or such nominee, as the case may be, or impair, as between the Depository, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

(f) By its acceptance of any Security bearing the Legend, each Holder of such Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and agrees that it will transfer such Security only as provided in this Indenture.

Section 2.13 CUSIP Numbers. The Company may issue the Securities with one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other 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 of any change in the CUSIP numbers.

ARTICLE III

REDEMPTION AND PURCHASES

Section 3.1 Company's Right to Redeem; Notices to Trustee. Prior to June 20, 2005, the Securities will not be redeemable at the Company's option. Beginning on June 20, 2005, the Company, at its option, may redeem the Securities, subject to and in accordance with the terms and conditions of Section 5 of the Securities, for cash, as a whole or in part, at a redemption price equal to the principal amount of those Securities plus any accrued and unpaid interest, including Additional Amounts, if any, on those Securities to the Redemption Date. If the Company elects to redeem Securities pursuant to Section 5 of the Securities, it shall notify the Trustee in writing of the Redemption Date, the principal amount of Securities to be redeemed and the Redemption Price.

The Company shall give the notice to the Trustee of its intention to exercise its right to redeem the Securities as provided for in this Section 3.1 by a Company Order at least ten (10) Business Days prior to the day the Redemption Notice is to be mailed.

Section 3.2 Selection of Securities to Be Redeemed. If less than all the Securities are to be redeemed, unless the procedures of the Depository provide otherwise, the Trustee shall select the Securities to be redeemed by lot, on a pro rata basis or by another method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules

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of any stock exchange on which the Securities are then listed). The Trustee shall make the selection within five Business Days after it receives the notice provided for in Section 3.1 from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal amount of Securities that have denominations larger than \$1,000.

Securities and portions of Securities that the Trustee selects shall be in principal amounts of \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of the Securities to be redeemed.

Securities and portions of Securities that are to be redeemed are convertible by the Holder until the close of business on the second Business Day prior to the Redemption Date. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.3 Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail a notice of redemption by first-class mail, postage prepaid, to each Holder of Securities to be redeemed.

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

- (1) the Redemption Date;
- (2) the Redemption Price;
- (3) the Conversion Price;
- (4) the name and address of the Paying Agent and Conversion Agent;
- (5) that Securities called for redemption may be converted at any time before the close of business on the second Business Day prior to the Redemption Date;
- (6) that Holders who wish to convert their Securities must satisfy the requirements set forth in Section 8 of the Securities;
- (7) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;
- (8) if fewer than all of the outstanding Securities are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Securities to be redeemed;

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- (9) that, unless the Company defaults in making payment of such Redemption Price, interest, including Additional Amounts, if any, on Securities called for redemption will cease to accrue interest on and after the Redemption Date; and
- (10) the CUSIP number(s) of the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense, provided that the Company makes such request at least ten Business Days prior to the date by which such notice of redemption is to be given to Holders in accordance with this Section 3.3, unless the Trustee agrees to a shorter period.

Section 3.4 Effect of Notice of Redemption. Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice.

Section 3.5 Deposit of Redemption Price. Prior to 10:00 a.m. (New York City time), on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Securities pursuant to Article 11. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 3.6 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in principal amount to the unredeemed portion of the Security surrendered.

Section 3.7 Purchase of Securities at Option of the Holder upon Change of Control. (a) (1) If a Change of Control occurs (subject to certain exceptions set forth below), the Securities not previously purchased by the Company shall be purchased by the Company for cash, at the option of the Holder thereof, at a purchase price specified in Section 6 of the Securities (the "Change of Control Purchase Price"), as of the date that is no later than 30 days after the date of a notice of Change of Control delivered by the Company pursuant to Section 3.7(b) (the "Change of Control Purchase Date"), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.7(c).

A "Change of Control" will be deemed to have occurred at such time after the Securities are originally issued when any of the following events shall occur:

- (i) the acquisition by any Person, including any syndicate or group deemed to be a "person" under Section 13(d) (3) of the Exchange Act, of beneficial

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ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions, of shares of the Capital Stock of the Company entitling that Person to exercise 50% or more of the total voting power of all shares of the Capital Stock of the Company entitled to vote generally in elections of directors, other than any acquisition by the Company, any of its subsidiaries or any of its employee benefit plans (except that any of those Persons shall be deemed to have beneficial ownership of all securities it has the right to acquire, whether the right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); or

- (ii) the first day on which a majority of the members of the board of directors of the Company does not consist of Continuing Directors; or
- (iii) the Company consolidates or merges with or into any other Person, any merger of another Person into the Company, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of the Company's properties and assets to another Person, other than: (A) any transaction: (1) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Company's Capital Stock; and (2) pursuant to which the holders of 50% or more of the total voting power of the Company's Capital Stock entitled to vote generally in elections of directors immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of Capital Stock entitled to vote generally in elections of directors of the continuing or surviving Person immediately after giving effect to such issuance; and (B) any merger primarily for the purpose of changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock, if at all, solely into shares of common stock of the surviving entity.

A "Continuing Director" shall mean, as of any date of determination, any member of the Board of Directors who:

- (i) was a member of the Board of Directors of the Company on June 13, 2002; or
- (ii) was nominated for election or elected to the Board of Directors with the approval of a majority of the Continuing Directors who were members of the Board of Directors at the time of the new director's nomination or election.

- (2) Notwithstanding the provisions of Section 3.7(a)(1), the Company shall not be required to purchase the Securities of the Holders upon a Change of Control pursuant to this Section 3.7 (and a Change of Control shall be deemed not to have occurred) if:
- (i) the Sale Price per share of Common Stock for any five trading days within (1) the period of 10 consecutive trading days ending immediately after the later of the Change of Control or the public announcement of the Change of Control, in the case of a Change of Control under clause (i) or (ii) of the definition of “Change of Control” above, or (2) the period of 10

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consecutive trading days ending immediately before the Change of Control, in the case of a Change of Control under clause (iii) of the definition of “Change of Control” above, equals or exceeds 110% of the Conversion Price of the Securities in effect on each of those five trading days; or

- (ii) all of the consideration in the transaction or transactions (other than cash payments for fractional shares and cash payments made in respect of dissenters’ appraisal rights) constituting a Change of Control consists of shares of common stock traded or to be traded immediately following a Change of Control on a national securities exchange or the Nasdaq National Market, and, as a result of the transaction or transactions, the Securities become convertible solely into that common stock (and any rights attached thereto).

For the purposes of this Section 3.7, (x) whether a Person is a “beneficial owner” shall be determined in accordance with Rule 13d-3 under the Exchange Act and (y) the term “Person” includes any syndicate or group that would be deemed to be a “person” under Section 13(d)(3) of the Exchange Act.

(b) No later than 30 days after the occurrence of a Change of Control, the Company shall mail a written notice of the Change of Control by first class mail to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Change of Control Purchase Notice to be completed by the Holder and shall state:

- (1) briefly, the events causing a Change of Control and the date of such Change of Control;
- (2) the date by which the Change of Control Purchase Notice pursuant to this Section 3.7 must be delivered to the Paying Agent in order for a Holder to exercise the repurchase rights;
- (3) the Change of Control Purchase Date;
- (4) the Change of Control Purchase Price;
- (5) the name and address of the Paying Agent and the Conversion Agent;
- (6) the Conversion Price and any adjustments thereto;
- (7) that the Securities as to which a Change of Control Purchase Notice has been given may be converted if they are otherwise convertible pursuant to Article 11 hereof only if the Change of Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;
- (8) that the Securities must be surrendered to the Paying Agent to collect payment;

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- (9) that the Change of Control Purchase Price for any Security as to which a Change of Control Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Change of Control Purchase Date and the time of surrender of such Security as described in (8);
- (10) briefly, the procedures the Holder must follow to exercise rights under this Section 3.7;
- (11) briefly, the conversion rights of the Securities;
- (12) the procedures for withdrawing a Change of Control Purchase Notice;
- (13) that, unless the Company defaults in making payment of such Change of Control Purchase Price, interest, if any, on Securities surrendered for purchase by the Company will cease to accrue on and after the Change of Control Purchase Date; and
- (14) the CUSIP number(s) of the Securities.

Without otherwise limiting the Company’s obligations pursuant to this Section 3.7 in any way, the Company shall also issue a press release through Dow Jones & Company, Inc. or Bloomberg Business News containing the relevant information and otherwise make this information publicly available.

(c) A Holder may exercise its rights specified in Section 3.7(a) upon delivery of a written notice of purchase (a “Change of Control Purchase Notice”) to the Paying Agent at any time on or prior to the close of business on the second Business Day preceding the Change of Control Purchase Date (unless the Company shall specify a later date), specifying:

- (1) the certificate number of the Security which the Holder will deliver to be purchased or the appropriate depository procedures if Certificated Securities have not been issued;
- (2) the portion of the principal amount of the Security which the Holder will deliver to be purchased, which portion must be \$1,000 or an integral multiple of \$1,000; and
- (3) that such Security shall be purchased pursuant to the terms and conditions specified in Section 6 of the Securities and in this Indenture.

The delivery of such Security to the Paying Agent with the Change of Control Purchase 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 Change of Control Purchase Price therefor; provided, however, that such Change of Control Purchase Price shall be so paid pursuant to this Section 3.7 and Section 3.8 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Change of Control Purchase Notice.

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The Company shall purchase from the Holder thereof, pursuant to this Section 3.7 and Section 3.8, a portion of a Security if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.7 and Section 3.8 shall be consummated by the delivery of the consideration to be received by the Holder.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Change of Control Purchase Notice contemplated by this Section 3.7(c) shall have the right to withdraw such Change of Control Purchase Notice at any time prior to the close of business on the last Business Day immediately preceding the Change of Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.8.

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

Section 3.8 Effect of Change of Control Purchase Notice: Withdrawal. Upon receipt by the Paying Agent of the Change of Control Purchase Notice specified in Section 3.7(c), the Holder of the Security in respect of which such Change of Control Purchase Notice was given shall (unless such Change of Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Change of Control Purchase Price with respect to such Security. Such Change of Control Purchase Price shall be paid to such Holder, subject to the receipt of funds by the Paying Agent, promptly following the later of (x) the Change of Control Purchase Date with respect to such Security (provided the conditions in Section 3.7(c) have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.7(c). Securities in respect of which a Change of Control Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article 11 hereof on or after the date of the delivery of such Change of Control Purchase Notice unless such Change of Control Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Change of Control Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Change of Control Purchase Notice, at any time prior to the close of business on the Business Day immediately preceding the Change of Control Purchase Date, specifying:

- (1) the certificate number, if any, of the Security in respect of which such notice of withdrawal is being submitted,
- (2) the principal amount of the Security with respect to which such notice of withdrawal is being submitted, and
- (3) the principal amount, if any, of such Security which remains subject to the original Change of Control Purchase Notice, and which has been or will be delivered for purchase by the Company.

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There shall be no purchase of any Securities pursuant to Section 3.7 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Change of Control Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Change of Control Purchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Change of Control Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Change of Control Purchase Price with respect to such Securities) in which case, upon such return, the Change of Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.9 Deposit of Change of Control Purchase Price. Prior to 10:00 a.m. (New York City time) on the Business Day following the Change of Control Purchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.4) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Change of Control Purchase Price of all the Securities or portions thereof which are to be purchased as of the Change of Control Purchase Date.

Section 3.10 Securities Purchased in Part. Any Certificated Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney 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 any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered which is not purchased.

Section 3.11 Covenant to Comply With Securities Laws Upon Purchase of Securities. When complying with the provisions of Section 3.7 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions available under applicable law, the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Section 3.7 to be exercised in the time and in the manner specified in Section 3.7.

Section 3.12 Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed as provided in Section 12 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 8.1(f)), held by them for the payment of the Change of Control Purchase Price; provided, however, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.9 exceeds the aggregate Change of Control Purchase Price of the Securities or

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portions thereof which the Company is obligated to purchase as of the Change of Control Purchase Date, then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Change of Control Purchase Date, the Trustee shall return any such excess to the Company together with interest thereon (subject to the provisions of Section 8.1(f)).

ARTICLE IV

COVENANTS

Section 4.1 Payment of Securities. The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities or pursuant to this Indenture. Any amounts of cash to be given to the Trustee or Paying Agent, shall be deposited with the Trustee or Paying Agent by 10:00 a.m., New York City time, by the Company. Principal amount plus accrued interest, if any, including Additional Amounts, if any, the Redemption Price, the Change of Control Purchase Price and cash interest, if any, shall be considered paid on the applicable date due if on such date the Trustee or the Paying Agent holds, in accordance with

this Indenture, cash sufficient to pay all such amounts then due.

Section 4.2 SEC and Other Reports. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the Trustee with reports containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In such event, such reports shall be provided at the times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. The Company also shall comply with the other provisions of TIA Section 314(a). 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 rely conclusively on Officers' Certificates).

Section 4.3 Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2002) an Officers' Certificate, stating whether or not to the knowledge of the signers thereof, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

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Section 4.4 Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.5 Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The office of The Bank of New York, 101 Barclay Street, Floor 21W, New York, New York 10286 (Attention: Corporate Trust Trustee Administration), shall initially be such office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of 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 address of the Trustee set forth in Section 12.2.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes.

Section 4.6 Delivery of Certain Information. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act. Whether a Person is a beneficial owner shall be determined by the Company to the Company's reasonable satisfaction.

ARTICLE V

SUBORDINATION

Section 5.1 Agreement of Subordination. The Company covenants and agrees, and each Holder of Securities issued hereunder by its acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 5; and each Person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

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The payment of the principal of and interest (including Additional Amounts, if any) on all Securities (including, but not limited to, the Redemption Price or the Change in Control Purchase Price) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full in cash or other payment satisfactory to the holders of Senior Debt of all Senior Debt, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 5 shall prevent the occurrence of any Default or Event of Default hereunder.

Section 5.2 Payments To Holders. No payment shall be made with respect to the principal of or interest (including Additional Amounts, if any) on the Securities (including, but not limited to, the Redemption Price or the Change in Control Purchase Price), except payments and distributions made by the Trustee as permitted by the first or second paragraph of Section 5.5, if:

- (i) a default by the Company in the payment of principal of, or premium, if any, or interest on, rent or other payment obligations due on any Senior Debt occurs and is continuing (or, in the case of Senior Debt for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Senior Debt); or
- (ii) a default, other than a payment default as described in clause (i) above, on any Designated Senior Debt occurs and is continuing that permits the holders of such Designated Senior Debt to accelerate its maturity (or, in the case of a lease constituting Designated Senior Debt, that permits the landlord under such lease either to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder) and the Company or the Trustee receives a notice that such default has occurred and is continuing (a "Payment Blockage Notice") from a Representative or holder of Designated Senior Debt or the Company.

Subject to the provisions of Section 5.5, if the Company or the Trustee receives any Payment Blockage Notice from any holder of Designated Senior Debt or any Representative thereof pursuant to clause (ii) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section unless and until at least 365 days shall have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee (unless such default was waived, cured or otherwise ceased to exist and thereafter subsequently reoccurred) shall be, or be made, the basis for a subsequent Payment Blockage Notice.

The Company may and shall resume payments on and distributions in respect of the Securities upon the earlier of:

(a) in the case of a default referred to in clause (i) above, the date upon which all such payments due in respect of such Senior Debt have been paid in full in cash or other payment satisfactory to the holders of such Senior Debt, or

(b) in the case of a default referred to in clause (ii) above, the earlier of (A) the date on which such default is cured or waived, (B) such Designated Senior Debt has been paid in full in cash or other payment satisfactory to the holders of such Designated Senior Debt or (C) 179 days after the date on which the applicable Payment Blockage Notice is received, if the maturity of such Designated Senior Debt has not been accelerated, unless this Article 5 otherwise prohibits the payment or distribution at the time of such payment or distribution; provided, that if such Designated Senior Debt has been accelerated (or, in the case of a lease constituting Designated Senior Debt, if as a result of such default the landlord under such lease has given the Company notice of its intention to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder), the Company shall make no payments on or distributions in respect of the Securities and the Trustee shall not receive or retain any such payments or distributions until such Designation Senior Debt has been paid in full in cash or other payment satisfactory to the holders of that Designated Senior Debt or such acceleration (or terminated, in the case of a lease constituting Designated Senior Debt) has been cured or waived.

Upon any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company (whether voluntary or involuntary) or in bankruptcy, insolvency, receivership, assignment for the benefit of creditors or similar proceedings, all amounts due or to become due upon all Senior Debt shall first be paid in full in cash, or other payments satisfactory to the holders of Senior Debt, before any payment is made on account of the principal of or interest (including Additional Amounts, if any) on the Securities (except payments made pursuant to Section 9.1 from monies deposited with the Trustee pursuant thereto prior to commencement of proceedings for such dissolution, winding-up, liquidation or reorganization); and upon any such dissolution or winding-up or liquidation or reorganization of the Company or bankruptcy, insolvency, receivership or other proceeding, any payment by the Company, 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 provision of this Article 5, shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders, or as otherwise required by law or a court order) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Debt in full in cash, or other payment satisfactory to the holders of Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution is made to the Holders of the Securities or to the Trustee.

For purposes of this Article 5, the words, "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article 5 with respect to the Securities to the payment of all Senior Debt which may at the time be outstanding; provided that (i) the Senior Debt is assumed by the new corporation, if any,

resulting from any reorganization or readjustment, and (ii) the rights of the holders of Senior Debt (other than leases which are not assumed by the Company or the new corporation, as the case may be) are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance, transfer or lease of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article 6 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 5.2 if such other corporation shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions stated in Article 6.

In the event of the acceleration of the Securities because of an Event of Default, no payment or distribution shall be made to the Trustee or any Holder of Securities in respect of the principal of or interest (including Additional Amounts, if any) on the Securities by the Company (including, but not limited to, the Redemption Price or the Change in Control Purchase Price), except payments and distributions made by the Trustee as permitted by Section 5.5, until all Senior Debt has been paid in full in cash or other payment satisfactory to the holders of Senior Debt or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Debt of such acceleration.

In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Debt is paid in full, in cash or other payment satisfactory to the holders of Senior Debt, or provision is made for such payment thereof in accordance with its terms in cash or other payment satisfactory to the holders of Senior Debt, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Debt or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Debt may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay all Senior Debt in full, in cash or other payment satisfactory to the holders of Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

Nothing in this Section 5.2 shall apply to claims of, or payments to, the Trustee under or pursuant to Article 8. This Section 5.2 shall be subject to the further provisions of Section 5.5.

Section 5.3 Subrogation Of Securities

Subject to the payment in full, in cash or other payment satisfactory to the holders of Senior Debt, of all Senior Debt, the rights of the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article 5 (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to

substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of and interest (including Additional Amounts, if any) on the Securities shall be paid in full in cash or other payment satisfactory to the holders of Senior Debt; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article 5, and no payment or pursuant to the provisions of this Article 5, to or for the benefit of the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Debt; and no payments or distributions of cash, property or securities to or for the benefit of the Holders of the Securities pursuant to the subrogation provisions of this Article 5, which would otherwise have been paid to the holders of Senior Debt shall be deemed to be a payment by the Company to or for the account of the Securities. It is understood that the provisions of this Article 5 are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Debt, on the other hand.

Nothing contained in this Article 5 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of and interest (including Additional Amounts, if any) on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Debt, nor shall anything herein or therein 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 5 of the holders of Senior Debt 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 5, the Trustee, subject to the provisions of Article 8, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Article 5.

Section 5.4 Authorization To Effect Subordination. Each Holder of a Security by the Holder's acceptance thereof authorizes and directs the Trustee on the Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 5 and appoints the Trustee to act as the Holder's attorney-in-fact for any and all such purposes. If the Trustee does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 5.3 hereof at least 30 days before the expiration

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of the time to file such claim, the holders of any Senior Debt or their representatives are hereby authorized to file an appropriate claim for and on behalf of the Holders of the Securities.

Section 5.5 Notice To Trustee. The Company shall give prompt written notice in the form of an Officers' Certificate to a Responsible Officer of the Trustee and to any Paying Agent of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee or any Paying Agent in respect of the Securities pursuant to the provisions of this Article 5. Notwithstanding the provisions of this Article 5 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 5, unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a Representative or a holder or holders of Senior Debt or from any trustee, agent or other representative thereof; and before the receipt of any such written notice, the Trustee, subject to the provisions of Article 8, shall be entitled in all respects to assume that no such facts exist; provided that if on a date not less than one Business Day prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of, or premium, if any, or interest on any Security) the Trustee shall not have received, with respect to such monies, the notice provided for in this Section 5.5, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies 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 on or after such prior date. Notwithstanding anything in this Article 5 to the contrary, nothing shall prevent any payment by the Trustee to the Holders of monies deposited with it pursuant to Section 9.1 during the pendency of a Payment Blockage Notice, and any such payment shall not be subject to the provisions of Article 5.

The Trustee, subject to the provisions of Article 8, shall be entitled to rely on the delivery to it of a written notice by a Representative or a Person representing himself to be a holder of Senior Debt (or a trustee, agent or other representative on behalf of such holder) to establish that such notice has been given by a Representative or a holder of Senior Debt or a trustee, agent or other representative on behalf of any such holder or holders. 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 Debt to participate in any payment or distribution pursuant to this Article 5, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt 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 5, 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 5.6 Trustee's Relation To Senior Debt. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 5 in respect of any Senior Debt at any time held by it, to the same extent as any other holder of Senior Debt, and nothing in Article 8 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

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With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 5, and no implied covenants or obligations with respect to the holders of Senior Debt 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 Debt and, subject to the provisions of Article 8, the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of Senior Debt shall be entitled by virtue of this Article 5 or otherwise provided that such pay over or delivery occurs prior to first Business Day after the Trustee's receipt of written notice of any fact that would prohibit the making of such payment of monies or delivery of assets to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 5.

Section 5.7 No Impairment Of Subordination. (a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

(b) Without limiting the generality of Section 5.7(a), the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article 5 or the obligations hereunder of the Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (1) change the manner, place or terms of payment or the amount of interest, fees or other amounts payable, in respect of Senior Debt; (2) extend the time of payment of, or renew, increase or otherwise alter, Senior Debt, or amend, waive, or otherwise modify any terms of any instrument or agreement of any kind evidencing, guaranteeing, securing or otherwise affecting or relating to Senior Debt; (3) exchange, release, sell, fail to perfect any security interest or other Lien on or otherwise deal with, any property pledged, mortgaged or otherwise subject to a security interest or other Lien securing Senior Debt; (4) release any guarantor or any other Person liable in any manner for the payment or collection of Senior Debt; (5) exercise or fail to exercise any right, power, privilege, or remedy in respect of Senior Debt or under any instrument or agreement evidencing, guaranteeing, securing or otherwise affecting or relating to Senior Debt; (6) give or fail to give any notice, or take or fail to take any other action, required by law, by agreement or otherwise to preserve the rights of any holder of Senior Debt or with respect to any property pledged, mortgaged or otherwise subject to a security interest or Lien securing Senior Debt; (7) perform or fail to perform any obligation of the holder of Senior Debt under any instrument or agreement evidencing, guaranteeing, securing or otherwise affecting or relating to Senior Debt; or (8) take or fail to take any action that might otherwise constitute a defense available to, or a discharge of, the Company or any guarantor or other Person liable in respect of Senior Debt or the Trustee in respect of this Indenture; provided, however, that in no event shall any such actions limit the right of the Holders of the Securities to take any action to accelerate the maturity of the Securities pursuant to Article 7 hereof or to pursue any rights or remedies hereunder or under applicable laws if the taking of such action does not otherwise violate the terms of this Indenture.

Section 5.8 Certain Conversions Deemed Payment. For the purposes of this Article 5 only, (1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 11 shall not be deemed to constitute a payment or distribution on account of the principal of or interest on Securities or on account of the purchase or other acquisition of Securities, and (2) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 11.2), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of such Security. For the purposes of this Section 5.8, the term “junior securities” means (a) shares of any stock of any class of the Company, or (b) securities of the Company which are subordinated in right of payment to all Senior Debt which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. Nothing contained in this Article 5 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Debt and the Holders, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 11.

Section 5.9 Article Applicable To Paying Agents. If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “Trustee” as used in this Article shall (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that the first paragraph of Section 5.5 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

Section 5.10 Senior Debt Entitled To Rely. The holders of Senior Debt (including, without limitation, Designated Senior Debt) shall have the right to rely upon this Article 5, and no amendment or modification of the provisions contained herein (or in the definition of any defined term used in any of the provisions of this Article 5) shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

ARTICLE VI

SUCCESSOR CORPORATION

Section 6.1 When Company May Merge or Transfer Assets. The Company shall not consolidate with or merge with or into any other Person or convey, transfer, sell, lease or otherwise dispose of all or substantially all of its properties and assets to any Person, unless:

(a) either (1) the Company shall be the continuing corporation or (2) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer or lease all or substantially all of the properties and assets of the Company substantially as an entirety (i) shall be organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and (ii) shall expressly assume, by an indenture supplemental hereto, executed and

delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

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

(c) the Company shall have 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 6 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary), which, if such assets were owned by the Company, would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The successor Person formed by such consolidation or into which the Company is merged or the successor Person 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 had been named as the Company herein; and thereafter, except in the case of a lease and obligations the Company may have under a supplemental indenture, the Company shall be discharged from all obligations and covenants under this Indenture and the Securities. Subject to Section 10.6, the Company, the Trustee and the successor Person shall enter into a supplemental indenture to evidence the succession and substitution of such successor Person and such discharge and release of the Company.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1 Events of Default. Subject to Section 9.1, so long as any Securities are outstanding, each of the following shall be an “Event of Default”:

(1) the Company defaults in the payment of the principal amount on any Security when the same becomes due and payable at its Stated Maturity, whether or not prohibited by the provisions of Article 5;

(2) the Company defaults in its obligation to repurchase any Security, or any portion thereof, upon the exercise by the Holder of such Holder’s right to require the Company to purchase such Securities pursuant to and in accordance with Section 3.7 hereof, whether or not prohibited by the provisions of Article 5;

(3) the Company defaults in its obligation to redeem any Security, or any portion thereof, called for redemption by the Company pursuant to and in accordance with Section 3.1 hereof, whether or not prohibited by the provisions of Article 5;

(4) the Company defaults in the payment of any accrued and unpaid interest, including Additional Amounts, if any, on any Security, in each case when due and payable, and continuance of such default for a period of 30 days, whether or not prohibited by the provisions of Article 5;

(5) the Company fails to comply with any of its agreements or covenants in the Securities or this Indenture (other than those referred to in clause (1) through (4) above) and such failure continues for 60 days after receipt by the Company of a Notice of Default;

(6) a default under any indebtedness for money borrowed by the Company or any Significant Subsidiary in an aggregate outstanding principal amount of \$15.0 million or more, for a period of 30 days after written notice of default is given to the Company by the Trustee or to the Company and the Trustee by Holders of not less than 25% in aggregate principal amount of the Securities then outstanding, which default (A) is caused by the failure to pay principal or interest when due on such indebtedness by

the end of the applicable grace period, if any, unless such indebtedness is discharged or (B) results in the acceleration of such indebtedness, unless such acceleration is waived, cured, rescinded or annulled or unless such indebtedness is discharged;

(7) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any of its Subsidiaries that is a Significant Subsidiary, in an involuntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company or any of its Subsidiaries that is a Significant Subsidiary, as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any of its Subsidiaries that is a Significant Subsidiary, under any applicable law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(8) the commencement by the Company or any of its Subsidiaries that is a Significant Subsidiary, of a voluntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company or any of its Subsidiaries that is a Significant Subsidiary, to the entry of a decree or order for relief in respect of the Company or any of its Subsidiaries that is a Significant Subsidiary, in an involuntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the filing by the Company or any of its Subsidiaries that is a Significant Subsidiary, of a petition or answer or consent seeking reorganization or relief under any applicable law, or the consent by the Company to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by the Company or any of its Subsidiaries that is a Significant Subsidiary, of an assignment for the benefit of creditors, or the admission by the Company or any of its Subsidiaries that is a Significant Subsidiary, in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by

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the Company or any of its Subsidiaries that is a Significant Subsidiary, expressly in furtherance of any such action.

A Default under clause (5) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in clause (5) above after actual receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default."

The Trustee shall, within 90 days of the occurrence of a Default or Event of Default, give to the Holders of the Securities notice of all uncured Defaults or Events of Default known to it, its status and what action the Company is taking or proposes to take with respect thereto; *provided, however*, the Trustee shall be protected in withholding such notice if it, in good faith, determines that the withholding of such notice is in the best interest of such Holders, except in the case of a Default or Event of Default under clauses (1), (2), (3) or (4) above.

Section 7.2 Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.1(7) or (8) with respect to the Company) occurs and is continuing (the Event of Default not having been cured or waived as provided in Article 10 hereto), the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding by notice to the Company and the Trustee, may declare the principal amount plus accrued and unpaid interest, including Additional Amounts, if any, on all the Securities to be immediately due and payable. Upon such a declaration, such accelerated amount shall be due and payable immediately. If an Event of Default specified in Section 6.1(7) or (8) occurs (with respect to the Company) and is continuing, the principal amount plus accrued and unpaid interest, including Additional Amounts, if any, on all the Securities shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder) may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the principal amount plus accrued and unpaid interest, including Additional Amounts, if any, that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 8.7 have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 7.3 Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the principal amount plus accrued and unpaid interest, including Additional Amounts, if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or

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acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 7.4 Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder), may waive an existing Default and its consequences except (i) an Event of Default described in Section 6.1(1), 6.1(2), 6.1(3) or 6.1(4), (ii) a Default in respect of a provision that under Section 10.2 cannot be amended without the consent of each Securityholder affected or (iii) a Default which constitutes a failure to convert any Security in accordance with the terms of Article 11. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. This Section 7.4 shall be in lieu of Section 316(a)(1)(B) of the TIA and such Section 316(a)(1)(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 7.5 Control by Majority. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 7.5 shall be in lieu of Section 316(a)(1)(A) of the TIA and such Section 316(a)(1)(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 7.6 Limitation on Suits. A Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (2) the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and

- (5) the Holders of a majority in aggregate principal amount of the Securities at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

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

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Section 7.7 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the principal amount, Redemption Price, Change of Control Purchase Price or interest, including Additional Amounts, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date, and to convert the Securities in accordance with Article 11, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 7.8 Collection Suit by Trustee. If an Event of Default described in Section 6.1(1), (2), (3) or (4) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount owing with respect to the Securities and the amounts provided for in Section 8.7.

Section 7.9 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal amount, Redemption Price, Change of Control Purchase Price or interest, including Additional Amounts, if any, in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal amount, Redemption Price, Change of Control Purchase Price, or interest, including Additional Amounts, if any, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 8.7) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or 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 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 8.7.

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

Section 7.10 Priorities. If the Trustee collects any money pursuant to this Article 7, it shall pay out the money in the following order:

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FIRST: to the Trustee for amounts due under Section 8.7;

SECOND: to Securityholders for amounts due and unpaid on the Securities for the principal amount, Redemption Price, Purchase Price, Change of Control Purchase Price or interest, including Additional Amounts, if any, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities; and

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

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 7.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 7.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 7.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 8.7 or a suit by Holders of more than 10% in aggregate principal amount of the Securities at the time outstanding. This Section 7.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 7.12 Waiver of Stay, Extension or Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount, Redemption Price or Change of Control Purchase Price in respect of Securities, or any interest, including Additional Amounts, if any, on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VIII

TRUSTEE

Section 8.1 Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

- (1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others; and
- (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein. This Section 8.1(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.
- (c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:
 - (1) this Section (c) does not limit the effect of Section (b) of this Section 8.1;
 - (2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and
 - (3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 7.5.

Subparagraphs (c)(1), (2) and (3) shall be in lieu of Sections 315(d)(1), 315(d)(2) and 315(d)(3) of the TIA and such Sections 315(d)(1), 315(d)(2) and 315(d)(3) are hereby expressly excluded from this Indenture, as permitted by the TIA.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c), (e) and (f) of this Section 8.1.

(e) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

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

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Section 8.2 Rights of Trustee. Subject to its duties and responsibilities under the TIA,

(a) 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, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) 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 (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate;

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

(d) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it believes to be authorized or within its rights or powers conferred under this Indenture;

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

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

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

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

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

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

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

Section 8.3 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 8.10 and 8.11.

Section 8.4 Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use or application of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act or in any offering document for the Securities, the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

Section 8.5 Notice of Defaults. If a Default occurs and if it is known to the Trustee, the Trustee shall give to each Securityholder notice of the Default within 90 days after it occurs or, if later, within 15 days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice. Notwithstanding the preceding sentence, except in the case of a Default described in Section 6.1(1), (2) (3) or (4), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interest of the Securityholders. The preceding sentence shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA. The Trustee shall not be deemed to have knowledge of a Default unless a Responsible Officer of the Trustee has received written notice of such Default, which notice specifically references this Indenture and the Securities.

Section 8.6 Reports by Trustee to Holders. Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each

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Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by such Section 313(a). The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each securities exchange, if any, on which the Securities are listed. The Company agrees to notify the Trustee promptly whenever the Securities become listed on any securities exchange and of any delisting thereof.

Section 8.7 Compensation and Indemnity. The Company agrees:

(a) to pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (which compensation shall not be limited (to the extent permitted by law) by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify the Trustee or any predecessor Trustee and their agents for, and to hold them harmless against, any loss, damage, claim, liability, cost or expense (including attorney's fees and expenses, and taxes (other than taxes based upon, measured by or determined by the income of the Trustee and any and all franchise taxes of the Trustee)) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

To secure the Company's payment obligations in this Section 8.7, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay the principal amount, Redemption Price, Change of Control Purchase Price or interest, including Additional Amounts, if any, as the case may be, on particular Securities.

The Company's payment obligations pursuant to this Section 8.7 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in Section 7.1(6) or (7), the expenses including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under any bankruptcy law.

Section 8.8 Replacement of Trustee. The Trustee may resign by so notifying the Company; provided, however, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 8.8. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

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- (1) the Trustee fails to comply with Section 8.10;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company satisfactory in form and substance to the retiring Trustee and the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 8.7.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount of the Securities at the time outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 8.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 8.9 Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

Section 8.10 Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(b). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. Nothing herein contained shall prevent the Trustee from filing with the Commission the application referred to in the penultimate paragraph of TIA Section 310(b).

Section 8.11 Preferential Collection of Claims Against Company. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

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ARTICLE IX
DISCHARGE OF INDENTURE

Section 9.1 Discharge of Liability on Securities. If (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced or repaid pursuant to Section 2.7) for cancellation, (ii) all outstanding Securities shall become due and payable within one year or (iii) all outstanding Securities are scheduled for redemption within one year, and, in each case, the Company deposits with the Trustee cash sufficient to pay all amounts due and owing on all outstanding Securities (other than Securities replaced pursuant to Section 2.7), and if in each case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 8.7, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company.

Section 9.2 Repayment to the Company. The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person and the Trustee and the Paying Agent shall have no further liability to the Securityholders with respect to such money or securities for that period commencing after the return thereof.

ARTICLE X
AMENDMENTS

Section 10.1 Without Consent of Holders. The Company and the Trustee may amend, modify or supplement this Indenture or the Securities without the consent of any Securityholder to:

- (a) add to the covenants of the Company for the benefit of the Holders of Securities;
- (b) surrender any right or power herein conferred upon the Company;
- (c) provide for conversion rights of Holders of Securities if any reclassification or change of the Common Stock or any consolidation, merger or sale of all or substantially all of the Company's assets occurs;
- (d) provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article 6 hereof;

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(e) reduce the Conversion Price; *provided, however*, that such reduction in the Conversion Price shall not adversely affect the interests of the Holders of Securities (after taking into account tax and other consequences of such reduction);

(f) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(g) cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or which is otherwise defective; *provided, however*, that such action pursuant to this clause (g) does not, in the good faith opinion of the Board of Directors of the Company (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Securities in any material respect; and

(h) add or modify any other provisions herein with respect to matters or questions arising hereunder which the Company and the Trustee may deem necessary or desirable and that will not, in the good faith opinion of the Board of Directors of the Company (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Securities.

Section 10.2 With Consent of Holders. Except as provided below in this Section 10.2, this Indenture or the Securities may be amended, modified or supplemented, and noncompliance in any particular instance with any provision of this Indenture or the Securities may be waived, in each case with the written consent of the Holders of at least a majority of the principal amount of the Securities at the time outstanding.

Without the written consent or the affirmative vote of each Holder of Securities affected thereby, an amendment or waiver under this Section 10.2 may not:

- (a) change the maturity of the principal amount of, or the date any installment of interest, including Additional Amounts, is due on, any Security;
- (b) reduce the principal amount of, or interest, including Additional Amounts payable on, or the Redemption Price or Change of Control Purchase Price of, any Security;
- (c) change the currency of any amount owed or owing under the Security or any interest thereon from U.S. Dollars;
- (d) impair the right of any Holder to institute suit for the enforcement of any payment or with respect to, or conversion of, any Security;
- (e) modify the obligation of the Company to maintain an office or agency in The City of New York pursuant to Section 4.5;
- (f) except as otherwise permitted or contemplated by the provisions of this Indenture, adversely affect the repurchase right of the Holders of the Securities as provided in Article 3 or the right of the Holders of the Securities to convert any Security as provided in Article 11;

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(g) modify the provisions of Article 3 in a manner adverse to the Holders of the Securities;

(h) modify the provisions of Article 5 in a manner adverse to the Holders of the Securities;

(i) modify any of the provisions of this Section 10.2, or reduce the principal amount of outstanding Securities required to waive a default, except 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; or

(j) reduce the percentage of the principal amount of the outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver provided for in this Indenture.

It shall not be necessary for the consent of the Holders under this Section 10.2 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 10.2 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

Nothing in this Section 10.2 shall impair the ability of the Company and the Trustee to amend this Indenture or the Securities without the consent of any Securityholder to provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article 6 hereof.

Section 10.3. Compliance with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall comply with the TIA.

Section 10.4. Revocation and Effect of Consents, Waivers and Actions. Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Securityholder.

Section 10.5. Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

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Section 10.6. Trustee to Sign Supplemental Indentures. The Trustee shall sign any supplemental indenture authorized pursuant to this Article 10 if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall receive, and (subject to the provisions of Section 8.1) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 10.7. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE XI

CONVERSIONS

Section 11.1. Conversion Privilege. (a) Subject to and upon compliance with the provisions of this Article 11, a Holder of a Security shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is \$1,000 or an integral multiple of \$1,000) of such Security into shares of Common Stock at the Conversion Price in effect on the date of conversion, at any time prior to the close of business on the Business Day prior to the Stated Maturity of the Securities.

Section 11.2. Conversion Procedure; Conversion Price; Fractional Shares. (a) Each Security shall be convertible at the office of the Conversion Agent into fully paid and nonassessable shares (calculated to the nearest 1/100th of a share) of Common Stock. The Security will be converted into shares of Common Stock at the Conversion Price therefor. No payment or adjustment shall be made in respect of dividends on the Common Stock or accrued interest on a converted Security, except as described in Section 11.9 hereof. The Company shall not issue any fraction of a share of Common Stock in connection with any conversion of Securities, but instead shall, subject to Section 11.3(h) hereof, make a cash payment (calculated to the nearest cent) equal to such fraction multiplied by the Sale Price of the Common Stock on the last Trading Day prior to the date of conversion. Notwithstanding the foregoing, a Security in respect of which a Holder has delivered a Change of Control Purchase Notice exercising such Holder's option to require the Company to repurchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the Section 3.8 hereof.

(b) Before any Holder of a Security shall be entitled to convert the same into Common Stock, such Holder shall, in the case of Global Securities, comply with the procedures of the Depository in effect at that time, and in the case of Certificated Securities, surrender such Securities, duly endorsed to the Company or in blank, at the office of the Conversion Agent, and shall give written notice to the Company at said office or place that such Holder elects to convert the same and shall state in writing therein the principal amount of Securities to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for Common Stock to be issued.

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Before any such conversion, a Holder also shall pay all funds required, if any, relating to interest on the Securities, as provided in Section 11.9, and all taxes or duties, if any, as provided in Section 11.8.

If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares of Common Stock which shall be deliverable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted thereby) so surrendered. Subject to the next succeeding sentence, the Company will, as soon as practicable thereafter, issue and deliver at said office or place to such Holder of a Security, or to such Holder's nominee or nominees, certificates for the number of full shares of Common Stock to which such Holder shall be entitled as aforesaid, together with cash in lieu of any fraction of a share to which such Holder would otherwise be entitled. The Company shall not be required to deliver certificates for shares of Common Stock while the stock transfer books for such stock or the security register are duly closed for any purpose, but certificates for shares of Common Stock shall be issued and delivered as soon as practicable after the opening of such books or security register.

(c) A Security shall be deemed to have been converted as of the close of business on the date of the surrender of such Securities for conversion as provided

above, and the Person or Persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record Holder or Holders of such Common Stock as of the close of business on such date.

(d) In case any Security shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Security so surrendered, without charge to such Holder (subject to the provisions of Section 11.8 hereof), a new Security or Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Securities.

Section 11.3. Adjustment of Conversion Price. The Conversion Price shall be adjusted from time to time as follows:

(a) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, pay a dividend or make a distribution in shares of Common Stock to all holders of its outstanding shares of Common Stock, then the Conversion Price in effect at the opening of business on the date following the record date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction:

- (1) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date fixed for such determination; and
- (2) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Such reduction shall become effective immediately after the opening of business on the day following the Record Date fixed for such determination. If any dividend or distribution of the type described in this Section 11.3(a) is declared but not so paid or made, the

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

(b) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case the Company shall, at any time or from time to time while any of the Securities are outstanding, combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased.

Such reduction or increase, as the case may be, shall become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, issue rights or warrants (other than any rights or warrants referred to in Section 11.3(d)) to all holders of its shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock (or securities convertible into shares of Common Stock) at a price per share (or having a conversion price per share) less than the Sale Price on the Business Day immediately preceding the date of the announcement of such issuance (treating the conversion price per share of the securities convertible into Common Stock as equal to (x) the sum of (i) the price for a unit of the security convertible into Common Stock and (ii) any additional consideration initially payable upon the conversion of such security into Common Stock divided by (y) the number of shares of Common Stock initially underlying such convertible security), then the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such date of announcement by a fraction:

- (1) the numerator of which shall be the number of shares of Common Stock outstanding on the close of business on the date of announcement, plus the number of shares or securities which the aggregate offering price of the total number of shares or securities so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered) would purchase at such Sale Price of the Common Stock; and
- (2) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of announcement, plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible).

Such adjustment shall become effective immediately after the opening of business on the day following the date of announcement of such issuance. To the extent that shares of Common Stock (or securities convertible into shares of Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants,

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the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into shares of Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if the date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Sale Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Directors.

(d) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, by dividend or otherwise, distribute to all holders of its shares of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation and the Common Stock is not changed or exchanged), cash, shares of its capital stock (other than any dividends or distributions to which Section 11.3(a) applies), evidences of its Indebtedness or other assets, including securities, but excluding (i) any rights or warrants referred to in Section 11.3(c), (ii) dividends or distributions of stock, securities or other property or assets (including cash) in connection with a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 11.4 applies and (iii) dividends and distributions paid exclusively in cash (such capital stock, evidence of its indebtedness, cash, other assets or securities being distributed hereinafter in this Section 11.3(d) called the "distributed assets"), then, in each such case, subject to the third and fourth succeeding paragraphs and the last Section of this Section 11.3(d), the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction:

- (1) the numerator of which shall be the Current Market Price of the Common Stock, less the Fair Market Value on such date of the portion of the distributed assets so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date)(determined as provided in Section 11.3(g)) on such date; and
- (2) the denominator of which shall be such Current Market Price.

Such reduction shall become effective immediately prior to the opening of business on the day following the Record Date for such distribution. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 11.3(d) by reference to the actual or when issued trading market for any distributed assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 11.3(g) to the extent possible, unless the Board of

Directors determines in good faith that determining the Fair Market Value during the Reference Period would not be in the best interest of the Holders.

In the event any such distribution consists of shares of capital stock of, or similar equity interests in, one or more of the Company's Subsidiaries (a "Spin-Off"), the Fair Market Value of the securities to be distributed shall equal the average of the closing sale prices of such securities on the principal securities market on which such securities are traded for the five consecutive Trading Days commencing on and including the sixth day of trading of those securities after the effectiveness of the Spin-Off, and the Current Market Price shall be measured for the same period. In the event, however, that an underwritten initial public offering of the securities in the Spin-Off occurs simultaneously with the Spin-Off, Fair Market Value of the securities distributed in the Spin-Off shall mean the initial public offering price of such securities and the Current Market Price shall mean the Sale Price for the Common Stock on the same Trading Day.

Rights or warrants distributed by the Company to all holders of its shares of Common Stock entitling them to subscribe for or purchase shares of the Company's capital 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 shares of Common Stock shall be deemed not to have been distributed for purposes of this Section 11.3(d) (and no adjustment to the Conversion Price under this Section 11.3(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different distributed assets, evidences of indebtedness or other assets, or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder 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 resulted in an adjustment to the Conversion Price under this Section 11.3(d):

- (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price 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 of shares of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of shares of Common Stock as of the date of such redemption or repurchase; and
- (2) in the case of such rights or warrants which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 11.3(d) and Sections 11.3(a), 11.3(b) and 11.3(c), any dividend or distribution to which this Section 11.3(d) is applicable that also includes (i) shares of Common Stock, (ii) a subdivision or combination of shares of Common Stock to which Section 11.3(b) applies or (iii) rights or warrants to subscribe for or purchase shares of Common Stock to which Section 11.3(c) applies (or any combination thereof), shall be deemed instead to be:

- (1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants, other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Sections 11.3(a), 11.3(b) and 11.3(c) apply, respectively (and any Conversion Price reduction required by this Section 11.3(d) 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, such subdivision or combination or such rights or warrants (and any further Conversion Price reduction required by Sections 11.3(a), 11.3(b) and 11.3(c) with respect to such dividend or distribution shall then be made), except:
 - (A) the Record Date of such dividend or distribution shall be substituted as (i) "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution," "Record Date fixed for such determinations" and "Record Date" within the meaning of Section 11.3(a), (ii) "the day upon which such subdivision becomes effective" and "the day upon which such combination becomes effective" within the meaning of Section 11.3(b), and (iii) as "the date fixed for the determination of stockholders entitled to receive such rights or warrants," "the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants" and such "Record Date" within the meaning of Section 11.3(c); and
 - (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 11.3(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

In the event of any distribution referred to in this Section 11.3(d) in which (1) the Fair Market Value (as determined by the Board of Directors) of such distribution applicable to one share of Common Stock (determined as provided above) equals or exceeds the average of the Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Record Date for such distribution or (2) the average of the Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Record Date for such distribution exceeds the Fair Market Value of such distribution by less than \$1.00, then, in each such case, in lieu of an adjustment to the Conversion Price, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security, in addition to shares of Common Stock, the kind and amount of such distribution such Holder would have received had

such Holder converted such Security immediately prior to the Record Date for determining the shareholders entitled to receive the distribution.

In the event of any distribution referred to in Section 11.3(c) or 11.3(d), where, in the case of a distribution described in Section 11.3(d), the Fair Market Value of such distribution per share of Common Stock (as determined by the Board of Directors) exceeds 10% of the Sale Price of a share of Common Stock on the Business Day immediately preceding the declaration date for such distribution, then, if such distribution would also trigger a conversion right under Section 11.1(b) or the Securities are otherwise convertible pursuant to this Article 11, the Company will be required to give notice to the Holders of Securities at least 20 days prior to the Ex-Dividend Time for the distribution and, upon the giving of notice, the Securities may be surrendered for conversion at any time on and after the date that the Company gives notice to the Holders of such conversion right, until the close of business on the Business Day prior to the Ex-Dividend Time or the Company announces that such distribution will not take place. No adjustment to the Conversion Price or the ability of a Holder of a Security to convert will be made if the Holder will otherwise participate in such distribution without conversion.

- (e) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, by dividend or otherwise, distribute to all holders

of its shares of Common Stock, cash (excluding any cash that is distributed upon a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 11.4 applies or as part of a distribution referred to in Section 11.3(d)), in an aggregate amount that, combined together with:

- (1) the aggregate amount of any other such distributions to all holders of shares of Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 11.3(e) has been made; and
- (2) the aggregate amount of any cash, plus the Fair Market Value (as determined by the Board of Directors) of consideration payable in respect of any tender or exchange offer by the Company or any of its Subsidiaries for all or any portion of the shares of Common Stock concluded within the 12 months preceding the date of such distribution, and in respect of which no adjustment pursuant to Section 11.3(f) has been made;

exceeds 10% of the product of the Current Market Price of the Common Stock on the Record Date with respect to such distribution, times the number of shares of Common Stock outstanding on such date, then, and in each such case, immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction:

- (1) the numerator of which shall be equal to the Current Market Price on the Record Date, less an amount equal to the quotient of (x) the excess of such combined amount over such 10% and (y) the number of shares of Common Stock outstanding on the Record Date; and

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- (2) the denominator of which shall be equal to the Current Market Price on such date.

However, in the event that the then Fair Market Value (as so determined) of the portion of cash and other securities, if any, so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security (or any portion thereof) the amount of cash in excess of such 10% such Holder would have received had such Holder converted such Security (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any of its Subsidiaries for all or any portion of the shares of Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of shares tendered) of an aggregate consideration having a Fair Market Value (as determined by the Board of Directors) that combined together with:

- (1) the aggregate amount of the cash, plus the Fair Market Value (as determined by the Board of Directors), as of the expiration of such tender or exchange offer, of consideration payable in respect of any other tender offers, by the Company or any of its Subsidiaries for all or any portion of the shares of Common Stock expiring within the 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this Section 11.3(f) has been made; and
- (2) the aggregate amount of any distributions to all holders of shares of Common Stock made exclusively in cash within 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to Section 11.3(e) has been made;

exceeds 10% of the product of the Current Market Price of the Common Stock as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender or exchange offer (as it may be amended), times the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time (such excess, the "Excess Amount"), then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the date of the Expiration Time by a fraction:

- (1) the numerator of which shall be (x) the product of (i) the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time and (ii) the Current Market Price of the Common Stock at the Expiration Time, less (y) the Excess Amount; and

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- (2) the denominator shall be the product of the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time and the Current Market Price of the Common Stock at the Expiration Time.

Such reduction (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all or a portion of such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such (or such portion of the) tender offer had not been made. If the application of this Section 11.3(f) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 11.3(f).

Pursuant to rights issued under the Company's preferred share purchase rights plan, if holders of the Securities exercising the right of conversion attaching after the date the rights separate from the underlying Common Stock are not entitled to receive the rights that would otherwise be attributable to the shares of Common Stock received upon conversion, the Conversion Price will be adjusted as though the rights were being distributed to holders of Common Stock on the date of such separation. If such an adjustment is made and the rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment will be made to the conversion price on an equitable basis.

- (g) For purposes of this Article 11, the following terms shall have the meanings indicated:

"Current Market Price" on any date means the average of the daily Sale Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to such date; provided, however, that if:

- (1) the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10.3(a), (b), (c), (d), (e) or (f) occurs during such ten consecutive Trading Days, the Sale Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by dividing such Sale Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event;
- (2) the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10.3(a), (b), (c), (d), (e) or (f) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the day in question, the Sale Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by dividing such Sale Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event; and
- (3) the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment

date shall be adjusted by adding thereto the amount of any cash and the Fair Market Value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 11.3(d), (e) or (f)) of the evidences of Indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such “ex” date.

For purposes of any computation under Section 11.3(f), if the “ex” date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 11.3(a), (b), (c), (d), (e) or (f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Sale Price for each Trading Day on and after the “ex” date for such other event shall be adjusted by dividing such Sale Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term “ex” date, when used:

- (1) with respect to any issuance or distribution, means the first date on which the shares of Common Stock trade regular way on the relevant exchange or in the relevant market from which the Sale Price was obtained without the right to receive such issuance or distribution;
- (2) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the shares of Common Stock trade regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective; and
- (3) with respect to any tender or exchange offer, means the first date on which the shares of Common Stock trade regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 11.3, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 11.3 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

“Fair Market Value” shall mean the amount that a willing buyer would pay a willing seller in an arm’s length transaction (as determined by the Board of Directors, whose determination shall be conclusive).

“Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of shares of Common Stock have the right to receive any cash, securities or other property or in which the shares of Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) The Company shall be entitled to make such additional reductions in the Conversion Price, in addition to those required by Sections 11.3(a), (b), (c), (d), (e) and (f), as

shall be necessary in order that any dividend or distribution of Common Stock, any subdivision, reclassification or combination of shares of Common Stock or any issuance of rights or warrants referred to above shall not be taxable to the holders of Common Stock for United States Federal income tax purposes.

(i) To the extent permitted by applicable law, the Company may, from time to time, reduce the Conversion Price by any amount for any period of time, if such period is at least 20 days and the reduction is irrevocable during the period. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to the Trustee and each Holder at the address of such Holder as it appears in the register of the Securities maintained by the Registrar, at least 15 days prior to the date the reduced Conversion Price takes effect, a notice of the reduction stating the reduced Conversion Price and the period during which it will be in effect.

(j) In any case in which this Section 11.3 shall require that any adjustment be made effective as of or retroactively immediately following a Record Date, the Company may elect to defer (but only for five Trading Days following the filing of the statement referred to in Section 11.5) issuing to the Holder of any Securities converted after such Record Date the shares of Common Stock issuable upon such conversion over and above the shares of Common Stock issuable upon such conversion on the basis of the Conversion Price prior to adjustment; provided, however, that the Company shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder’s right to receive such additional shares upon the occurrence of the event requiring such adjustment.

(k) All calculations under this Section 11.3 shall be made to the nearest cent or one-hundredth of a share, with one-half cent and 0.005 of a share, respectively, being rounded upward. Notwithstanding any other provision of this Section 11.3, the Company shall not be required to make any adjustment of the Conversion Price unless such adjustment would require an increase or decrease of at least 1% of such price. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1% in such price. Any adjustments under this Section 11.3 shall be made successively whenever an event requiring such an adjustment occurs.

(l) In the event that at any time, as a result of an adjustment made pursuant to this Section 11.3, the Holder of any Securities thereafter surrendered for conversion shall become entitled to receive any shares of stock of the Company other than shares of Common Stock into which the Securities originally were convertible, the Conversion Price of such other shares so receivable upon conversion of any such Security shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in subparagraphs (a) through (k) of this Section 11.3, and the provision of Sections 11.1, 11.2 and 11.4 through 11.9 with respect to the Common Stock shall apply on like or similar terms to any such other shares and the determination of the Board of Directors as to any such adjustment shall be conclusive.

(m) No adjustment shall be made pursuant to this Section 11.3 (i) if the effect thereof would be to reduce the Conversion Price below the par value (if any) of the Common

Stock or (ii) if the Holders of the Securities may participate in the transaction that would otherwise give rise to an adjustment pursuant to this Section 11.3.

Section 11.4 Consolidation or Merger of the Company.

If any of the following events occurs, namely:

- (1) any reclassification or change of the outstanding 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 subdivision or combination);

(2) any merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock; or

(3) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock;

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture, if such supplemental indenture is then required to so comply) providing that such Securities shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) which such Holder would have been entitled to receive upon such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Securities been converted into Common Stock immediately prior to such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance (provided, that if the kind or amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purposes of this Section 11.4, the kind and amount of securities, cash or other property receivable upon such merger, consolidation, statutory share exchange, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). 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 11. If, in the case of any such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain

such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the conversion rights set forth in this Article 11.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Securities maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 11.4 shall similarly apply to successive reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 11.4 applies to any event or occurrence, Section 11.3 shall not apply.

Section 11.5 Notice of Adjustment.

Whenever an adjustment in the Conversion Price with respect to the Securities is required:

(1) the Company shall forthwith place on file with the Trustee and any Conversion Agent for such securities a certificate of the Treasurer of the Company, stating the adjusted Conversion Price determined as provided herein and setting forth in reasonable detail such facts as shall be necessary to show the reason for and the manner of computing such adjustment; and

(2) a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price shall forthwith be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company, to each Holder in the manner provided in Section 12.2. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

Section 11.6 Notice in Certain Events.

In case:

(1) of a consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or conveyance to another Person or entity or group of Persons or entities acting in concert as a partnership, limited partnership, syndicate or other group (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of all or substantially all of the property and assets of the Company; or

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

(3) of any action triggering an adjustment of the Conversion Price referred to in clauses (x) or (y) below;

then, in each case, the Company shall cause to be filed with the Trustee and the Conversion Agent, and shall cause to be given, to the Holders of the Securities in the manner provided in Section 12.2, at least 15 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of any distribution or grant of rights or warrants triggering an adjustment to the Conversion Price pursuant to this Article 11, or, if a record is not to be taken, the date as of which the holders of record of Common Stock entitled to such distribution, rights or warrants are to be determined, or (y) the date on which any reclassification, consolidation, merger, sale, conveyance, dissolution, liquidation or winding up triggering an adjustment to the Conversion Price pursuant to this Article 11 is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger sale, conveyance, dissolution, liquidation or winding up.

Failure to give such notice or any defect therein shall not affect the legality or validity of the proceedings described in clause (1), (2) or (3) of this Section 11.6.

Section 11.7 Company To Reserve Stock; Registration; Listing.

(a) The Company shall, in accordance with the laws of the State of Washington, at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued shares of Common Stock, for the purpose of effecting the conversion of the Securities, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all Securities then outstanding into such Common Stock at any time (assuming that, at the time of the computation of such number of shares or securities, all such Securities would be held by a single Holder); provided, however, that nothing contained herein shall preclude the

Company from satisfying its obligations in respect of the conversion of the Securities by delivery of purchased shares of Common Stock which are then held in the treasury of the Company. The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be fully paid and nonassessable and free from all liens and charges and, except as provided in Section 11.8, taxes with respect to the issue thereof.

(b) If any shares of Common Stock which would be issuable upon conversion of Securities hereunder require registration with or approval of any governmental authority before such shares or securities may be issued upon such conversion, the Company will in good faith and as expeditiously as possible endeavor to cause such shares or securities to be duly registered or approved, as the case may be. The Company further covenants that so long as the Common Stock shall be listed on the New York Stock Exchange, the Company will, if permitted by the rules of such exchange, list and keep listed all Common Stock issuable upon conversion of the Securities, and the Company will endeavor to list the shares of Common Stock required to be delivered upon conversion of the Securities prior to such delivery upon any other national securities exchange upon which the outstanding Common Stock is listed at the time of such delivery.

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Section 11.8 Taxes on Conversion.

The issue of stock certificates on conversion of Securities shall be made without charge to the converting Holder for any documentary, stamp or similar issue or transfer taxes in respect of the issue thereof, and the Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock or the portion, if any, of the Securities which are not so converted in a name other than that in which the Securities so converted were registered, 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 such tax or has established to the satisfaction of the Company that such tax has been paid.

Section 11.9 Conversion After Record Date.

Except as provided below, if any Securities are surrendered for conversion on any day other than an Interest Payment Date, the Holder of such Securities shall not be entitled to receive any interest that has accrued on such Securities since the prior Interest Payment Date. By delivery to the Holder of the number of shares of Common Stock or other consideration issuable upon conversion in accordance with this Article 11, any accrued and unpaid interest on such Securities will be deemed to have been paid in full.

If any Securities are surrendered for conversion subsequent to the Record Date preceding an Interest Payment Date but on or prior to such Interest Payment Date, the Holder of such Securities at the close of business on such Record Date shall receive the interest payable on such Securities on such Interest Payment Date notwithstanding the conversion thereof. Securities surrendered for conversion during the period from the close of business on any Record Date preceding any Interest Payment Date to the opening of business on such Interest Payment Date shall (except in the case of Securities which have been called for redemption on a Redemption Date between such Record Date and the third Business Day after such Interest Payment Date) be accompanied by payment by Holders, for the account of the Company, in New York Clearing House funds or other funds of an amount equal to the interest payable on such Interest Payment Date on the Securities being surrendered for conversion. Except as provided in this Section 11.9, no adjustments in respect of payments of interest on Securities surrendered for conversion or any dividends or distributions or interest on the Common Stock issued upon conversion shall be made upon the conversion of any Securities.

Section 11.10 Company Determination Final.

Any determination that the Company or the Board of Directors must make pursuant to this Article 11 shall be conclusive if made in good faith and in accordance with the provisions of this Article, absent manifest error, and set forth in a Board Resolution.

Section 11.11 Responsibility of Trustee for Conversion Provisions.

The Trustee has no duty to determine when an adjustment under this Article XI should be made, how it should be made or what it should be. The Trustee makes no

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representation as to the validity or value of any securities or assets issued upon conversion of Securities. The Trustee shall not be responsible for any failure of the Company to comply with this Article 11. Each Conversion Agent other than the Company shall have the same protection under this Section 11.11 as the Trustee.

The rights, privileges, protections, immunities and benefits given to the Trustee under the Indenture including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Paying Agent or Conversion Agent acting hereunder.

Section 11.12 Unconditional Right of Holders to Convert.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to convert its Security in accordance with this Article 11 and to bring an action for the enforcement of any such right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 12.2 Notices. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

Labor Ready, Inc.
1015 A Street
Tacoma, Washington 98402
Attn: Timothy J. Adams
Facsimile No. (800) 587-9257

With a copy to:

Preston Gates & Ellis LLP
701 Fifth Avenue, 55th Floor
Seattle, Washington 98104
Attn: Gary J. Kocher
Facsimile No.: (206) 623-7022

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if to the Trustee:

The Bank of New York
101 Barclay Street
New York, New York 10286
Telephone No. (212) 896-7135
Facsimile No. (212) 896-7299
Attention: Corporate Trust Administration

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

Any notice or communication given to a Securityholder shall be mailed to the Securityholder, by first-class mail, postage prepaid, at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

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

If the Company mails a notice or communication to the Securityholders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 12.3 Communication by Holders with Other Holders. Securityholders may communicate pursuant to TIA Section 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

Section 12.4 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.5 Statements Required in Certificate or Opinion. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that each Person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

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(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

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

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

Section 12.6 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 12.7 Rules by Trustee, Paying Agent, Conversion Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar, the Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 12.8 Legal Holidays. A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Securities, no interest, if any, shall accrue for the intervening period.

Section 12.9 GOVERNING LAW. THIS INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 12.10 No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 12.11 Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 12.12 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

LABOR READY, INC.

By: /s/

Name:

Title:

THE BANK OF NEW YORK

As Trustee

By: /s/

Name:

Title:

EXHIBIT A

[FORM OF FACE OF GLOBAL SECURITY]

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

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT OF 1933"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE BY ACQUISITION HEREOF, THE HOLDER:

- (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT OF 1933;
- (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OF 1933, (C) TO A NON-U.S. PERSON OUTSIDE THE UNITED STATES IN COMPLIANCE WITH REGULATIONS UNDER THE SECURITIES ACT OF 1933, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OF 1933 (IF AVAILABLE), (E) TO ANY INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT PURSUANT TO AN

EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR (F) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND

- (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(F) ABOVE), A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

The foregoing legend may be removed from this Security on satisfaction of the conditions specified in the Indenture.

LABOR READY, INC.

6.25% Convertible Subordinated Notes due 2007

No.
Issue Date: , 2002

CUSIP:
Principal Amount: \$

LABOR READY, INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the principal amount of [dollars (\$)] on June 15, 2007.

Interest Payment Dates: June 15 and December 15, commencing December 15, 2002.

Record Dates: June 1 and December 1.

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: _____, 2002

LABOR READY, INC.

By: _____
Title: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK,
as Trustee, certifies that this is one
of the Securities referred to in the
within-mentioned Indenture.

By _____
Authorized Signatory

Dated: _____, 2002

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[FORM OF REVERSE OF GLOBAL SECURITY]

6.25% Convertible Subordinated Notes due 2007

This Security is one of a duly authorized issue of the 6.25% Convertible Subordinated Notes due 2007 (the "Securities") of Labor Ready, Inc., a Delaware corporation (including any successor corporation under the Indenture hereinafter referred to, the "Company"), issued under an Indenture, dated as of June 19, 2002 (the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). The terms of the Security include those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("TIA"), and those set forth in this Security. This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control. Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest

The Company promises to pay Interest on the principal amount of the Securities at the interest rate of 6.25% (the "Interest Rate") from the date of issuance until repayment in full at June 15, 2007, or until an earlier redemption or repurchase. The Company will pay Interest on this Security semi-annually in arrears on June 15 and December 15 of each year (each, an "interest payment date"), commencing December 15, 2002.

The Securities shall bear interest from June 19, 2002 until the principal amount thereof is paid or made available for payment, or until such date on which the Securities are converted, redeemed or purchased as provided herein at a rate of 6.25% per annum.

Interest on the Securities shall be computed (i) for any full semi-annual period for which a particular Interest Rate is applicable, on the basis of a 360-day year of twelve 30-day months and (ii) for any period for which a particular Interest Rate is applicable for less than a full semiannual period for which Interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month.

If this Security is redeemed or repurchased by the Company on a date that is after the record date and prior to the corresponding interest payment date, interest and Additional Amounts, if any, accrued and unpaid hereon to but not including the applicable Redemption Date or Change of Control Purchase Date, as the case may be, will be paid to the same Holder to whom the Company pays the principal of this Security.

Interest on Securities converted after a record date but prior to the corresponding interest payment date will be paid to the Holder of the Securities on the record date but, upon conversion, the Holder must pay the Company the interest and Additional Amounts, if any, which have accrued and will be paid on such interest payment date; provided, that no such

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payment need be made with respect to Securities which will be redeemed by the Company after a record date and prior to the third Business Day after the corresponding interest payment date.

If the principal amount hereof or any portion of such principal amount or any interest, including Additional Amounts, if any, on any Security is not paid when due (whether upon acceleration pursuant to Section 7.2 of the Indenture, upon the date set for payment of the Redemption Price pursuant to Section 5 hereof or the Change of Control Purchase Price pursuant to Section 6 hereof or upon the Stated Maturity of this Security), then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the Interest Rate, compounded semi-annually, which interest shall accrue from the date on which such overdue amount was originally due to the date of payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

2. Method of Payment

Except as provided below, interest will be paid (i) on the Global Securities to DTC in immediately available funds, (ii) on any definitive Securities having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of such Securities; and (iii) on any definitive Securities having an aggregate principal amount of more than \$5,000,000, by wire transfer in immediately available funds at the election of the Holders of these Securities.

At Stated Maturity the Company will pay interest on definitive Securities at the Company's office or agency in New York City, which initially will be the Corporate Trust Office of the Trustee in New York City.

Principal on definitive Securities will be payable, upon Stated Maturity or when due, at the office or agency of the Company in New York City, maintained for such purpose, initially the Corporate Trust Office of the Trustee in New York City.

Subject to the terms and conditions of the Indenture, the Company will make payments in cash in respect of Redemption Prices, Change of Control Purchase Prices and at Stated Maturity to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money.

3. Paying Agent, Conversion Agent and Registrar.

Initially, The Bank of New York (the "Trustee") will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Registrar without notice, other than notice to the Trustee; provided that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Registrar.

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4. Indenture.

The Securities are general unsecured subordinated obligations of the Company limited to \$75,000,000 in aggregate principal amount. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are not redeemable by the Company prior to June 20, 2005. The Securities are redeemable for cash at the option of the Company, in whole or in part, at any time or from time to time on, or after June 20, 2005 upon not less than 30 nor more than 60 days' notice (the "Redemption Notice") by mail for a redemption price equal to the principal amount of those Securities plus accrued and unpaid interest, including Additional Amounts, if any, up to the Redemption Date (the "Redemption Price"); provided, that the Current Market Value for the Common Stock equals or exceeds 125% of the Conversion Price in then in effect for at least 20 Trading Days in any consecutive 30 Trading Day period ending on the Trading Day prior to the date of the mailing of the Redemption Notice by the Company. The term "Current Market Value", for any Trading Day, shall mean the Sale Price of the Common Stock, as reported on the New York Stock Exchange or the principal national securities exchange or inter-dealer quotation system on which the Common Stock is then listed, on such Trading Day.

6. Purchase By the Company at the Option of the Holder.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to offer to purchase the Securities held by such Holder within 30 days after the occurrence of a Change of Control of the Company for a Change of Control Purchase Price equal to the principal amount plus accrued and unpaid interest, including Additional Amounts, if any, of such Security on the Change of Control Purchase Date. The Change of Control Purchase Date shall be within 30 days of the Company's delivery of the notice described in the preceding sentence. The Change of Control Purchase Price shall be paid in cash.

Holders have the right to withdraw any Change of Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Change of Control Purchase Price of all Securities or portions thereof to be purchased as of the Change of Control Purchase Date, is deposited with the Paying Agent, on the Business Day following the Change of Control Purchase Date, interest will cease to accrue on such Securities (or portions thereof) immediately after such Change of Control Purchase Date, and the Holder thereof shall have no other rights as such other than the right to receive the Change of Control Purchase Price upon surrender of such Security.

7. Notice of Redemption.

Notice of redemption pursuant to Section 5 of this Security will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be

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redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date interest ceases to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of principal amount may be redeemed in part but only in integral multiples of \$1,000 of principal amount.

8. Conversion.

Subject to and in compliance with the provisions of the Indenture, a Holder is entitled, at such Holder's option, to convert the Holder's Security (or any portion of the principal amount thereof that is \$1,000 or an integral multiple \$1,000), into fully paid and nonassessable shares of Common Stock at the Conversion Price in effect at the time of conversion.

A Security in respect of which a Holder has delivered a Change of Control Purchase Notice, exercising the option of such Holder to require the Company to purchase such Security, may be converted only if such Change of Control Purchase Notice is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Price is \$7.26, subject to adjustment in certain events described in the Indenture. A Holder that surrenders Securities for conversion will receive cash or a check in lieu of any fractional share of Common Stock.

To surrender a Security for conversion, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents and (4) pay any transfer or similar tax, if required by the Indenture.

No fractional shares of Common Stock shall be issued upon conversion of any Security. Instead of any fractional share of Common Stock that would otherwise be issued upon conversion of such Security, the Company shall pay a cash adjustment as provided in the Indenture.

If the Company (i) is a party to a consolidation, merger or binding share exchange, (ii) reclassifies the Common Stock or (iii) conveys, transfers or leases its properties and assets substantially as an entirety to any Person, the right to convert a Security into shares of Common Stock may be changed into a right to convert it into securities, cash or other assets of the Company or such other Person, in each case in accordance with the Indenture.

9. Subordination of Securities.

The indebtedness evidenced by the Securities is, to the extent and in the manner provided in Article 5 of the Indenture, expressly subordinate and subject in right of payment to the prior payment in full of all Senior Debt of the Company, as defined in the Indenture, whether outstanding at the date of the Indenture or thereafter incurred, and this Security is issued subject to the provisions of the Indenture with respect to such subordination. Each holder of this Security, by accepting the same, agrees to and shall be bound by such provisions and authorizes

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the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee his or her attorney-in-fact for such purpose.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (including Additional Amounts, if any) on this Security at the place, at the respective times, at the rate and in the coin or currency herein prescribed.

10. Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of principal amount and integral multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or Change of Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

11. Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

12. Unclaimed Money or Securities.

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

13. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate principal amount of the outstanding Securities. The Indenture and the Securities may also be amended by the Company and the Trustee, without the consent of any Holder, in certain circumstances set forth in the Indenture; provided, that certain provisions of the Indenture and the Securities may not be amended without the consent of each affected Holder.

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14. Defaults and Remedies.

If any Event of Default with respect to Securities shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

15. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others.

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

17. Authentication.

This Security shall not be valid until an authorize signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

18. Abbreviations.

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

19. GOVERNING LAW.

THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture which has in it the text of this Security in

larger type. Requests may be made to:

LABOR READY, INC.
1015 A. Street
Tacoma, Washington 98402
Attn: Timothy J. Adams
Facsimile No. (800) 587-9257

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20. Registration Rights.

The Holders of the Securities are entitled to the benefits of a Resale Registration Rights Agreement, dated as of June 19, 2002, among the Company, Lehman Brothers Inc., Wells Fargo Securities, LLC and Gerard Klauer Mattison & Co., Inc., including the receipt of Additional Amounts upon a registration default (as defined in such agreement).

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ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Insert assignee's soc. sec. or tax ID no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint

_____ agent to transfer
this Security on the books of the Company. The agent
may substitute another to act for him.

CONVERSION NOTICE

To convert this Security into Common Stock of the Company, check the box

To convert only part of this Security, state the principal amount to be converted (which must be \$1,000 or an integral multiple of \$1,000):

If you want the stock certificate made out in another person's name fill in the form below:

(Insert the other person's soc. sec. tax ID no.)

(Print or type other person's name, address and zip code)

Date: _____ Your Signature: _____

(Sign exactly as your name appears on the other side of this Security)

Signature Guaranteed

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

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SCHEDULE OF INCREASES AND DECREASES OF GLOBAL SECURITY

Initial Principal Amount of Global Security: (\$ _____).

Date	Amount of Increase in Principal Amount of Global Security	Amount of Decrease in Principal Amount of Global Security	Principal Amount of Global Security After Increase or Decrease	Notation by Registrar or Security Custodian

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EXHIBIT B
[FORM OF FACE OF CERTIFICATED SECURITY]

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT OF 1933") OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE BY ACQUISITION HEREOF, THE HOLDER:

- (4) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT OF 1933;
- (5) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OF 1933, (C) TO A NON-U.S. PERSON OUTSIDE THE UNITED STATES IN COMPLIANCE WITH REGULATIONS UNDER THE SECURITIES ACT OF 1933, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OF 1933 (IF AVAILABLE), (E) TO ANY INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR (F) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND
- (6) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(F) ABOVE), A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

The foregoing legend may be removed from this Security on satisfaction of the conditions specified in the Indenture.

LABOR READY, INC.

6.25% Convertible Subordinated Notes due 2007

No. _____ CUSIP: _____
Issue Date: 2002
Issue Price: \$1,000

LABOR READY, INC., a Delaware corporation, promises to pay to _____ or registered assigns, the principal amount of [_____ (\$ _____)] on June 15, 2007.

Interest Payment Dates: June 15 and December 15, commencing December 15, 2002.

Record Dates: June 1 and December 1.

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

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: _____
LABOR READY, INC.
By: _____
Title: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK,
as Trustee, certifies that this
is one of the Securities referred
to in the within-mentioned Indenture

By _____
Authorized Signatory

Dated: _____

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[FORM OF REVERSE OF CERTIFICATED SECURITY IS IDENTICAL TO EXHIBIT A]

EXHIBIT C

6.25% Senior Convertible Debentures due 2007

Transfer Certificate

In connection with any transfer of any of the Securities or beneficial interest in a Global Security that is a Restricted Security within the period prior to the expiration of the holding period applicable to the sales thereof under Rule 144(k) under the Securities Act of 1933, as amended (the "Securities Act") (or any successor provision), the undersigned registered owner or beneficial owner of this Security hereby certifies with respect to \$ _____ principal amount of the above-captioned

Securities (the "Surrendered Securities") presented or surrendered on the date hereof for registration of transfer, or for exchange or conversion where the securities issuable upon such exchange or conversion are to be registered in a name other than that of the undersigned registered or beneficial owner (each such transaction being a "transfer"), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Securities for the reason checked below:

- A transfer of the Surrendered Securities is made to the Company or any subsidiaries; or
- The transfer of the Surrendered Securities complies with Rule 144A under the Securities Act; or
- The transfer of the Surrendered Securities complies with Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act; or
- The transfer of the Surrendered Securities is pursuant to an effective registration statement under the Securities Act; or
- The transfer of the Surrendered Securities is pursuant to another available exemption from the registration requirement of the Securities Act;

and unless the box below is checked, the undersigned confirms that, to the undersigned's knowledge, such Securities are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

- The transferee is an Affiliate of the Company.

DATE:

Signature(s)

(If the registered owner is a corporation, partnership or fiduciary, the title of the person signing on behalf of such registered owner must be stated.)

Signature Guaranteed

Participant in a Recognized Signature

RESALE REGISTRATION RIGHTS AGREEMENT

between

LABOR READY, INC.,

LEHMAN BROTHERS INC.,

WELLS FARGO SECURITIES, LLC

and

GERARD KLAUER MATTISON & CO., INC.

DATED AS OF JUNE 19, 2002

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RESALE REGISTRATION RIGHTS AGREEMENT, dated as of June 19, 2002, among Labor Ready, Inc., a Washington corporation (together with any successor entity, herein referred to as the “**Issuer**”), and Lehman Brothers Inc., Wells Fargo Securities, LLC and Gerard Klauer Mattison & Co., Inc. (the “**Initial Purchasers**”).

Pursuant to the Purchase Agreement, dated June 13, 2002, between the Issuer and the Initial Purchasers (the “**Purchase Agreement**”), the Initial Purchasers have agreed to purchase from the Issuer \$65,000,000 aggregate principal amount of 6.5% Convertible Subordinated Notes due 2007 (the “**Notes**”) (including \$10,000,000 aggregate principal amount if the initial purchasers exercise their option to purchase additional Notes, as set forth in the Purchase Agreement). The Notes initially will be convertible into fully paid, nonassessable common stock, no par value per share, of the Issuer (the “**Common Stock**”) on the terms, and subject to the conditions, set forth in the Indenture (as defined herein). To induce the Initial Purchasers to purchase the Notes, the Issuer has agreed to provide the registration rights set forth in this Agreement pursuant to the Purchase Agreement.

The parties hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following capitalized terms shall have the following meanings:

Additional Amounts: As defined in Section 3(a) hereof.

Additional Amounts Payment Date: Each June 15 and December 15, commencing December 15, 2002.

Agreement: This Resale Registration Rights Agreement, as amended, modified or otherwise supplemented from time to time in accordance with the terms hereof.

Blue Sky Application: As defined in Section 6(a) hereof.

Broker-Dealer: Any broker or dealer registered under the Exchange Act.

Business Day: A day other than a Saturday or Sunday or any day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

Closing Date: The date of this Agreement.

Commission: Securities and Exchange Commission.

Common Stock: As defined in the preamble hereto.

Effectiveness Period: As defined in Section 2(a)(iii) hereof.

Effectiveness Target Date: As defined in Section 2(a)(ii) hereof.

Exchange Act: Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

Holder: A Person who owns, beneficially or otherwise, Transfer Restricted Securities.

Holder Questionnaire: As defined in Section 2(b) hereof.

Indemnified Holder: As defined in Section 6(a) hereof.

Indenture: The Indenture, dated as of June 19, 2002, between the Issuer and The Bank of New York, as trustee (the “Trustee”), pursuant to which the Notes are to be issued, as such Indenture is amended, modified or supplemented from time to time in accordance with the terms thereof.

Initial Purchasers: As defined in the preamble hereto.

Interest Payment Date: Each June 15 and December 15 of each year, commencing December 15, 2002.

Issuer: As defined in the preamble hereto.

Majority of Holders: Holders holding more than 50% of the aggregate principal amount at maturity of Notes outstanding; *provided that*, for purpose of this definition, a holder of shares of Common Stock which constitute Transfer Restricted Securities when issued upon conversion of the Notes shall be deemed to hold an aggregate principal amount at maturity of Notes (in addition to the principal amount at maturity of Notes held by such holder) equal to \$1,000 times the quotient of (x) the number of such shares of Common Stock received upon conversion of the Notes and then held by such holder and (y) the prevailing conversion rate, such prevailing conversion rate as determined in accordance with the Indenture.

NASD: National Association of Securities Dealers, Inc.

Notes: As defined in the preamble hereto.

Person: An individual, partnership, corporation, unincorporated organization, limited liability company, trust, joint venture or a government or agency or political subdivision thereof.

Prospectus: The prospectus included in a Shelf Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such Prospectus.

Purchase Agreement: As defined in the preamble hereto.

Questionnaire Deadline: As defined in Section 2(b) hereof.

Record Holder: With respect to any Additional Amounts Payment Date, each Person who is a Holder on the record date with respect to the Interest Payment Date on which such Additional Amounts Payment Date shall occur. In the case of a Holder of shares of Common Stock issued upon conversion of the Notes, “Record Holder” shall mean each Person who is a Holder of shares of Common Stock which constitute Transfer Restricted Securities on the 15th day preceding the relevant Additional Amounts Payment Date.

Registration Default: As defined in Section 3(a) hereof.

Sale Notice: As defined in Section 4(d) hereof.

Securities Act: Securities Act of 1933, as amended, and the rules and resolutions of the Commission thereunder.

Shelf Filing Deadline: As defined in Section 2(a)(i) hereof.

Shelf Registration Statement: As defined in Section 2(a)(i) hereof.

Suspension Notice. As defined in Section 4(c) hereof.

Suspension Period. As defined in Section 4(b)(i) hereof.

TIA: Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder, in each case, as in effect on the date the Indenture is qualified under the TIA.

Transfer Restricted Securities: Each Note and each share of Common Stock issued upon conversion of Notes until the earlier of:

(i) the date on which such Note or such share of Common Stock issued upon conversion thereof has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement;

(ii) the date on which such Note or such share of Common Stock issued upon conversion thereof is transferred in compliance with Rule 144 under the Securities Act or may be sold or transferred by a person who is not an affiliate of the Issuer pursuant to Rule 144 under the Securities Act (or any other similar provision then in force) without any volume or manner of sale restrictions thereunder; or

(iii) the date on which such Note or such share of Common Stock issued upon conversion ceases to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise); provided that any Note and any Common Stock issued upon conversion of such Note that is redeemed or repurchased by the Company shall not be deemed Transfer Restricted Securities for purposes of this Agreement upon resale by the Company.

Underwritten Registration or Underwritten Offering: A registration in which Notes of the Issuer are sold to an underwriter for reoffering to the public.

2. Shelf Registration. The Issuer shall:

(i) not later than 90 days after the date hereof (the “**Shelf Filing Deadline**”), cause to be filed a registration statement pursuant to Rule 415 under the Securities Act (together with any amendments thereto, and including any documents incorporated by reference therein, the “**Shelf Registration Statement**”), which Shelf Registration Statement shall provide for resales of all Transfer Restricted Securities held by Holders that have provided the information required pursuant to the terms of Section 2(b) hereof;

(ii) use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the Commission not later than 180 days after the date hereof (the “**Effectiveness Target Date**”); and

(iii) use its reasonable best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 4(b) hereof to the extent necessary to ensure that (A) it is available for resales by the Holders of Transfer Restricted Securities entitled to the benefit of this Agreement and (B) conforms with the requirements of this Agreement and the Securities Act for a period (the “**Effectiveness Period**”) of:

(1) two years following the last date of original issuance of Notes; or

(2) such shorter period that will terminate when (x) all of the Holders of Transfer Restricted Securities are able to sell all Transfer Restricted Securities immediately without restriction pursuant to Rule 144(k) under the Securities Act or any successor rule thereto, (y) when all Transfer Restricted Securities have ceased to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise) or (z) all Transfer Restricted Securities registered under the Shelf Registration Statement have been sold.

(b) To have its Transfer Restricted Securities included in the Shelf Registration Statement pursuant to this Agreement, each Holder shall complete the Selling Securityholder Notice and Questionnaire, the form of which is contained in Annex A to the Offering Memorandum relating to the Notes (the “**Questionnaire**”). The Issuer shall mail the Questionnaire not less than 20 Business Days prior to the time the Company intends in good faith to have the Shelf Registration Statement declared effective by the Commission. Upon receipt of written request for additional information from the Issuer, each Holder who intends to be named as a selling securityholder in the Shelf Registration Statement shall furnish to the Issuer in writing, within 20 Business Days after such Holder’s receipt of such request, such additional information regarding such Holder and the proposed distribution by such Holder of its Transfer Restricted Securities, in connection with the Shelf Registration Statement or Prospectus

or Preliminary Prospectus included therein and in any application to be filed with or under state securities law, as the Issuer may reasonably request. In connection with all such requests for information from Holders of Transfer Restricted Securities, the Issuer shall notify such Holders of the requirements set forth in this paragraph regarding their obligation to provide the information requested pursuant to this Section. Holders who have not delivered a Questionnaire prior to the effectiveness of the Shelf Registration Statement may receive a Questionnaire from the Company upon request. Upon receipt of such a completed Questionnaire from a Holder following the effectiveness of the Shelf Registration Statement, the Company shall, as promptly as reasonably practicable, file such amendments to the Shelf Registration Statement or supplements to a related Prospectus as are necessary to permit such Holder to transfer its Transfer Restricted Securities pursuant to the Shelf Registration Statement. Each Holder as to which the Shelf Registration Statement is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make information previously furnished to the Issuer by such Holder not materially misleading.

3. Additional Amounts.

(a) If:

(i) the Shelf Registration Statement is not filed with the Commission prior to or on the Shelf Filing Deadline;

(ii) the Shelf Registration Statement has not been declared effective by the Commission prior to or on the Effectiveness Target Date;

(iii) except as provided in Section 4(b)(i) hereof, the Shelf Registration Statement is filed and declared effective but, during the Effectiveness Period, shall thereafter cease to be effective or fail to be usable for its intended purpose without being succeeded within five Business Days by a post-effective amendment to the Shelf Registration Statement, a supplement to the Prospectus or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act that cures such failure and, in the case of a post-effective amendment, is itself immediately declared effective; or

(iv) (A) prior to or on the 45th or 90th day, as the case may be, of any Suspension Period, such suspension has not been terminated or (B) Suspension Periods exceed an aggregate of 90 days in any 360 day period,

(each such event referred to in foregoing clauses (i) through (iv), a “**Registration Default**”), the Issuer hereby agrees to pay additional amounts (“**Additional Amounts**”) with respect to the Transfer Restricted Securities from and including the day following the Registration Default to but excluding the day on which the Registration Default has been cured, accruing at a rate:

(A) in respect of the Notes, to each holder of Notes, (x) with respect to the first 90-day period during which a Registration Default shall have occurred and be continuing, equal to 0.25% per annum of the principal amount of the Notes, and (y) with respect to the period commencing on the 91st day following the day the Registration Default shall have occurred and be continuing, equal to

0.50% per annum of the principal amount of the Notes; *provided* that in no event shall Additional Amounts accrue at a rate per year exceeding 0.50% of the Applicable Amount of the Notes; and

(B) in respect of any shares of Common Stock, to each holder of shares of Common Stock issued upon conversion of Notes, (x) with respect to the first 90-day period in which a Registration Default shall have occurred and be continuing, equal to 0.25% per annum of the Applicable Amount of the converted Notes, and (y) with respect to the period commencing on the 91st day following the day the Registration Default shall have occurred and be

continuing, equal to 0.50% per annum of the Applicable Amount of the converted Notes; *provided* that in no event shall Additional Amounts accrue at a rate per year exceeding 0.50% of the Applicable Amount of the converted Notes.

(b) All accrued Additional Amounts shall be paid in arrears to Record Holders by the Issuer on each Additional Amounts Payment Date by wire transfer of immediately available funds or by federal funds check. Following the cure of all Registration Defaults relating to any particular Security or share of Common Stock, the accrual of Additional Amounts with respect to such Security or share of Common Stock will cease. The Issuer agrees to deliver all notices, certificates and other documents contemplated by the Indenture in connection with the payment of Additional Amounts.

All obligations of the Issuer set forth in this Section 3 that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such Transfer Restricted Security shall have been satisfied in full.

The Additional Amounts set forth above shall be the exclusive monetary remedy available to the Holders of Transfer Restricted Securities for such Registration Default.

4. *Registration Procedures.*

(a) In connection with the Shelf Registration Statement, the Issuer shall comply with all the provisions of Section 4(b) hereof and shall use its reasonable best efforts to effect such registration to permit the sale of the Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof, and pursuant thereto, shall prepare and file with the Commission a Shelf Registration Statement relating to the registration on any appropriate form under the Securities Act.

(b) In connection with the Shelf Registration Statement and any Prospectus required by this Agreement to permit the sale or resale of Transfer Restricted Securities, the Issuer shall:

(i) Subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), use its reasonable best efforts to keep the Shelf Registration Statement continuously effective during the Effectiveness Period; upon the occurrence of any event that would cause the Shelf Registration Statement or the

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Prospectus contained therein (A) to contain a material misstatement or omission or (B) not be effective and usable for resale of Transfer Restricted Securities during the Effectiveness Period, the Issuer shall file promptly an appropriate amendment to the Shelf Registration Statement, a supplement to the Prospectus or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use its reasonable best efforts to cause such amendment to be declared effective and the Shelf Registration Statement and the related Prospectus to become usable for their intended purposes as soon as reasonably practicable thereafter. Notwithstanding the foregoing, the Issuer may suspend the effectiveness of the Shelf Registration Statement by written notice to the Holders for a period not to exceed an aggregate of 45 days in any 90-day period (each such period, a “**Suspension Period**”) if:

(x) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in the Issuer’s reasonable judgment, 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 not misleading; and

(y) the Issuer reasonably determines that the disclosure of such event at such time would have a material adverse effect on the business of the Issuer (and its subsidiaries, if any, taken as a whole);

provided that in the event the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Issuer’s ability to consummate such transaction, the Issuer may extend a Suspension Period from 45 days to 90 days; *provided, however*, that Suspension Periods shall not exceed an aggregate of 90 days in any 360-day period.

(ii) Prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement effective during the Effectiveness Period; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all Transfer Restricted Securities covered by the Shelf Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in the Shelf Registration Statement or supplement to the Prospectus.

(iii) Advise the underwriter(s), if any, and selling Holders promptly (but in any event within five Business Days) and, if requested by such Persons, to confirm such advice in writing:

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(A) when the Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to the Shelf Registration Statement or any post-effective amendment thereto, when the same has become effective,

(B) of any request by the Commission for amendments to the Shelf Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto,

(C) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, or

(D) of the existence of any fact or the happening of any event, during the Effectiveness Period, that makes any statement of a material fact made in the Shelf Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Shelf Registration Statement or the Prospectus in order to make the statements therein not misleading.

If at any time the Commission shall issue any stop order suspending the effectiveness of the Shelf Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state

securities or Blue Sky laws, the Issuer shall use its reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time and will provide to the Initial Purchasers and each Holder who is named in the Shelf Registration Statement prompt notice of the withdrawal of any such order.

(iv) Furnish to each of the selling Holders and each of the underwriter(s), if any, before filing with the Commission, a copy of the Shelf Registration Statement and copies of any Prospectus included therein or any amendments or supplements to the Shelf Registration Statement or Prospectus (other than documents incorporated by reference after the initial filing of the Shelf Registration Statement), which documents will be subject to the review of such holders and underwriter(s), if any, for a period of at least five Business Days (in the case of the Shelf Registration Statement and Prospectus) and one Business Day (in the case of any amendment or supplement thereto), and the Issuer will not file the Shelf Registration Statement or Prospectus or any amendment or supplement to the Shelf Registration Statement or Prospectus (other than documents incorporated by reference) to which a selling Holder of Transfer Restricted Securities covered by the Shelf Registration Statement or the

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underwriter(s), if any, shall reasonably object prior to the filing thereof. A selling Holder or underwriter, if any, shall be deemed to have reasonably objected to such filing if the Shelf Registration Statement, amendment, Prospectus or supplement, as applicable, as proposed to be filed, contains a material misstatement or omission.

(v) Make available at reasonable times for inspection by one or more representatives of the selling Holders, designated in writing by a Majority of Holders whose Transfer Restricted Securities are included in the Shelf Registration Statement, any underwriter participating in any distribution pursuant to the Shelf Registration Statement, and any attorney or accountant retained by such selling Holders or any of the underwriter(s), all financial and other records, pertinent corporate documents and properties of the Issuer as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the Issuer's officers, directors, managers and employees to supply all information reasonably requested by any such representative or representatives of the selling Holders, underwriter, attorney or accountant in connection with the Shelf Registration Statement after the filing thereof and before its effectiveness, *provided, however*, that any information designated by the Issuer as confidential at the time of delivery of such information shall be kept confidential by the recipient thereof.

(vi) If requested by any selling Holders or the underwriter(s), if any, promptly incorporate in the Shelf Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders and underwriter(s), if any, may reasonably request to have included therein, including, without limitation: (1) information relating to the "Plan of Distribution" of the Transfer Restricted Securities, (2) information with respect to the principal amount of Notes or number of shares of Common Stock being sold to such underwriter(s), (3) the purchase price being paid therefor and (4) any other terms of the offering of the Transfer Restricted Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after the Issuer is notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment.

(vii) Furnish to each selling Holder and each of the underwriter(s), if any, without charge, at least one copy of the Shelf Registration Statement, as first filed with the Commission, and of each amendment thereto (and any documents incorporated by reference therein or exhibits thereto (or exhibits incorporated in such exhibits by reference) as such Person may request).

(viii) Deliver to each selling Holder and each of the underwriter(s), if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons reasonably may request; subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in

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Section 4(b)(iii) (D), the Issuer hereby consents to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto.

(ix) The Issuer shall:

(A) upon request, furnish to each selling Holder and each underwriter, if any, in such substance and scope as they may reasonably request and as are customarily made by issuers to underwriters in primary underwritten offerings for selling security holders, upon the date of closing of any sale of Transfer Restricted Securities in an Underwritten Registration:

(1) a certificate, dated the date of such closing, signed by the Chief Financial Officer of the Issuer confirming, as of the date thereof, the matters set forth in Section 5(g) of the Purchase Agreement and such other matters as such parties may reasonably request;

(2) opinions, each dated the date of such closing, of counsel to the Issuer covering such of the matters as are customarily covered in legal opinions to underwriters in connection with underwritten offerings of securities; and

(3) customary comfort letters, dated the date of such closing, from the Issuer's independent accountants in the customary form and covering matters of the type customarily covered in comfort letters to underwriters in connection with underwritten offerings of securities;

(B) set forth in full in the underwriting agreement, if any, indemnification provisions and procedures which provide rights no less protective than those set forth in Section 6 hereof with respect to all parties to be indemnified; and

(C) deliver such other documents and certificates as may be reasonably requested by such parties to evidence compliance with clause (A) above and with any customary conditions contained in the underwriting agreement or other agreement entered into by the selling Holders pursuant to this clause (ix).

(x) Before any public offering of Transfer Restricted Securities, cooperate with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Transfer Restricted Securities under the securities or Blue Sky laws of such jurisdictions in the United States as the selling Holders or underwriter(s), if any, may reasonably request and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the Shelf Registration Statement; *provided, however*, that the Issuer shall not be required (A) to register or qualify as a foreign corporation or a dealer of securities

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where it is not now so qualified or to take any action that would subject it to the service of process in any jurisdiction where it is not now so subject or (B) to subject itself to taxation in any such jurisdiction if it is not now so subject.

(xi) Cooperate with the selling Holders and the underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends (unless required by applicable securities laws); and enable such Transfer Restricted Securities to be in such denominations and registered in such names as the Holders or the underwriter(s), if any, may request at least two Business Days before any sale of Transfer Restricted Securities made by such underwriter(s).

(xii) Use its reasonable best efforts to cause the Transfer Restricted Securities covered by the Shelf Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Transfer Restricted Securities; provided however, that the Issuer shall not be required to subject itself to taxation in any such jurisdiction if it is not now so subject.

(xiii) Subject to Section 4(b)(i) hereof, if any fact or event contemplated by Section 4(b)(iii)(D) hereof shall exist or have occurred, use its reasonable best efforts to prepare a supplement or post-effective amendment to the Shelf Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

(xiv) Provide CUSIP numbers for all Transfer Restricted Securities not later than the effective date of the Shelf Registration Statement and provide the Trustee under the Indenture with certificates for the Notes that are in a form eligible for deposit with The Depository Trust Company.

(xv) Cooperate and assist in any filings required to be made with the NASD and in the performance of any due diligence investigation by any underwriter that is required to be retained in accordance with the rules and regulations of the NASD.

(xvi) Otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Commission and all reporting requirements under the Exchange Act.

(xvii) Cause the Indenture to be qualified under the TIA not later than the effective date of the Shelf Registration Statement required by this Agreement, and, in connection therewith, cooperate with the Trustee and the holders of Notes

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to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; and execute and use its best efforts to cause the Trustee thereunder to execute all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner.

(xviii) Cause all shares of Common Stock covered by the Shelf Registration Statement to be listed or quoted, as the case may be, on each securities exchange or automated quotation system on which similar securities issued by the Issuer are then listed or quoted.

(xix) Provide to each Holder upon written request each document filed with the Commission pursuant to the requirements of Section 13 and Section 15 of the Exchange Act after the effective date of the Shelf Registration Statement.

(xx) If requested by the underwriters, make appropriate officers of the Issuer available to the underwriters for meetings with prospective purchasers of the Transfer Restricted Securities and prepare and present to potential investors customary "road show" or marketing materials in a manner consistent with other new issuances of other securities similar to the Transfer Restricted Securities.

(c) Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice (a "**Suspension Notice**") from the Issuer of the existence of any fact of the kind described in Section 4(b)(iii)(D) hereof, such Holder will, and will use its reasonable best efforts to cause any underwriter(s) in an Underwritten Offering to, forthwith discontinue disposition of Transfer Restricted Securities pursuant to the Shelf Registration Statement until:

(i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 4(b)(xiii) hereof; or

(ii) such Holder is advised in writing by the Issuer that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus.

If so directed by the Issuer, each Holder will deliver to the Issuer (at the Issuer's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such notice of suspension.

(d) Upon the effectiveness of the Shelf Registration Statement, each Holder shall notify the Issuer at least three Business Days prior to any intended distribution of Transfer Restricted Securities pursuant to the Shelf Registration Statement (a "**Sale Notice**"), which notice shall be effective for five Business Days. Each Holder of Transfer Restricted Securities, by accepting the same, agrees to hold any communication by the Issuer in response to a Sale Notice in confidence.

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5. Registration Expenses. All expenses incident to the Issuer's performance of or compliance with this Agreement shall be borne by the Issuer regardless of whether a Shelf Registration Statement becomes effective, including, without limitation:

(i) all registration and filing fees and expenses (including filings, if any, required to be made by any Initial Purchasers or Holders with the NASD);

(ii) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws;

(iii) all expenses of printing (including printing of Prospectuses and certificates for the Common Stock to be issued upon conversion of the Notes) and the Issuer's expenses for messenger and delivery services and telephone;

(iv) all fees and disbursements of counsel to the Issuer and, subject to Section 5(b) below, the Holders of Transfer Restricted Securities;

(v) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(vi) all fees and disbursements of independent certified public accountants of the Issuer (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuer shall bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Issuer.

(b) In connection with the Shelf Registration Statement required by this Agreement, including any amendment or supplement thereto, and any other documents delivered to any Holders, the Issuer shall reimburse the Initial Purchasers and the Holders of Transfer Restricted Securities being registered pursuant to the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements (not to exceed \$15,000) of not more than one counsel, which shall be Simpson Thacher & Bartlett, or such other counsel as may be chosen prior to the initial filing of the Shelf Registration Statement by a Majority of Holders for whose benefit the Shelf Registration Statement is being prepared.

6. Indemnification and Contribution. The Issuer shall indemnify and hold harmless each Holder, such Holder's officers, directors, partners and employees and each person, if any, who controls such Holder within the meaning of the Securities Act (each, an "**Indemnified Holder**"), from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to resales of the Transfer Restricted Securities), to which such Indemnified Holder may become subject, insofar as any such loss, claim, damage, liability or action arises out of, or is based upon:

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(i) any untrue statement or alleged untrue statement of a material fact contained in (A) the Shelf Registration Statement or Prospectus or any amendment or supplement thereto or (B) any blue sky application or other document or any amendment or supplement thereto prepared or executed by the Issuer (or based upon written information furnished by or on behalf of the Issuer expressly for use in such blue sky application or other document or amendment or supplement) filed in any jurisdiction specifically for the purpose of qualifying any or all of the Transfer Restricted Securities under the securities law of any state or other jurisdiction (such application or document being hereinafter called a "**Blue Sky Application**"); or

(ii) the omission or alleged omission to state in the Shelf Registration Statement, Prospectus or any amendment or supplement thereto, or in any Blue Sky Application, any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading,

and shall reimburse each Indemnified Holder promptly upon demand for any legal or other expenses reasonably incurred by such Indemnified Holder in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Issuer shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or Prospectus or amendment or supplement thereto or Blue Sky Application in reliance upon and in conformity with written information furnished to the Issuer. The foregoing indemnity agreement is in addition to any liability which the Issuer may otherwise have to any Indemnified Holder.

(b) Each Holder, severally and not jointly, shall indemnify and hold harmless the Issuer, its officers, directors and employees and each person, if any, who controls the Issuer within the meaning of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Issuer or any such officer, director, employee or controlling person may become subject, insofar as any such loss, claim, damage or liability or action arises out of, or is based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in the Shelf Registration Statement or Prospectus or any amendment or supplement thereto or any Blue Sky Application; or

(ii) the omission or the alleged omission to state in the Shelf Registration Statement, Prospectus or any amendment or supplement thereto, or in any Blue Sky Application, any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading,

but in each case only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Issuer by or on behalf of such Holder (or its related Indemnified

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Holder) specifically for use therein, and shall reimburse the Issuer and any such officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred by the Issuer or any such officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred. The foregoing indemnity agreement is in addition to any liability which any Holder may otherwise have to the Issuer and any such officer, employee or controlling person.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 6, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this Section 6 except to the extent it has been materially prejudiced by such failure and, *provided, further*, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 6. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 6 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that a Majority of Holders shall have the right to employ a single counsel to represent jointly a Majority of Holders and their respective officers, directors, partners, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by a Majority of Holders against the Issuer under this Section 6, and, if a Majority of Holders seeking indemnification shall have been advised by legal counsel that there may be one or more legal defenses available to them and their respective officers, employees and controlling persons that are different from or additional to those available to the Issuer and its officers, directors, employees and controlling persons, the fees and expenses of a single separate counsel shall be paid by the Issuer. No indemnifying party shall:

(i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld) settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding, or

(ii) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the

indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

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

(i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer from the offering and sale of the Transfer Restricted Securities on the one hand and a Holder with respect to the sale by such Holder of the Transfer Restricted Securities on the other, or

(ii) if the allocation provided by clause (6)(d)(i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 6(d)(i) but also the relative fault of the Issuer on the one hand and the Holders on the other in connection with the statements or omissions or alleged statements or alleged omissions that resulted in such loss, claim, damage or liability (or action in respect thereof), as well as any other relevant equitable considerations.

The relative benefits received by the Issuer on the one hand and a Holder on the other with respect to such offering and such sale shall be deemed to be in the same proportion as the total net proceeds from the offering of the Notes purchased under the Purchase Agreement (before deducting expenses) received by the Issuer on the one hand, bear to the total proceeds received by such Holder with respect to its sale of Transfer Restricted Securities on the other. The relative fault of the parties shall be determined by reference to 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 Issuer on the one hand or the Holders on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Issuer and each Holder agree that it would not be just and equitable if the amount of contribution pursuant to this Section 6(d) were determined by *pro rata* allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the first sentence of this paragraph (d). The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 6 shall be deemed to include, for purposes of this Section 6, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending or preparing to defend any such action or claim. Notwithstanding the provisions of this Section 6, no Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Transfer Restricted Securities purchased by it were resold exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute as provided in this Section 6(d) are several and not joint.

7. Rule 144A. In the event the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer hereby agrees with each Holder, for so long as any Transfer Restricted Securities remain outstanding, to make available to any Holder or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A.

8. Participation in Underwritten Registrations. No Holder may participate in any Underwritten Registration hereunder unless such Holder:

(i) agrees to sell such Holder's Transfer Restricted Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements; and

(ii) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such underwriting arrangements.

9. Selection of Underwriters. The Holders of Transfer Restricted Securities covered by the Shelf Registration Statement who desire to do so may sell such Transfer Restricted Securities in an Underwritten Offering if approved by the Issuer. In any such Underwritten Offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by a Majority of Holders whose Transfer Restricted Securities are included in such offering; *provided*, that such investment bankers and managers must be reasonably satisfactory to the Issuer.

10. Miscellaneous.

(a) **Remedies.** The Issuer acknowledges and agrees that any failure by the Issuer to comply with its obligations under Section 2 hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Issuer's obligations under Section 2 hereof.

(b) **Actions Affecting Transfer Restricted Securities.** The Issuer shall not take any action with the purpose of adversely affecting the ability of the Holders of the Transfer Restricted Securities as a class to include such Transfer Restricted Securities in a registration undertaken pursuant to this Agreement.

(c) **No Inconsistent Agreements.** The Issuer will not, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. In addition, the Issuer shall not grant to any of its security holders (other than the Holders of Transfer Restricted Securities in such capacity) the right to include any of its securities in the Shelf Registration Statement provided for in this Agreement other than the Transfer Restricted Securities. The Issuer has not previously entered into any agreement (which has not expired or

been terminated) granting any registration rights with respect to its securities to any Person which rights conflict with the provisions hereof.

(d) **Amendments and Waivers.** This Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, unless the Issuer has obtained the written consent of a Majority of Holders or such greater percentage of the Holders as required by the Indenture.

Wells Fargo Bank N.A.
Tacoma Regional Commercial Banking Office
1201 Pacific Avenue, Third Floor
Tacoma, WA 98402-4301
800 688-0224
253 593-5215 Fax

June 12, 2002

Mr. Steven C. Cooper
Executive Vice President &
Chief Financial Officer
Labor Ready, Inc.
P.O. Box 2910
Tacoma, Washington 98401

Dear Steve:

Wells Fargo Bank, National Association ("Bank") has made a credit accommodation to Labor Ready, Inc., a Washington corporation ("Borrower"), pursuant to the Credit Agreement dated as of January 4, 2002 (the signed Credit Agreement incorrectly shows the date as January 2, 2001), executed by Bank and Borrower (the "Credit Agreement"). Except as otherwise defined herein, all capitalized terms herein shall have the meanings given in the Credit Agreement.

Borrower desires to issue, between the date hereof and September 30, 2002, up to \$75,000,000 (with a 20% greenshoe) of unsecured, subordinated convertible debt on the terms set forth in the offering memorandum heretofore shown to Bank.

Borrower has asked Bank to consent to such subordinated debt and to agree to certain changes in the EBITDA coverage ratio which is set forth in Section 4.9(b) of the Credit Agreement. Accordingly, this letter will confirm the following agreement between Bank and Borrower:

1. Bank hereby consents to the subordinated debt offering as described above, so long as (a) GECC consents thereto pursuant to amendments to the GECC Letter of Credit Documents and the GECC Receivable Documents which are substantially similar to the drafts of those amendments heretofore delivered to Bank (the "GECC Amendments"), and (b) the subordinated debt satisfies the requirements of such amendments.

2. Bank hereby consents to the GECC Amendments.

3. Bank hereby agrees that the requirement in Section 4.9(d) of the Credit Agreement that the EBITDA Coverage Ratio be not less than 2.00 to 1.00, determined on a rolling four fiscal quarter basis as of each fiscal quarter end, shall be deemed modified hereby to reflect the following:

(a) The EBITDA Coverage Ratio shall be not less than 1.50 to 1.0 from and including the four fiscal quarter period ending on September 30, 2002 and continuing up to and including the four fiscal quarter period ending on June 30, 2003.

(b) The EBITDA Coverage Ratio shall be not less than 1.75 to 1.0 from and including the four fiscal quarter period commencing on September 30, 2003 and continuing up to and including the four fiscal quarter period ending on June 30, 2004.

(c) The EBITDA Coverage Ratio shall be not less than 2.00 to 1.0 for any four fiscal quarter period ending after June 30, 2004.

4. Except as expressly provided herein, all terms and provisions of the Credit Agreement and the other loan document shall continue in full force and effect without waiver or modification, and Bank reserves all of its rights, privileges and remedies in connection therewith.

Please acknowledge your acceptance of the foregoing by executing and returning to the undersigned this letter or a copy hereof not later than June 26, 2002.

Sincerely,

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Edward Foreman
Title: VICE PRESIDENT

Acknowledged and agreed to by:

LABOR READY, INC.

By: /s/ Derrek Gafford
Title: VP and Treasurer

FOURTH AMENDMENT TO SECURITIZATION AGREEMENTS

THIS FOURTH AMENDMENT TO SECURITIZATION AGREEMENTS (this “**Amendment**”), is made and entered into as of June 12, 2002 (the “**Effective Date**”), by and among **LABOR READY, INC.**, a Washington corporation (the “**Parent**”), each of the Parent’s Subsidiaries listed on the signature pages hereto as a “**Selling Subsidiary**” (each, a “**Selling Subsidiary**”; Parent and each Selling Subsidiary are hereinafter sometimes referred to individually as an “**Originator**” and collectively as the “**Originators**”), **LABOR READY FUNDING CORPORATION**, a Delaware corporation (the “**Buyer**”; Buyer and each Originator are hereinafter sometimes referred to individually as a “**Company**” and collectively as the “**Companies**”), **REDWOOD RECEIVABLES CORPORATION**, a Delaware corporation (“**Redwood**”), as Conduit Lender (in such capacity, the “**Conduit Lender**”), and **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation (“**GE Capital**”), as Committed Lender (in such capacity, the “**Committed Lender**”; together with the Conduit Lender referred to herein collectively as the “**Lenders**”), as Administrative Agent for the Lenders (in such capacity, the “**Administrative Agent**”), as Collateral Agent for the Conduit Lender and the Conduit Lender Secured Parties (in such capacity, the “**Collateral Agent**”), as Operating Agent for Redwood (in such capacity, the “**Operating Agent**”), and as Liquidity Agent for the Liquidity Lenders (in such capacity, the “**Liquidity Agent**”).

WITNESSETH:

WHEREAS, each of the Selling Subsidiaries and the Parent are parties to a certain Receivables Sale Agreement, dated as of March 1, 2001 (as amended to the date hereof, the “**Receivables Sale Agreement**”; capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in Annex X to the Receivables Sale Agreement as amended by this Amendment), whereby each Selling Subsidiary has agreed to sell or otherwise transfer to the Parent, and the Parent has agreed to purchase or otherwise acquire from such Selling Subsidiaries, all of the right, title and interest of such Selling Subsidiaries in the Receivables; and

WHEREAS, the Parent and the Buyer are parties to a certain Receivables Sale and Contribution Agreement, dated as of March 1, 2001 (as amended to the date hereof, the “**Transfer Agreement**”), whereby the Parent has agreed to sell, contribute or otherwise transfer to Buyer, and Buyer has agreed to purchase or otherwise acquire from the Parent, all of the right, title and interest of the Parent in the Receivables; and

WHEREAS, the Buyer, the Lenders and the Administrative Agent are parties to a certain Receivables Funding Agreement, dated as of March 1, 2001 (as amended to the date hereof, the “**Funding Agreement**”), pursuant to which, among other things, the Lenders have agreed, subject to certain terms and conditions, to make Advances to the Buyer to fund its purchases of the Receivables; and

WHEREAS, Redwood and GE Capital, as Liquidity Agent, Initial Liquidity Lender, Collateral Agent and Operating Agent are parties to a certain Liquidity Loan and Asset Purchase Agreement, dated as of March 1, 2001 (the “**Liquidity Loan Agreement**”; the Receivables Sale Agreement, the Transfer Agreement, the Funding Agreement and the Liquidity Loan Agreement,

together with all exhibits and annexes thereto, are referred to herein collectively as the “**Securitization Agreements**”), pursuant to which, among other things, the Liquidity Lenders have agreed, subject to certain terms and conditions, to make Liquidity Loans to Redwood; and

WHEREAS, the Companies have requested that the Securitization Agreements be amended in certain respects, and the Lenders, the Administrative Agent and the Collateral Agent are willing to agree to such amendments subject to the terms and conditions of this Amendment.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Amendment of Securitization Agreements.**

1.1 The definition of Minimum EBITDA set forth in Annex G to the Funding Agreement is hereby amended by deleting the first sentence thereof and substituting the following new sentence to read in its entirety as follows:

“EBITDA” shall mean, with respect to any Person for any fiscal period, the amount equal to (a) consolidated net income of such Person for such period, minus (b) the sum of (i) income tax credits, (ii) gain from extraordinary items for such period, (iii) any aggregate net gain (but not any aggregate net loss) during such period arising from the sale, exchange or other disposition of capital assets by such Person (including any fixed assets, whether tangible or intangible, all inventory sold in conjunction with the disposition of fixed assets and all securities), and (iv) any other non-cash gains that have been added in determining consolidated net income (including LIFO adjustments), in each case to the extent included in the calculation of consolidated net income of such Person for such period in accordance with GAAP, but without duplication, plus (c) the sum of (i) any provision for income taxes, (ii) Interest Expense, (iii) loss from extraordinary items for such period, (iv) depreciation and amortization for such period, (v) amortized debt discount for such period, and (vi) the amount of any deduction to consolidated net income as the result of any grant to any members of the management of such Person of any Stock, in each case to the extent included in the calculation of consolidated net income of such Person for such period in accordance with GAAP, but without duplication.

1.2 Section 4.3(e) of the Transfer Agreement is hereby amended by deleting clause (ii) of Section 4.3(e) and substituting in lieu thereof the following new clause (ii) to read in its entirety as follows:

(ii) make any change in its capital structure as described on Schedule 4.01(h), including the issuance of any shares of Stock, warrants or other securities convertible into Stock or any revision of the terms of its outstanding Stock, except for any changes in capital structure resulting from the issuance by the Parent of the Subordinated Convertible Notes, the incurrence by the Parent of any Subordinated Convertible Indebtedness or the conversion by the Parent of any of the Subordinated Convertible Indebtedness into common stock of the Parent in accordance with the terms of the Subordinated Convertible Note Indenture,

provided that: (A) the aggregate principal amount of such Subordinated Convertible Indebtedness shall not exceed \$90,000,000, (B) the Convertible Subordinated Indebtedness is not redeemable at the option of the holders thereof prior to its stated maturity date (except upon a change of control event acceptable to the Administrative Agent) and does not have any required scheduled payments of principal prior to the maturity date thereof; (C) the stated maturity date of the Subordinated Convertible Indebtedness shall be not less than six (6) months after the Facility Termination Date; and (D) the Subordinated Convertible Indebtedness shall be unsecured and subordinated in right of payment to the Obligations (as such term is defined in the Letter of Credit Agreement) on terms satisfactory to the Administrative Agent, including customary payment blockage provisions, or

1.3 Annex X is hereby amended by adding in alphabetical order the following new definitions:

“Subordinated Convertible Indebtedness” shall mean the Debt incurred by Parent under and pursuant to the Subordinated Convertible Notes and

Subordinated Convertible Note Indenture.

“Subordinated Convertible Note Indenture” shall mean that certain Indenture dated on or about June 13, 2002 between Parent and The Bank of New York, as Trustee.

“Subordinated Convertible Notes” shall mean those certain Convertible Subordinated Notes due in 2007 and issued pursuant to the Subordinated Convertible Note Indenture.

2. **No Other Amendments.** Except for the amendments expressly set forth and referred to in Section 1 above, the Securitization Agreements shall remain unchanged and in full force and effect.

3. **Representations and Warranties.** Each Company hereby represents and warrants to the Lenders, the Administrative Agent and the Collateral Agent that (a) this Amendment has been duly authorized, executed and delivered by each Company, (b) after giving effect to this Amendment, no Termination Event, Incipient Termination Event, Event of Servicer Termination or Incipient Servicer Termination Event has occurred and is continuing as of this date, and (c) after giving effect to this Amendment, all of the representations and warranties made by each Company in the Securitization Agreements are true and correct in all material respects on and as of the date of this Amendment (except to the extent that any such representations or warranties expressly referred to a specific prior date). Any breach in any material respect by any Company of any of its representations and warranties contained in this Section 3 shall be a Termination Event and an Event of Servicer Termination for all purposes of the Securitization Agreements.

4. **Ratification.** Each Company hereby ratifies and reaffirms each and every term, covenant and condition set forth in the Securitization Agreements and all other documents delivered by such Company in connection therewith (including without limitation the other Related Documents to which each Company is a party), effective as of the date hereof.

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5. **Estoppel.** To induce the Lenders and the Administrative Agent to enter into this Amendment, each Company hereby acknowledges and agrees that, as of the date hereof, there exists no right of offset, defense or counterclaim in favor of any Company as against any Lender, the Administrative Agent or the Collateral Agent with respect to the obligations of any Company to any Lender, the Administrative Agent or the Collateral Agent under the Securitization Agreements or the other Related Documents, either with or without giving effect to this Amendment.

6. **Conditions to Effectiveness.** This Amendment shall be effective as of the Effective Date upon the satisfaction of the following conditions: (i) receipt by the Administrative Agent of this Amendment, duly executed, completed and delivered by each of the Companies, each Lender, the Administrative Agent and the Collateral Agent and (ii) receipt by the Administrative Agent of the Second Amendment to Letter of Credit Agreement, dated as of the date hereof, by and between Parent, as Debtor therein, and GE Capital, as Creditor therein, and all conditions to effectiveness of said amendment have been satisfied.

7. **Reimbursement of Expenses.** Each Company hereby agrees that it shall reimburse the Administrative Agent on demand for all costs and expenses (including without limitation reasonable attorney’s fees) incurred by such parties in connection with the negotiation, documentation and consummation of this Amendment and the other documents executed in connection herewith and therewith and the transactions contemplated hereby and thereby.

8. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK FOR CONTRACTS TO BE PERFORMED ENTIRELY WITHIN SAID STATE.

9. **Severability of Provisions.** Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, each Company hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

10. **Counterparts.** This Amendment may be executed in any number of several counterparts, all of which shall be deemed to constitute but one original and shall be binding upon all parties, their successors and permitted assigns.

11. **Entire Agreement.** The Securitization Agreements as amended from time to time and by this Amendment embody the entire agreement between the parties hereto relating to the subject matter hereof and supersede all prior agreements, representations and understandings, if any, relating to the subject matter hereof.

12. **Parent and GE Capital’s Capacities.** The Parent is executing and delivering this Amendment both in its capacity as an Originator under the Transfer Agreement and as the Servicer under the Funding Agreement, and all references herein to the “Parent” shall be deemed to include the Parent in both such capacities unless otherwise expressly indicated. GE Capital is executing and delivering this Amendment both in its capacity as a Lender and as the Administrative Agent for the Lenders and the Collateral Agent for the Conduit Lender and the

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Conduit Lender Secured Parties, and all references herein to “GE Capital” shall be deemed to include it in both such capacities unless otherwise expressly indicated.

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IN WITNESS WHEREOF, the parties have caused this Fourth Amendment to Securitization Agreements to be duly executed by their respective officers thereunto duly authorized, as of the date first above written.

REDWOOD RECEIVABLES CORPORATION,
as the Conduit Lender

By: /s/ Brian P. Schwinn
Name: Brian P. Schwinn
Title: Assistant Secretary

GENERAL ELECTRIC CAPITAL CORPORATION, as Committed Lender,
Administrative Agent and Collateral Agent

By: /s/ Craig Winslow
Its Duly Authorized Signatory

LABOR READY FUNDING CORPORATION

By: /s/ Bruce H. Marley
Name: Bruce H. Marley
Title: President

LABOR READY, INC.

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: Executive Vice President and Secretary

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SELLING SUBSIDIARIES:

LABOR READY CENTRAL, INC.

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: President

LABOR READY CENTRAL II, LLC

By: Labor Ready Central, Inc., as its sole Member

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: President

LABOR READY CENTRAL III, LP

By: Labor Ready Central, Inc., as its sole General Partner

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: President

LABOR READY GP CO., INC.

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: President

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LABOR READY MID-ATLANTIC, INC.

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: President

LABOR READY MID-ATLANTIC II, INC.

By: /s/ Tim J. Adams
Name: Tim J. Adams
Title: President

LABOR READY MID-ATLANTIC III, LP

By: Labor Ready GP Co., Inc., as its sole General Partner

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

LABOR READY MIDWEST, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

LABOR READY NORTHEAST, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

8

LABOR READY NORTHWEST, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

LABOR READY SOUTHEAST, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

LABOR READY SOUTHEAST II, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

LABOR READY SOUTHEAST III, LP

By: Labor Ready GP Co., Inc., as its sole General Partner

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

LABOR READY SOUTHWEST, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

9

LABOR READY PUERTO RICO, INC.

By: /s/ Tim J. Adams

Name: Tim J. Adams
Title: President

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SECOND AMENDMENT TO LETTER OF CREDIT AGREEMENTS

THIS SECOND AMENDMENT TO LETTER OF CREDIT AGREEMENTS (this "Amendment"), is made and entered into as of June 12, 2002, by and between LABOR READY, INC., a Washington corporation ("Debtor"), and GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation ("Creditor").

WITNESSETH:

WHEREAS, Debtor and Creditor are parties to that certain Letter of Credit Agreement dated as of March 1, 2001 (the "Letter of Credit Agreement"; capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Letter of Credit Agreement or Annex A thereto), whereby Creditor has agreed, subject to certain terms and conditions, to incur Letter of Credit Obligations or cause the issuance of Letters of Credit; and

WHEREAS, Creditor and Debtor desire to modify the Letter of Credit Agreement in certain respects, all in accordance with and subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Amendments to Letter of Credit Agreement.** Subject to the terms and conditions of this Amendment, the Letter of Credit Agreement shall be amended as follows:

1.1 Section 6.3 to the Letter of Credit Agreement is hereby amended by deleting the word "and" from the end of clause (iv) and adding the word "and" to the end of clause (v) and adding a new clause (vi) to read in its entirety as follows:

(vi) the Subordinated Indebtedness, provided that: (A) the aggregate principal amount of such Indebtedness shall not exceed \$90,000,000; (B) such Indebtedness is not redeemable at the option of the holders thereof prior to its stated maturity date (except upon a change of control event acceptable to Creditor) and does not have any required scheduled payments of principal prior to the maturity date thereof; (C) the stated maturity date of such Indebtedness shall be not less than six (6) months after the Commitment Termination Date; and (D) such Indebtedness shall be unsecured and subordinated in right of payment to the Obligations on terms satisfactory to Creditor, including customary payment blockage provisions.

1.2 Section 6.5 to the Letter of Credit Agreement is hereby amended by deleting clause (b) thereof and substituting in lieu thereof the following clause (b) to read in its entirety as follows:

(b) make any change in its capital structure as described on Disclosure Schedule (3.8), including the issuance of any shares of Stock, warrants or other securities convertible into Stock or any revision of the terms of its outstanding Stock, except for any changes in capital structure resulting from the issuance by Debtor of the Subordinated Notes, the incurrence by Debtor of any Subordinated Indebtedness or the conversion by Debtor of any of the Subordinated Indebtedness into common stock of Debtor in accordance with the terms of the Subordinated Note Indenture, provided that: (A) the aggregate principal amount of such Subordinated Indebtedness shall not exceed \$90,000,000, (B) the Subordinated Indebtedness is not redeemable at the option of the holders thereof prior to its stated maturity date (except upon a change of control event acceptable to the Creditor) and does not have any required scheduled payments of principal prior to the maturity date thereof; (C) the stated maturity date of the Subordinated Indebtedness shall be not less than six (6) months after the Commitment Termination Date; and (D) the Subordinated Indebtedness shall be unsecured and subordinated in right of payment to the Obligations on terms satisfactory to the Creditor, including customary payment blockage provisions, or

1.3 The first sentence of Section 6.14 is hereby deleted in its entirety and the following new sentence is substituted in lieu thereof:

6.14 Restricted Payments. No Credit Party shall make any Restricted Payment, except: (a)(i) intercompany loans and advances between Debtor and its Subsidiaries (other than the Existing Foreign Subsidiaries, LR Assurance and Workers' Assurance) and (ii) intercompany loans and advances between Debtor and the Existing Foreign Subsidiaries, LR Assurance and Workers' Assurance, so long as the aggregate of all such loans and advances permitted under this clause (ii) does not exceed \$500,000 during any Fiscal Year; (b) dividends and distributions by Subsidiaries of Debtor paid to Debtor; and (c) subject to the subordination provisions provided for in the Subordinated Notes Indenture, scheduled semi-annual payments of interest to the holders of the Subordinated Notes, in the manner provided for therein or pursuant to the Subordinated Notes Indenture.

1.4 Section 8.1 to the Letter of Credit Agreement is hereby amended by adding a new subsection (n) to read in its entirety as follows:

(n) The occurrence of any "Event of Default" under and as defined in the Subordinated Notes Indenture.

1.5 Annex A to the Letter of Credit Agreement is hereby amended by adding in alphabetical order the following definitions:

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"Subordinated Notes Indenture" shall mean that certain Indenture dated on or about June 13, 2002, between Debtor and The Bank of New York, as Trustee.

"Subordinated Notes" shall mean those certain Convertible Subordinated Notes due in 2007 and issued pursuant to the Subordinated Notes Indenture.

"Subordinated Indebtedness" shall mean the Indebtedness incurred by Debtor under and pursuant to the Subordinated Notes and the Subordinated Notes Indenture.

2. **No Other Amendments.** Except for the amendments expressly set forth and referred to in Section 1 above, the Letter of Credit Agreement shall remain unchanged and in full force and effect. Without limiting the generality of the foregoing, the parties hereto hereby acknowledge and agree that this Amendment is not intended to, nor shall it be construed as, waiving any Default or Event of Default that now or hereafter may exist as a result of any transactions between or among Debtor or any other Credit Party, except for those transactions specifically described in Section 1 of this Amendment.

3. **Representations and Warranties.** Debtor hereby represents and warrants to Creditor that (a) this Amendment has been duly authorized, executed and delivered by Debtor, (b) after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing as of this date, and (c) after giving effect to this Amendment, all of the representations and warranties made by Debtor in the Letter of Credit Agreement are true and correct in all material respects on and as of the date of this

Amendment (except to the extent that any such representations or warranties expressly referred to a specific prior date). Any breach in any material respect by Debtor of any of its representations and warranties contained in this Section 3 shall be a Default and an Event of Default for all purposes of the Letter of Credit Agreement.

4. **Ratification.** Debtor hereby ratifies and reaffirms each and every term, covenant and condition set forth or incorporated by reference in the Letter of Credit Agreement and all other documents delivered by Debtor in connection therewith (including without limitation the other Letter of Credit Documents to which Debtor is a party) effective as of the date hereof.

5. **Estoppel.** To induce Creditor to enter into this Amendment, Debtor hereby acknowledges and agrees that, as of the date hereof, there exists no right of offset, defense or counterclaim in favor of Debtor as against Creditor with respect to the obligations of Debtor under the Letter of Credit Agreement or the other Letter of Credit Documents, either with or without giving effect to this Amendment.

6. **Conditions to Effectiveness.** Upon the receipt by Creditor of (i) this Amendment, duly executed, completed and delivered by Debtor and each Guarantor and (ii) a copy of the final Subordinated Notes Indenture in form and substance satisfactory to Creditor, this Amendment shall become effective.

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7. **Reimbursement of Expenses.** Debtor hereby agrees that it shall reimburse Creditor on demand for all costs and expenses (including without limitation reasonable attorney's fees) incurred by such parties in connection with the negotiation, documentation and consummation of this Amendment and the other documents executed in connection herewith and therewith and the transactions contemplated hereby and thereby.

8. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK FOR CONTRACTS TO BE PERFORMED ENTIRELY WITHIN SAID STATE.

9. **Severability of Provisions.** Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, Debtor hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

10. **Counterparts.** This Amendment may be executed in any number of several counterparts, all of which shall be deemed to constitute but one original and shall be binding upon all parties, their successors and permitted assigns.

11. **Entire Agreement.** The Letter of Credit Agreement as amended from time to time and by this Amendment embodies the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior agreements, representations and understandings, if any, relating to the subject matter hereof.

[Remainder of page intentionally blank; next page is signature page]

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IN WITNESS WHEREOF, the parties have caused this Second Amendment to Letter of Credit Agreements to be duly executed by their respective officers thereunto duly authorized, as of the date first above written.

GENERAL ELECTRIC CAPITAL CORPORATION

By: /s/ Craig Winslow
Its Duly Authorized Signatory

LABOR READY, INC.

By: /s/ Steven C. Cooper
Name: Steven C. Cooper
Title: Executive Vice President & Chief
Financial Officer

Each of the undersigned Guarantors hereby acknowledges and agrees with the terms of the foregoing Second Amendment to Letter of Credit Agreements and hereby ratifies and reaffirms all of its obligations under that certain Subsidiary Guaranty dated as of March 1, 2001 by the Guarantors in favor of Creditor.

LABOR READY CENTRAL, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY CENTRAL II, LLC

By: Labor Ready Central, Inc., as its sole Member

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY CENTRAL III, LP

By: Labor Ready Central, Inc., as its sole General Partner

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY GP CO., INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY MID-ATLANTIC, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY MID-ATLANTIC II, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY MID-ATLANTIC III, LP

By: Labor Ready GP Co., Inc., as its sole General Partner

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY MIDWEST, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY NORTHEAST, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY NORTHWEST, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY SOUTHEAST, INC.

By: /s/ Timothy J. Adams
Name: Timothy J. Adams
Title: President

LABOR READY SOUTHEAST, INC.

By: /s/ Timothy J. Adams _____
Name: Timothy J. Adams
Title: President

LABOR READY SOUTHEAST III, LP

By: Labor Ready GP Co., Inc., as its sole General Partner

By: /s/ Timothy J. Adams _____
Name: Timothy J. Adams
Title: President

LABOR READY SOUTHWEST, INC.

By: /s/ Timothy J. Adams _____
Name: Timothy J. Adams
Title: President

LABOR READY PROPERTIES, INC.

By: /s/ Timothy J. Adams _____
Name: Timothy J. Adams
Title: President

LABOR READY HOLDINGS, INC.

By: /s/ Timothy J. Adams _____
Name: Timothy J. Adams
Title: President

LABOR READY PUERTO RICO, INC.

By: /s/ Timothy J. Adams _____
Name: Timothy J. Adams
Title: President

Wells Fargo Bank N.A.
Tacoma Regional Commercial Banking Office
1201 Pacific Avenue, Third Floor
Tacoma, WA 98402-4301
800 688-0224
253 593-5215 Fax

July 31, 2002

Mr. Steven C. Cooper
Executive Vice President &
Chief Financial Officer
Labor Ready, Inc.
P.O. Box 2910
Tacoma, Washington 98401

Dear Steve:

Wells Fargo Bank, National Association ("Bank") has made a credit accommodation to Labor Ready, Inc., a Washington corporation ("Borrower"), pursuant to the Credit Agreement dated as of January 4, 2002 (the signed Credit Agreement incorrectly shows the date as January 4, 2001), executed by Bank and Borrower (the "Credit Agreement"). Except as otherwise defined herein, all capitalized terms herein shall have the meanings given in the Credit Agreement.

In Bank's prior letter to Borrower dated June 12, 202 (the "Consent Letter"), the parties confirmed Bank's consent to a certain subordinated debt offering and modified the EBITDA Coverage Ratio in Section 4.9(d) of the Credit Agreement. When the consent Letter was executed the parties agreed to subsequently negotiate a mutually acceptable "change of control" provision for the Credit Agreement. This letter will confirm the following agreement between Bank and Borrower:

1. Section 6.1 of the Credit Agreement shall be deemed modified hereby to include the following paragraph at the end thereof:

"(j) The occurrence of any "Change of Control" as defined in the GECC Letter of Credit Documents, as same may be amended by any amendment consented to by Bank."

-
2. Except as expressly provide herein, all terms and provision of the Credit Agreement and the other loan documents shall continue in full force and effect without waiver or modification, and Bank reserves all of its rights, privileges and remedies in connection therewith

Please acknowledge your acceptance of the foregoing by executing and returning to the undersigned this letter or a copy hereof not later than August 7, 2002.

Sincerely,

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ Edward Foreman
Title: VICE PRESIDENT

Acknowledged and agreed to by:

LABOR READY, INC.

By: /s/ Steve Cooper
Title: CFO

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Labor Ready, Inc. (the "Company") on Form 10-Q for the period ending June 28, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Joseph P. Sambataro, Jr., Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Reported fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Joseph P. Sambataro, Jr.

Joseph P. Sambataro, Jr.
Chief Executive Officer
August 12, 2002

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Labor Ready, Inc. (the "Company") on Form 10-Q for the period ending June 28, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Steven C. Cooper, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Steven C. Cooper

Steven C. Cooper
Chief Financial Officer
August 12, 2002
