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

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**FORM 8-K**

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

**April 24, 2007**  
Date of Report (Date of earliest event reported)

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**ADVANCED MICRO DEVICES, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**001-07882**  
(Commission File Number)

**94-1692300**  
(IRS Employer  
Identification Number)

**One AMD Place**  
**P.O. Box 3453**  
**Sunnyvale, California 94088-3453**  
(Address of principal executive offices) (Zip Code)

**(408) 749-4000**  
(Registrant's telephone number, including area code)

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Item 1.01 Entry into a Material Definitive Agreement

On April 27, 2007, Advanced Micro Devices, Inc. (the “**Company**”) issued \$2.2 billion aggregate principal amount of 6.00% Convertible Senior Notes due 2015 (the “**Notes**”). The terms of the Notes are governed by an Indenture (the “**Indenture**”), dated as of April 27, 2007, by and between the Company and Wells Fargo Bank, National Association, as Trustee. A copy of the Indenture, including the form of the Notes, is attached as Exhibit 4.1 to this Report, the terms of which are incorporated herein by reference. The foregoing description of the Indenture is qualified in its entirety by reference to the full text of the Indenture. Additional information pertaining to the Notes is contained in Items 2.03 and 3.02 and is incorporated herein by reference.

In connection with the pricing of the Notes, on April 24, 2007, the Company entered into a capped call transaction (the “**Capped Call**”) with respect to its common stock, par value \$0.01 per share (the “**Common Stock**”), with Lehman Brothers OTC Derivatives Inc., an affiliate of one of the Initial Purchasers (defined below). The Capped Call has an initial strike price of \$28.08 per share, subject to certain adjustments, which matches the initial conversion price of the Notes, and a cap price of \$42.12 per share. The Capped Call is intended to reduce the potential dilution upon conversion of the Notes. If, however, the market value per share of the Common Stock, as measured under the terms of the Capped Call, exceeds the cap price of the Capped Call, there would be dilution to the extent that the then market value per share of the Common Stock exceeds the cap price. The Company paid approximately \$182 million from the net proceeds from the issuance and sale of the Notes to purchase the Capped Call. A copy of the Capped Call is attached as Exhibit 10.1 to this Report, the terms of which are incorporated herein by reference. The foregoing description of the Capped Call is qualified in its entirety by reference to the full text of the Capped Call.

In connection with the issuance and sale of the Notes, the Company also entered into a Registration Rights Agreement (the “**Registration Rights Agreement**”), dated April 27, 2007, between the Company and Morgan Stanley & Co. Incorporated, as representative of the several initial purchasers of the Notes (the “**Initial Purchasers**”). A copy of the Registration Rights Agreement is attached as Exhibit 10.2 to this Report, the terms of which are incorporated herein by reference. The foregoing description of the Registration Rights Agreement is qualified in its entirety by reference to the full text of the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the Company has agreed that it will:

- file a shelf registration statement (the “**Registration Statement**”) with the Securities and Exchange Commission (the “**SEC**”) as soon as practicable, but no later than July 26, 2007 for the resale by holders of the Notes and the shares of common stock of the Company issuable upon conversion of the Notes (the “**Conversion Shares**”);
- use its reasonable best efforts to cause that Registration Statement to be declared effective by the SEC as promptly as practicable, but in no event later than October 24, 2007; and
- use its reasonable best efforts to keep the Registration Statement effective until such time as all of the Notes and the Conversion Shares cease to be outstanding or have either been:

- sold pursuant to the Registration Statement; or
- sold pursuant to Rule 144 under the Securities Act of 1933, as amended (the “*Securities Act*”), under circumstances in which any legend borne by the Notes or the Conversion Shares relating to restrictions on transferability thereof is removed or the Notes or the Conversion Shares are eligible to be sold pursuant to Rule 144(k) under the Securities Act.

If the Company does not meet these deadlines then, subject to certain exceptions, additional interest will accrue on the Notes to be paid semi-annually in arrears at a rate per year equal to 0.25% of the principal amount of Notes to and including the 90<sup>th</sup> day following such registration default, or 0.50% of the principal amount thereafter, for the period during which the registration default is not cured. In no event will such additional interest accrue at a rate per year exceeding 0.50%.

The Initial Purchasers and their respective affiliates have performed various financial advisory, investment banking and commercial banking services from time to time for the Company and its affiliates and may do so in the future. Morgan Stanley Senior Funding Inc., an affiliate of Morgan Stanley & Co. Incorporated, is an agent, and Merrill Lynch Capital Corp., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, is one of the lenders under the term loan that the Company entered into to finance the acquisition of ATI Technologies Inc. (the “*October 2006 Term Loan*”). The Company applied \$500 million of the net proceeds from the issuance and sale of the Notes to repay a portion of the amount outstanding under the October 2006 Term Loan. As a result, Merrill Lynch Capital Corp. received a portion of the net proceeds of this offering. Lehman Brothers OTC Derivatives Inc., an affiliate of Lehman Brothers Inc., is the counterparty in the Capped Call.

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

On April 27, 2007, the Company issued \$2.2 billion aggregate principal amount of 6.00% Convertible Senior Notes due 2015. The Notes bear interest at 6.00% per annum. Interest is payable on May 1 and November 1 of each year beginning November 1, 2007 until the maturity date of May 1, 2015.

Upon the occurrence of certain events described in the Indenture, the Notes will be convertible into cash up to the principal amount, and if applicable, Conversion Shares in respect of any conversion value above the principal amount, based on an initial conversion rate of 35.6125 shares of common stock per \$1,000 principal amount of Notes, which is equivalent to an initial conversion price of \$28.08 per share. This initial conversion price represents a premium of 100% relative to the last reported sale price of AMD’s common stock on April 23, 2007 (the trading date preceding the date of pricing of the Notes) of \$14.04 per share. The conversion rate will be adjusted for certain anti-dilution events. In addition, the conversion rate will be increased in the case of corporate events that constitute a fundamental change (as defined in the Indenture) of the Company under certain circumstances. Holders of the Notes may require AMD to repurchase the Notes for cash equal to 100% of the principal amount to be repurchased plus accrued and unpaid interest upon the occurrence of a fundamental change (as defined in the Indenture) or a termination of trading (as defined in the Indenture).

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The Notes rank equally with the Company's existing and future senior debt and senior to all of its future subordinated debt. The Notes rank junior to all of the Company's existing and future senior secured debt to the extent of the collateral securing such debt and are structurally subordinated to all existing and future debt and liabilities of the Company's subsidiaries.

The following events are considered "Events of Default," which may result in the acceleration of the maturity of the Notes:

- The Company's failure to pay when due the principal on any of the Notes at maturity, upon exercise of a repurchase right or otherwise;
- The Company's failure to pay interest (including additional interest, if any) on any of the Notes for 30 days after the date when due;
- The Company's failure to convert the Notes for cash and/or Conversion Shares, if any, when due upon conversion of a Note in accordance with the terms of the Indenture;
- The Company's failure to give timely notice of a fundamental change or termination of trading;
- The Company's failure to comply with certain restrictions on the Company's ability to merge, consolidate or sell substantially all of its assets;
- The Company's failure to perform or observe any other covenants under the Indenture governing the Notes for a period of 60 days after receiving notice of such failure;
- A default by the Company or any subsidiary under any indebtedness that results in acceleration of such indebtedness, or the failure to pay any such indebtedness at maturity, in an aggregate principal amount in excess of \$50 million, and such acceleration has not been rescinded or annulled within 60 days;
- Any judgment or judgments for the payment of money in an aggregate amount in excess of \$50 million shall be rendered against the Company and shall not be waived, satisfied or discharged for any period of 60 consecutive days during which a stay of enforcement shall not be in effect; or
- Certain events of bankruptcy, insolvency or reorganization with respect to the Company or any significant subsidiary.

Additional information pertaining to the Notes is contained in Items 1.01 and 3.02 and is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

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On April 27, 2007, the Company issued \$2.2 billion aggregate principal amount of the 6.00% Convertible Senior Notes due 2015 to the Initial Purchasers in a private placement pursuant to exemptions from the registration requirements of the Securities Act. The Initial Purchasers received an aggregate commission of approximately \$30.3 million in connection with the offering of the Notes.

The net proceeds from this offering will be approximately \$2,169 million, after deducting the Initial Purchasers' discounts and commissions and estimated offering expenses payable by the Company. The Company used approximately \$182 million of the net proceeds to pay the cost of the Capped Call and paid \$500 million of the remaining net proceeds to repay a portion of the October 2006 Term Loan (see Item 1.01 above). The Company expects to use the remaining amount for general corporate purposes, including working capital and capital expenditures.

The Company offered and sold the Notes to the Initial Purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the Notes to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. The Notes and the Conversion Shares have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The Company has entered into a Registration Rights Agreement for the resale by holders of the Notes and the Conversion Shares (see Item 1.01 above).

Additional information pertaining to the Notes is contained in Items 1.01 and 2.03 and is incorporated herein by reference.

This report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

**Item 8.01 Other Events.**

In a press release issued on April 27, 2007, the Company announced the closing of its previously announced offering of \$2.2 billion aggregate principal amount of 6.00% of Convertible Senior Notes due 2015, including the exercise in full by the initial purchasers of their over-allotment option. The full text of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Indenture, dated April 27, 2007, between Advanced Micro Devices, Inc. and Wells Fargo Bank, National Association, including the form of the 6.00% Convertible Senior Notes due 2015.
10.1	Confirmation Letter of Capped Call, dated April 24, 2007, between Advanced Micro Devices, Inc. and Lehman Brothers OTC Derivatives Inc.
10.2	Registration Rights Agreement, dated April 27, 2007, between the Company and Morgan Stanley & Co. Incorporated.
99.1	Press release, dated April 27, 2007.

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**SIGNATURES**

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

Date: April 27, 2007

ADVANCED MICRO DEVICES, INC.

By: /s/ Faina Medzonsky

Name: Faina Medzonsky

Title: Assistant General Counsel and Assistant Secretary

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## EXHIBIT INDEX

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99.1	Press release, dated April 27, 2007.



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**ADVANCED MICRO DEVICES, INC.**

as Issuer

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

as Trustee

**INDENTURE**

Dated as of April 27, 2007

6.00% Convertible Senior Notes due 2015

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**ADVANCED MICRO DEVICES, INC.**  
**Reconciliation and tie between Trust Indenture Act of 1939 and**  
**Indenture, dated as of April 27, 2007**

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
§310(a)(1)	6.09
(a)(2)	6.09
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	6.09
(b)	6.08; 6.10; 6.11
(c)	Not Applicable
§311(a)	6.13
(b)	6.13
§312(a)	4.01; 4.02(a)
(b)	4.02(b)
(c)	4.02(c)
§313(a)	4.03(a)
(b)	4.03(a)
(c)	4.03(a)
(d)	4.03(b)
§314(a)	4.04
(b)	Not Applicable
(c)(1)	15.05
(c)(2)	15.05
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	15.05
§315(a)	6.01
(b)	5.08
(c)	6.01
(d)	6.01
(e)	5.09
§316(a)	7.01
(a)(1)(A)	7.01; 5.01
(a)(1)(B)	5.07
(a)(2)	Not Applicable
(b)	5.04
(c)	7.01
§317(a)(1)	5.03; 5.02; 5.05
(a)(2)	5.02
(b)	6.05; 11.01
§318(a)	1.02
(c)	1.02

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

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INDENTURE dated as of April 27, 2007 between Advanced Micro Devices, Inc., a Delaware corporation, as issuer (hereinafter sometimes called the “**Company**”, as more fully set forth in Section 1.01), and Wells Fargo Bank, National Association, as trustee (hereinafter sometimes called the “**Trustee**”, as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 6.00% Convertible Senior Notes due 2015 (the “**Notes**”) initially in an aggregate principal amount not to exceed \$2,200,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture;

WHEREAS, the Notes, the certificate of authentication to be borne by the Notes, a form of assignment, a form of the Designated Event Purchase Notice, a form of conversion notice are to be substantially in the forms hereinafter provided for;

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE 1  
DEFINITIONS

Section 1.01. *Definitions.*

(a) The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of



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this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture, which are defined in the Trust Indenture Act or which are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this Indenture. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by any of the provisions of the Trust Indenture Act, such required provision shall control. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 2 of the Registration Rights Agreement.

“**Additional Shares**” shall have the meaning specified in Section 13.01(e).

“**Adjustment Determination Date**” shall have the meaning specified in Section 13.04(j).

“**Adjustment Event**” shall have the meaning specified in Section 13.04(j).

“**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.

“**Beneficial Owner**” and “**Beneficial Ownership**” means as determined in accordance with Rule 13d-3 under the Exchange Act.

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

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

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“**Business Day**” means, with respect to any Note, any day, except a Saturday, Sunday or day on which the Federal Reserve Bank of New York is closed.

“**Capital Lease**” means a lease that, in accordance with accounting principles generally accepted in the United States of America, would be recorded as a capital lease on the balance sheet of the lessee.

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

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

“**Code**” means the Internal Revenue Code of 1983, as amended.

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

“**Common Stock**” means, subject to Section 13.06, shares of common stock of the Company, par value \$0.01 per share, at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and that are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“**Company**” means Advanced Micro Devices, Inc., a Delaware corporation, and subject to the provisions of Article 10, shall include its successors and assigns and, to the extent the obligations hereunder shall be to more than one entity pursuant to Section 13.06, shall include each of such entities.

“**Company Order**” means a written order of the Company, signed by the Company’s Chief Executive Officer, President, Vice President, Treasurer or Assistant Treasurer or Secretary or any Assistant Secretary, and delivered to the Trustee.

“**Conversion Agent**” shall have the meaning specified in Section 3.03.

“**Conversion Date**” shall have the meaning specified in Section 13.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 13.01(a).

“**Conversion Price**” means in respect of each \$1,000 principal amount of Notes, \$1,000 divided by the Conversion Rate, as may be adjusted from time to time as set forth herein.

“**Conversion Rate**” shall have the meaning specified in Section 13.01(a).

“**Corporate Trust Office**” or other similar term means the principal corporate trust office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office is, at the date as of which this Indenture is dated, located at Wells Fargo Bank, National Association, 608 2<sup>nd</sup> Avenue South, 12<sup>th</sup> Floor, Minneapolis, MN 55479.

“**Custodian**” means Wells Fargo Bank, National Association, as custodian for The Depository Trust Company, with respect to the Notes in global form, or any successor entity thereto.

“**Daily Conversion Value**” means, for each of the thirty (30) consecutive Trading Days during the Observation Period, one-thirtieth (1/30<sup>th</sup>) of the product of (a) the applicable Conversion Rate and (b) the Daily VWAP of the Common Stock (or the Reference Property pursuant to Section 13.06) on such day.

“**Daily Settlement Amount**,” for each of the thirty (30) Trading Days during the Observation Period, shall consist of:

(i) cash equal to the lesser of one-thirtieth (1/30<sup>th</sup>) of \$1,000 and the Daily Conversion Value relating to such day; and

(ii) to the extent such Daily Conversion Value exceeds one-thirtieth (1/30<sup>th</sup>) of \$1,000, a number of shares of Common Stock equal to (A) the difference between such Daily Conversion Value and one-thirtieth (1/30<sup>th</sup>) of \$1,000, divided by (B) the Daily VWAP of the Common Stock for such day.

“**Daily VWAP**” for the Common Stock means, for each of the thirty (30) consecutive Trading Days during the Observation Period, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page AMD <equity> [AQR] (or its equivalent successor if such page is unavailable) in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day as the Board of Directors determines in good faith using a volume-weighted method).

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

“**Defaulted Interest**” shall have the meaning specified in Section 2.04.

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“**Definitive Notes**” shall have the meaning specified in Section 2.07(d).

“**Depository**” means, with respect to the Notes issuable or issued in whole or in part in global form, the person specified in Section 2.07(d) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depository**” shall mean or include such successor.

“**Designated Event**” means the occurrence of either a Fundamental Change or a Termination of Trading.

“**Designated Event Company Notice**” shall have the meaning specified in Section 14.01(b).

“**Designated Event Expiration Time**” shall have the meaning specified in Section 14.01(b)(viii).

“**Designated Event Purchase Date**” shall have the meaning specified in Section 14.01(a).

“**Designated Event Purchase Notice**” shall have the meaning specified in Section 14.01(a)(i).

“**Designated Event Purchase Price**” shall have the meaning specified in Section 14.01(a).

“**Designated Institution**” shall have the meaning specified in Section 13.03(a)(i).

“**Distributed Property**” shall have the meaning specified in Section 13.04(c).

“**Effective Date**” shall have the meaning specified in Section 13.01(e)(ii).

“**Event of Default**” means, with respect to the Notes, any event specified in Section 5.01, continued for the period of time, if any, and after the giving of notice, if any, therein designated.

“**Ex-Date**” means, (a) with respect to Section 13.01(b), the first date upon which a sale of the Common Stock does not automatically transfer the right to receive the relevant dividend from the seller of the Common Stock to its buyer, and (b) in all other cases, with respect to any issuance or distribution on the Common Stock or any other equity security, the first date on which the shares of Common Stock or such other equity security trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance or distribution.

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

“**Extension Fee**” shall have the meaning specified in Section 5.01.

“**Fundamental Change**” will be deemed to have occurred at the time after the Notes are originally issued that any of the following occurs:

- (1) any Person acquires Beneficial Ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of the Company’s Capital Stock entitling the person to exercise fifty percent (50%) or more of the total voting power of all shares of the Company’s Capital Stock entitled to vote generally in elections of directors, other than an acquisition by the Company, any of the Company’s Subsidiaries or any of the Company’s employee benefit plans;
- (2) the Company merges, or consolidates with or into any other Person (other than a Subsidiary), another Person merges with or into the Company, or the Company conveys, sells, transfers or leases all or substantially all of the Company’s assets to another Person, other than any transaction:
  - (A) that does not result in a reclassification, conversion, exchange or cancellation of Company’s outstanding Common Stock;
  - (B) pursuant to which the holders of the Company’s Common Stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, fifty percent (50%) or more of the voting power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after the transaction; or
  - (C) which is effected solely to change the Company’s jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of the Company’s Common Stock solely into shares of common stock of the surviving entity.

However, notwithstanding the foregoing, Noteholders will not have the right to require the Company to purchase any Notes under clauses (1) or (2) above (and the Company will not be required to deliver the Designated Event Purchase Notice incidental thereto) if at least ninety percent (90%) of the consideration paid

for the Company's Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in a merger or consolidation or a conveyance, sale, transfer or lease otherwise constituting a Fundamental Change under clause (2) above consists of shares of common stock that are (x) listed on, or immediately after the transaction or event will be listed on, a United States national securities exchange or (y) approved, or immediately after the transaction or event will be approved, for quotation on a United States system of automated dissemination of quotations of securities prices similar to the NASDAQ National Market prior to its designation as a national securities exchange and, as a result of the merger or consolidation, the Notes become convertible into such shares of such common stock.

"**Global Note**" shall have the meaning specified in Section 2.07(b).

"**Global Note Legend**" shall have the meaning specified in Section 2.03(d).

"**Indebtedness**" as applied to any Person, means (i) obligations, contingent or otherwise, for money borrowed (other than unamortized debt discount or premium); (ii) reimbursement and other obligations pertaining to letters of credit issued for the account of such Person; (iii) obligations under any swap, cap, collar, forward purchase contract, derivatives contract or other similar agreement pursuant to which such Person hedges risks related to interest rates, currency exchange rates, commodity prices, financial market conditions or other risks incurred by such Person in the operation of its business; (iv) obligations evidenced by bonds, debentures, promissory notes or other instruments or arrangements; (v) obligations as lessee under a Capital Lease; and (vi) obligations of such Person under any amendments, renewals, extensions, modifications and refundings of any such Indebtedness or obligations listed in clause (i), (ii), (iii), (iv) or (v) above. All indebtedness of any type described in the immediately preceding sentence which is secured by a lien upon property owned by such Person, although such Person has not assumed or become liable for the payment of such Indebtedness, shall for all purposes be deemed to be Indebtedness of such Person. All indebtedness for borrowed money incurred by any other Persons which is directly guaranteed as to payment of principal by such Person shall for all purposes be deemed to be Indebtedness of such Person, but no other contingent obligation of such Person in respect of indebtedness incurred by any other Persons shall for any purpose be deemed to be indebtedness of such Person.

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

"**Initial Purchasers**" has the meaning set forth in the Purchase Agreement.

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“**Interest Payment Date**” means May 1 and November 1 of each year, beginning on November 1, 2007.

“**Last Reported Sale Price**” means, with respect to the Common Stock or any other security for which a Last Reported Sale Price must be determined, on any date, the closing sale price per share of the Common Stock or unit of such other security (or, if no closing sale price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on such date as reported in composite transactions for the principal U.S. securities exchange on which it is traded. If the Common Stock or such other security is not listed for trading on a U.S. national or regional securities exchange, on the relevant date, the Last Reported Sale Price shall be the last quoted bid price per share of Common Stock or such other security in the over-the-counter market on the relevant date, as reported by the National Quotation Bureau or similar organization. In absence of such quotation, the Last Reported Sale Price shall be the average of the mid-point of the last bid and asked prices for the Common Stock or such other security on the relevant date from each of at least three nationally recognized independent investment banking firms, which may include any or all of the Initial Purchasers selected from time to time by the Board of Directors of the Company for that purpose. The Last Reported Sale Price shall be determined without reference to extended or after hours trading.

“**Market Disruption Event**” means the occurrence or existence for more than a one-half hour period in the aggregate on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

“**Maturity Date**” means May 1, 2015.

“**Measurement Period**” shall have the meaning specified in Section 13.01(a)(i).

“**Merger Event**” shall have the meaning specified in Section 13.06.

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

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

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“**Note register**” shall have the meaning specified in Section 2.07(a).

“**Note Registrar**” shall have the meaning specified in Section 2.07(a).

“**Notice of Conversion**” shall have the meaning specified in Section 13.02(c).

“**Observation Period**” means, with respect to any Note, , the thirty (30) consecutive Trading Day period beginning on and including the third Trading Day following the related Conversion Date in respect of such Note except that, with respect to any Conversion Date with respect to the Notes occurring during the period beginning on the 32<sup>nd</sup> Scheduled Trading Day prior to the applicable Maturity Date and ending at the close of business on the Scheduled Trading Day immediately preceding such Maturity Date, “**Observation Period**” means the first thirty (30) Trading Days, beginning on and including the thirty-second (32<sup>nd</sup>) Scheduled Trading Day prior to such Maturity Date.

“**Officer’s Certificate**,” when used with respect to the Company, means a certificate signed by one of the President, the Chief Executive Officer, any Vice President, the Treasurer or any Assistant Treasurer, Secretary or any Assistant Secretary of the Company, which is delivered to the Trustee. Each such certificate shall include the statements provided for in Section 15.05 if and to the extent required by the provisions of such Section. The officer giving an Officer’s Certificate pursuant to Section 5.08 shall be the principal executive, financial or accounting officer of the Company.

“**Offering Memorandum**” means the offering memorandum dated April 24, 2007 relating to the offering by the Company of the Notes.

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel acceptable to the Trustee, which is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 15.05 if and to the extent required by the provisions of such Section.

“**Outstanding**,” when used with reference to the Notes, shall, subject to the provisions of Section 7.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (i) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation,
- (ii) Notes, or portions thereof, for the payment or purchase of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or



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shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(iii) Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.09 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course; and

(iv) Notes converted pursuant to Article 13.

“**Paying Agent**” shall have the meaning specified in Section 3.03.

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

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.09 in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the lost, destroyed or stolen Note that it replaces.

“**Purchase Agreement**” means that certain Purchase Agreement, dated April 24, 2007 among the Company and the Initial Purchasers.

“**QIB**” means any “qualified institutional buyer” (as such term is defined in Rule 144A).

“**Record Date**” or “**record date**,” (i) with respect to the payment of interest on the Notes on any Interest Payment Date, shall have the meaning specified in Section 2.04 and (ii) for purposes of Section 13.04 shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of 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).

“**Reference Property**” shall have the meaning specified in Section 13.06(b).

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“**Registration Rights Agreement**” means the Registration Rights Agreement dated as of the date hereof among the Company and the Initial Purchasers.

“**Responsible Officer**,” when used with respect to the Trustee, shall mean an officer of the Trustee in the Corporate Trust Office, having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“**Restricted Securities**” shall have the meaning specified in Section 2.03.

“**Restricted Securities Legend**” shall have the meaning specified in Section 2.03.

“**Rule 144**” means Rule 144 under the Securities Act.

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

“**Scheduled Trading Day**” means a day that is scheduled to be a trading day on the U.S. national securities exchange market on which Common Stock is listed or admitted for trading.

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

“**Spin-Off**” shall have the meaning specified in Section 13.04(c).

“**Significant Subsidiary**” means such Subsidiary of the Company as meets the definition of “significant subsidiary” in Rule 1-02 of Regulation S-X promulgated by the Commission as in effect on the original date of issuance of the Notes.

“**Stock Price**” means the price paid per share of Common Stock in connection with a Fundamental Change pursuant to which Additional Shares shall be added to the Conversion Rate as set forth in Section 13.01(d) hereof, which shall be equal to (i) if holders of Common Stock receive only cash in such Fundamental Change, the cash amount paid per share of Common Stock and (ii) in all other cases, the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on the Trading Day preceding the Effective Date of the Fundamental Change.

“**Subsidiary**” of the Company means (i) a corporation a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by the Company, by the Company and one or more Subsidiaries of the Company or by one or more Subsidiaries of the

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Company or (ii) any other Person (other than a corporation) in which the Company, one or more Subsidiaries of the Company or the Company and one or more Subsidiaries of the Company, directly or indirectly, at the date of determination thereof, has greater than a fifty percent (50%) ownership interest.

“**Successor Company**” shall have the meaning specified in Section 10.01(a).

“**Termination of Trading**” means the occurrence if the Common Stock is neither listed for trading on a U.S. national securities exchange nor approved for quotation on a U.S. system of automated dissemination of quotation of securities prices similar to the NASDAQ National Market (prior to its designation as a national securities exchange).

“**Trading Day**” means a day during which (a) trading in Common Stock generally occurs and (b) there is no Market Disruption Event; *provided* that if the Common Stock (or other security for which a closing sale price must be determined) is not admitted for trading or quotation on or by any exchange, bureau or other organization referred to in the definition of Last Reported Sale Price (excluding the last sentence of that definition), Trading Date shall mean any Business Day.

“**Trading Price**” with respect to the Notes, on any date of determination, means the average of the secondary market bid quotations obtained by the Trustee for \$2.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company, which may include any or all of the Initial Purchasers; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for \$2.0 million principal amount of Notes from a nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of such Notes will be deemed to be less than ninety-eight percent (98%) of the product of the Last Reported Sale Price of the Common Stock (as provided to the Trustee by the Company) and the Conversion Rate. If the Company does not, when obligated to do so, make a request to the Trustee to determine the Trading Price of the Notes, or if the Company makes such request to the Trustee and the Trustee does not make such determination, then the Trading Price per \$1,000 principal amount of the Notes will be deemed to be less than ninety-eight percent (98%) of the product of the Last Reported Sale Price of the Common Stock (as provided to the Trustee by the Company) and the Conversion Rate.

“**transfer**” shall have the meaning specified in Section 2.03.

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

“**Trustee**” means Wells Fargo Bank, National Association, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

Section 1.02. *Incorporation by Reference of Trust Indenture Act.*

This Indenture is subject to the mandatory provisions of the Trust Indenture Act, which are incorporated by reference in and made a part of this Indenture. The following Trust Indenture Act terms have the following meanings:

“**indenture securities**” means the Notes.

“**indenture security holder**” means a holder.

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

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

“**obligor**” on the indenture securities means the Company and any other obligor on the indenture securities.

All other terms in this Indenture that are defined by the Trust Indenture Act, defined by it by reference to another statute or defined by Commission rule have the meanings assigned to them by such definitions. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by the Trust Indenture Act, such required provision shall control.

ARTICLE 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the “6.00% Convertible Senior Notes due 2015.” The aggregate principal amount of the Notes that may be authenticated and delivered under this Indenture is initially limited to \$2,200,000,000, subject to Section 2.13 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or

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in lieu of other Notes pursuant to Section 2.07, Section 2.09, Section 9.04 and Section 13.02.

Section 2.02. *Form of Notes.* The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A, with such applicable legends as are provided for in Section 2.03.

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

The Notes shall be issued initially in the form of one or more permanent Global Notes with the applicable legends as provided in Section 2.03. Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect purchases, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal and accrued and unpaid interest on the Global Note shall be made to the holder of such Note on the date of payment, unless a record date or other means of determining holders eligible to receive payment is provided for herein.

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

Section 2.03. *Legends.* Each Note issued hereunder and each Common Stock certificate representing shares of Common Stock issued upon conversion of such Note (collectively, the "**Restricted Securities**") shall, upon issuance, bear the legend set forth in Section 2.03(a) or 2.03(b), as applicable (each a "**Restricted Securities Legend**"), and such legend shall not be removed except as provided in Section 2.03(c). Each such Restricted Security that bears or is

required to bear the applicable Restricted Securities Legend shall be subject to the restrictions on transfer set forth in this Section 2.03 (including the Restricted Securities Legend set forth below), and the holder of each such Restricted Security, by such holder's acceptance thereof, shall be deemed to have agreed to be bound by all such restrictions on transfer.

As used in Section 2.03, the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(a) *Restricted Securities Legend for the Notes.* Except as provided in Section 2.03(c), any certificate evidencing such Note (and all Notes issued in exchange therefor or substitution thereof, shall bear a Restricted Securities Legend in substantially the following form:

THIS SECURITY AND THE SHARES OF ADVANCED MICRO DEVICES, INC. (THE "COMPANY") COMMON STOCK ("COMMON STOCK") ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, (1) AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LAST ORIGINAL ISSUE DATE HEREOF ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR

TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES WHERE REGISTRATION OR TRANSFER OF THIS SECURITY IS REQUIRED, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE AND (2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED AFTER THE RESALE RESTRICTION TERMINATION DATE. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTION. IN ANY CASE, THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS SECURITY OR THE COMMON STOCK EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.

(b) *Restricted Securities Legend for the Common Stock Issued Upon Conversion of the Notes.* Each stock certificate representing Common Stock issued upon conversion of Notes bearing a Restricted Securities Legend will, subject to the availability of a Shelf Registration Statement (as defined in the Registration Rights Agreement) and registration thereunder as set forth in the Registration Rights Agreement, bear the following legend:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE

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SECURITIES ACT; AND (2) IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY FURNISH TO THE TRANSFER AGENT AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

(c) *Removal of the Restricted Securities Legends.* The Restricted Securities Legend may be removed from any Note or any Common Stock certificate representing shares of the Common Stock issued upon conversion of any Note if there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company, that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such Note or shares of the Common Stock issued upon conversion of Notes, as the case may be, will not violate the registration requirements of the Securities Act or the qualification requirements under any state securities laws. Upon provision of such satisfactory evidence, at the written direction of the Company, (x) in the case of a Note, the Trustee shall authenticate and deliver in exchange for such Note another Note or Notes having an equal aggregate principal amount that does not bear such legend or (y) in the case of a Common Stock certificate representing shares of the Common Stock, the transfer agent for the Common Stock shall authenticate and deliver in exchange for the Common Stock certificate or certificates representing such shares of Common Stock bearing such legend, one or more new Common Stock certificates representing a like aggregate number of shares of Common Stock that do not bear such legend. If the Restricted Securities Legend has been removed from a Note or Common Stock certificates representing shares of the Common Stock issued upon conversion of any Note as provided above, no other Note issued in exchange for all or any part of such Note, or no other Common Stock certificates issued in exchange for such Common Stock, shall bear such legend, unless the Company has reasonable cause to believe that such other Note is a “restricted security” (or such shares of Common Stock are “restricted securities”) within the meaning of Rule 144 and instructs the Trustee in writing to cause a Restricted Securities Legend to appear thereon.

Any Note (or Note issued in exchange or substitution therefor) as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.03(a) as set forth therein have been satisfied may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of Section 2.07, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend required by Section 2.03(a).



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Any Common Stock certificate representing shares of Common Stock issued upon conversion of any Note as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.03(b) have been satisfied may, upon surrender of the Common Stock certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new Common Stock certificate or certificates representing a like aggregate number of shares of Common Stock, which shall not bear the Restricted Securities Legend.

(d) *Global Note Legend.* Each Global Note shall also bear the following legend (the “**Global Note Legend**”) on the face thereof:

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

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO IN THE TERMS OF THE NOTE ATTACHED HERETO.

(e) *Legend for Definitive Notes.* Definitive Notes, in addition to the legend set forth in Section 2.03(a), will also bear a legend substantially in the following form:

THIS SECURITY WILL NOT BE ACCEPTED IN EXCHANGE FOR A BENEFICIAL INTEREST IN A GLOBAL NOTE UNLESS THE HOLDER OF THIS SECURITY, SUBSEQUENT TO SUCH EXCHANGE, WILL HOLD NO NOTES.

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Section 2.04. *Date and Denomination of Notes; Payments of Interest.* The Notes shall be issuable initially in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Note attached as Exhibit A hereto, as applicable. Interest on the Notes (including any Additional Interest) shall be computed on the basis of a 360-day year comprising of twelve (12) 30-day months.

If any Interest Payment Date (other than an Interest Payment Date coinciding with the Maturity Date or required Designated Event Purchase Date) of a Note falls on a day that is not a Business Day, such Interest Payment Date will be postponed to the next succeeding Business Day. If the Maturity Date or required Designated Event Purchase Date would fall on a day that is not a Business Day, the required payment of interest (including any Additional Interest), if any, and principal, will be made on the next succeeding Business Day and no interest on such payment will accrue for the period from and after the Maturity Date or required Designated Event Purchase Date to such next succeeding Business Day.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note register at the close of business on any record date with respect to any Interest Payment Date shall be entitled to receive the interest (including any Additional Interest) payable on such Interest Payment Date. Interest shall be payable at the office of the Company maintained by the Company for such purposes in Minneapolis, Minnesota. The Company shall pay interest (including Additional Interest, if any) (i) on any Global Note in immediately available funds to the account of the Depository or its nominee or (ii) on Notes in certificated form (x) to holders having an aggregate principal amount of \$5,000,000 or less, by check mailed to the holders of these Notes or (y) to holders having an aggregate principal amount of more than \$5,000,000, either by check mailed to each holder or, upon application by a holder to the Note Registrar not later than the relevant record date, by wire transfer in immediately available funds to that holder's account within the United States, which application shall remain in effect until the holder notifies, in writing, the Note Registrar to the contrary. The term "**record date**" with respect to any Interest Payment Date shall mean the April 15 or October 15 preceding the applicable May 1 or November 1 Interest Payment Date, respectively.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Noteholder on the relevant record date by virtue of his having been such Noteholder, and such Defaulted Interest shall be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five (25) days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment, and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class postage prepaid, to each holder at his address as it appears in the Note register, not less than ten (10) days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.04.

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

Section 2.05. *Date and Denomination of Notes.* The Notes shall be issuable initially in fully registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Every Note shall be dated the date of its authentication.

Section 2.06. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or

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facsimile signature of its Chairman or Vice-Chairman of the Board of Directors, Chief Executive Officer, President or any of its Vice Presidents.

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

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, manually executed by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 15.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

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

The Trustee shall have the right to decline to authenticate and deliver any Notes under this Section if the Trustee, being advised by counsel of national reputation, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Noteholders.

*Section 2.07. Exchange and Registration of Transfer of Notes; Transfer Generally; Depositary.*

(a) The Company shall cause to be kept at the Corporate Trust Office a register for the Notes (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 3.03 being herein sometimes collectively referred to as the “**Note register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in

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written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby appointed “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 3.03.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.07, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of such Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 3.03. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Noteholder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

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

No service charge shall be charged to the Noteholder for any exchange or registration of transfer of Notes, but the Company or the Trustee may require payment of a sum sufficient to cover any tax, assessments or other governmental charges that may be imposed in connection therewith.

None of the Company, the Trustee, the Note Registrar or any co-registrar shall be required to exchange or register a transfer of (a) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (b) any Notes, or a portion of any Note, surrendered for purchase (and not withdrawn) except in accordance with Article 13 for conversion and Article 14 for purchase hereof, respectively.

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

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(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depository or the nominee of the Depository. The transfer and exchange of beneficial interests in a Global Note, which does not involve the issuance of a Definitive Note, shall be effected through the Depository (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor.

(c) Any Global Note shall initially bear (i) the Restricted Securities Legend set forth in Section 2.03(a) and (ii) the Global Note Legend set forth in Section 2.03(d), and may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian, the Depository or by the National Association of Securities Dealers, Inc. to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Notwithstanding any other provisions of this Indenture, a Global Note may not be transferred as a whole or in part except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

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

If at any time the Depository for a Global Note (i) notifies the Company that it is unwilling or unable to continue as Depository for such Note or (ii) ceases to be registered as a clearing agency under the Exchange Act, the Company may appoint a successor Depository with respect to such Note. If (1) a successor Depository for such Global Note is not appointed by the Company within ninety (90) days after the Company receives such notice or the Depository ceasing to be a registered clearing agency, (2) the Company, at its option, notifies the Trustee that it elects to cause the issuance of Notes in definitive form (“**Definitive Notes**”) in exchange for all or any part of the Notes represented by a Global Note, subject to the procedures of the Depository, or (3) an Event of Default has occurred and is continuing and the Note Registrar has received a request from the Depository for

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the issuance of Definitive Notes in exchange for a Global Note, the Company will execute, and the Trustee, upon receipt of an Officer's Certificate for the authentication and delivery of Definitive Notes, will authenticate and deliver Definitive Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, and upon delivery of the Global Note to the Trustee such Global Note shall be canceled.

Definitive Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.07(d) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Definitive Notes to the persons in whose names such Definitive Notes are so registered.

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

Section 2.08. *Special Transfer Provisions.* Unless a Note is no longer a Restricted Security, the following provisions shall apply to any sale, pledge or other transfer of such Notes:

(a) *Transfer of Notes to a QIB.* The following provisions shall apply with respect to the registration of any proposed transfer of Notes to a QIB:

(i) If the Notes to be transferred consist of a beneficial interest in the Global Notes, the transfer of such interest may be effected only through the book-entry systems maintained by The Depository Trust Company.

(ii) If the Notes to be transferred consist of Definitive Notes, the Note Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Note stating (or has otherwise advised the Company and the Registrar in writing) that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed a certification

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stating or has otherwise advised the Company and the Note Registrar in writing that:

(A) it is purchasing the Notes for its own account or an account with respect to which it exercises sole investment discretion;

(B) it and any such account is a QIB within the meaning of Rule 144A;

(C) it is aware that the sale to it is being made in reliance on Rule 144A;

(D) it acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information; and

(E) it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A.

(b) *General.* By its acceptance of any Note bearing the Restricted Securities Legend, each holder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and agrees that it will transfer such Note only as provided in this Indenture. The Note Registrar shall not register a transfer of any Note unless such transfer complies with the restrictions on transfer of such Note set forth in this Indenture. The Note Registrar shall be entitled to receive and rely on written instructions from the Company verifying that such transfer complies with such restrictions on transfer. In connection with any transfer of Notes, each holder agrees by its acceptance of the Notes to furnish the Note Registrar or the Company such certifications, legal opinions or other information as either of them may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; *provided* that the Note Registrar shall not be required to determine (but may rely on a determination made by the Company with respect to) the sufficiency of any such certifications, legal opinions or other information.

The Note Registrar shall retain copies of all certifications, letters, notices and other written communications received pursuant to Section 2.06 hereof or this Section 2.08. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Note Registrar.



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Section 2.09. *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

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

Every substitute Note issued pursuant to the provisions of this Section 2.09 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or purchase of mutilated, destroyed, lost or

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stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender.

Section 2.10. *Temporary Notes.* Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form (other than in the case of Notes in global form) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 3.03 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, such temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.11. *Cancellation of Notes Paid, Etc.* All Notes surrendered for the purpose of payment, purchase, conversion, exchange or registration of transfer, shall, if surrendered to the Company or any Paying Agent or any Note Registrar or any Conversion Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall destroy canceled Notes in accordance with its customary procedures and, after such destruction, shall deliver a certificate of such destruction to the Company, at the Company's written request. If the Company shall acquire any of the Notes, such acquisition shall not operate as satisfaction of the Indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.12. *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in Company Notices as a convenience to holders of the Notes; *provided*, that any such notice may state that no representation is made as to the

correctness of such numbers either as printed on the Notes or Company Notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company will promptly notify the Trustee in writing of any change in the “CUSIP” numbers.

Section 2.13. *Additional Notes, Purchases.* The Company may, without the consent of the Noteholders and notwithstanding Section 2.01, reopen the Notes and issue additional Notes hereunder with the same terms and with the same CUSIP number as such Notes initially issued hereunder in an unlimited aggregate principal amount, which will form the same series with the Notes initially issued hereunder so long as such additional Notes are fungible with such Notes initially issued hereunder for U.S. federal income tax purposes. The Company may also from time to time purchase Notes in tender offers, open market purchases or negotiated transactions without prior notice to Noteholders.

ARTICLE 3  
PARTICULAR COVENANTS OF THE COMPANY

Section 3.01. *Payment of Principal, Interest and Extension Fee.* The Company covenants and agrees that it will cause to be paid the principal of, accrued and unpaid interest (including any Additional Interest) on, each of the Notes and if applicable, payment of the Extension Fee, Conversion Obligation and Additional Shares, at the places, at the respective times and in the manner provided herein and in the Notes.

Section 3.02. *Additional Interest.* If Additional Interest is payable by the Company pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee an Officer’s Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer receives such a certificate, the Trustee may assume without inquiry that no Additional Interest is payable. If the Company has paid Additional Interest directly to the persons entitled to it, the Company shall deliver to the Trustee an Officer’s Certificate setting forth the particulars of such payment.

Section 3.03. *Maintenance of Office or Agency.* The Company will maintain an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment, redemptions or purchase (“**Paying Agent**”) or for conversion (“**Conversion Agent**”) and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee

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with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee.

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

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

So long as the Trustee is the Note Registrar, the Trustee agrees to mail, or cause to be mailed, the notices set forth in Section 6.10(a) and the third paragraph of Section 6.11.

Section 3.04. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 6.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 3.05. *Provisions as to Paying Agent.*

(a) If the Company shall appoint a Paying Agent other than the Trustee or if the Trustee shall appoint such a Paying Agent, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 3.05:

(i) that it will hold all sums held by it as such agent for the payment of the principal of, accrued and unpaid interest (including any Additional Interest) on, and any Extension Fee with respect to the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes;

(ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of, accrued and unpaid interest (including any Additional

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Interest) on, or any Extension Fee with respect to the Notes when the same shall be due and payable; and

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

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

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

(c) Anything in this Section 3.05 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 3.05, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 3.05 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 3.05 is subject to Section 11.03 and Section 11.04.

Section 3.06. *Existence.* Subject to Article 12, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 3.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, accrued and unpaid interest (including any Additional Interest) on, or any Extension Fee with respect to the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 3.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within one hundred-twenty (120) calendar days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 30, 2007) an Officer's Certificate stating whether or not the signer thereof has knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible and in any event within thirty (30) days after the Company becomes aware of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action which the Company proposes to take with respect thereto.

Section 3.09. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

#### ARTICLE 4

##### LISTS OF NOTEHOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 4.01. *Lists of Noteholders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than fifteen (15) days after each April 15 and October 15 in each year beginning with October 15, 2007, and at such other times as the Trustee may request in writing, within thirty (30) days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Noteholders

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as of a date not more than fifteen (15) days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 4.02. *Preservation and Disclosure of Lists.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Noteholders contained in the most recent list furnished to it as provided in Section 4.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 4.01 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other Noteholders with respect to their rights under this Indenture or under such Notes and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

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

Section 4.03. *Reports by Trustee.*

(a) The Trustee shall transmit to Noteholders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than November 1 in each calendar year, beginning with the year 2007. Each such report shall be dated as of a date not more than sixty (60) days prior to the date of transmission.

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

Section 4.04. *SEC Reports; Financial Statements.*

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(a) The Company shall file with the Trustee and the Commission, and transmit to Noteholders, such information, documents and other reports and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be delivered to the Trustee within thirty (30) days after the same is filed with the Commission; *provided, however*, that the Company shall not be required to deliver to the Trustee any material for which the Company has sought and received confidential treatment by the Commission; *provided further*, each such report will be deemed to be so delivered to the Trustee if the Company files such report with the Commission through the Commission's EDGAR system no later than the time such report is required to be filed with the Commission pursuant to the Exchange Act.

(b) In the event and for so long as the Company is not subject to Section 13 or 15(d) of the Exchange Act, it shall file with the Trustee and cause to be mailed to each holder at such holder's registered address, upon the request of any holder or beneficial holder of the Notes or the Common Stock issued upon conversion thereof, and make available to such holder or beneficial holder of such Notes or Common Stock in connection with any sale thereof and any prospective purchaser of Notes or Common Stock designated by such holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act and it will take such further action as any holder or beneficial holder of such Notes or Common Stock may reasonably request, all to the extent required from time to time to enable such holder or beneficial holder to sell its Notes or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such Rule may be amended from time to time.

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

ARTICLE 5  
DEFAULTS AND REMEDIES

Section 5.01. *Events of Default*. The following events shall be Events of Default with respect to the Notes:



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- (a) default in any payment of interest or Additional Interest, on any Note when due and payable and the default continues for a period of thirty (30) days;
  - (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon required purchase, upon declaration or otherwise;
  - (c) failure by the Company to comply with its Conversion Obligations in accordance herewith, upon exercise of a holder's conversion right;
  - (d) failure by the Company to comply with its obligations under Article 10;
  - (e) failure by the Company to issue a Designated Event Company Notice in accordance with Section 14.01(b) when due;
  - (f) failure by the Company for sixty (60) days to comply with any of its other agreements (other than a covenant or warranty or default in whose performance or whose breach is elsewhere in this Section specifically provided for) contained in the Notes or the Indenture after written notice of such default from the Trustee or the holders of at least twenty-five percent (25%) in principal amount of the Notes then outstanding has been received by the Company;
  - (g) default by the Company or any Subsidiary of the Company in the payment of the principal or interest on any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any debt for money borrowed in excess of \$50,000,000 in the aggregate of the Company and/or any such Subsidiary, whether such debt now exists or shall hereafter be created, which default results in such debt becoming or being declared due and payable, and such acceleration shall not have been rescinded or annulled within sixty (60) days after written notice of such acceleration has been received by the Company or such Subsidiary;
  - (h) there has been entered in a court of competent jurisdiction a final judgment or judgments for the payment of money in an aggregate amount exceeding \$50,000,000 (or its equivalent in foreign currency) entered against the Company or any Subsidiary and that shall not be waived, satisfied or discharged for any period of sixty (60) days during which a stay of enforcement shall not be in effect;
  - (i) the Company shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any of its Significant Subsidiaries or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a

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trustee, receiver, liquidator, custodian or other similar official of the Company or any of its Significant Subsidiaries or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any of its Significant Subsidiaries seeking liquidation, reorganization or other relief with respect to the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any of its Significant Subsidiaries or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of ninety (90) consecutive days.

In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 5.01(i) or Section 5.01(j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of at least twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding determined in accordance with Section 7.04, by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare one hundred percent (100%) of the principal of, and accrued and unpaid interest, Additional Interest, if any, on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 5.01(i) or Section 5.01(j) occurs and is continuing with respect to the Company, the principal of all the Notes and accrued and unpaid interest, Additional Interest, if any, shall be immediately due and payable. This provision, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest, Additional Interest, if any, upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest, Additional Interest, if any, (to the extent that payment of such interest is enforceable under applicable law) and on such principal at the rate borne by the Notes during the period of such Default) and amounts due to the Trustee pursuant

to Section 6.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all Events of Defaults under this Indenture, other than the nonpayment of principal of and accrued and unpaid interest, Additional Interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 5.07, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or Event of Default, or shall impair any right consequent thereon. The Company shall notify the Responsible Officer of the Trustee in writing, promptly upon becoming aware thereof, of any Event of Default by delivering to the Trustee a statement specifying such Event of Default and any action the Company has taken, is taking or proposes to take with respect thereto.

Notwithstanding the foregoing, if so elected by the Company, the sole remedy for an Event of Default relating to the failure to comply with Section 4.04(a) hereof or Section 314(a)(1) of the Trust Indenture Act, will for the first sixty (60) days after the occurrence of such an Event of Default consist exclusively of the right to receive a one-time additional payment (the “**Extension Fee**”) on the Notes in an amount equal to 0.25% of the principal amount of the Notes. The Extension Fee will be in addition to any Additional Interest that may accrue pursuant to Section 3.08. On the sixty-first (61<sup>st</sup>) day after such Event of Default (if the Event of Default relating to the reporting obligations is not cured or waived prior to such sixty-first (61<sup>st</sup>) day), the Notes will be subject to acceleration as provided above. The foregoing provisions in this Section 5.01 will not affect the rights of Noteholders in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay the Extension Fee upon an Event of Default in accordance with this paragraph, the Notes will be subject to acceleration as provided above.

In order to elect to pay the Extension Fee as the sole remedy during the first sixty (60) days after the occurrence of an Event of Default relating to the failure to comply with the reporting obligations in accordance with the immediately preceding paragraph, the Company must (i) notify all Noteholders and the Trustee and Paying Agent of such election and pay such Extension Fee on or before the close of business on the date on which such Event of Default occurs and (ii) pay such Extension Fee on or before the close of business on the date on which such Event of Default occurs. The Extension Fee shall be payable to Noteholders of record on the date of such notice. Upon the failure to timely give such holders such notice or pay such Extension Fee, the Notes will be subject to acceleration as provided above.

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

Section 5.02. *Payments of Notes on Default; Suit Therefor:* In the event that the Trustee or the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding hereunder have declared the principal of and accrued and unpaid interest (including any Additional Interest) on, the Notes, to be due and payable immediately in accordance with Section 5.01, and the Company shall have failed forthwith to pay such amounts, the Trustee, in its own name and as trustee of an express trust, after being furnished suitable indemnity pursuant to Section 6.01, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid (including such further amounts as shall be sufficient to cover the reasonable costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith), and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor on the Notes and collect in the manner provided by law out of the property of the Company or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the case of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest (including any Additional Interest) in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee

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(including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 6.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 6.06 hereof, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

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

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

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

Section 5.03. *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 5 with respect to the Notes shall be applied in the order following, at the date or dates fixed by the Trustee for the

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distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee under Section 6.06;

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

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

Fourth, to the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

Section 5.04. *Proceedings by Noteholders.* No holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby, and the Trustee for sixty (60) days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction that, in the opinion of the

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Trustee, is inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the Notes outstanding pursuant to Section 5.07; it being understood and intended, and being expressly covenanted by the holder of every Note with every other holder and the Trustee, that no one or more Noteholders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholder, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Noteholders (except as otherwise provided herein). For the protection and enforcement of this Section 5.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

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

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

Section 5.05. *Proceedings by Trustee.* In case of an Event of Default the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 5.06. *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.09, all powers and remedies given by this Article 5 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default or Event of Default shall impair any such right or

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power, or shall be construed to be a waiver of any such default or any acquiescence therein; and, subject to the provisions of Section 5.04, every power and remedy given by this Article 5 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient by the Trustee or by the Noteholders.

Section 5.07. *Direction of Proceedings and Waiver of Defaults by Majority of Noteholders.* The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 7.04 shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 7.04 may, on behalf of the holders of all of the Notes waive any past default or Event of Default hereunder and its consequences except (i) a default in the payment of and accrued and unpaid interest on, or the principal of, the Notes when due which has not been cured pursuant to the provisions of Section 5.01, (ii) a failure by the Company to deliver cash and, if applicable, shares of Common Stock (and cash in lieu of fractional shares) upon conversion of the Notes, or (iii) a default in respect of a covenant or provisions hereof which under Article 9 cannot be modified or amended without the consent of each holder of an outstanding Note affected thereby. Upon any such waiver the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 5.07, said default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 5.08. *Notice of Defaults.* The Trustee shall, within ninety (90) days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, mail to all Noteholders as the names and addresses of such holders appear upon the Note register, notice of all Defaults known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; and *provided* that, except in the case of a Default in the payment of the principal of and accrued and unpaid interest on any of the Notes, then in any such event the Trustee shall be protected in withholding such notice if



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and so long as a committee of trust officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Noteholders.

Section 5.09. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 5.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than ten percent (10%) in principal amount of the Notes at the time outstanding determined in accordance with Section 7.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of and accrued and unpaid interest on any Note on or after the due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 13.

ARTICLE 6  
CONCERNING THE TRUSTEE

Section 6.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the holders unless such holders have offered to the Trustee reasonable indemnity or security against loss, liability or expense.

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

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

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(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and, after it has been qualified thereunder, the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and

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

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith and either (i) believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture or (ii) in accordance with the direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 7.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

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

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act

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as if no such event occurred, unless such Responsible Officer of the Trustee had actual knowledge of such event;

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

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 6 shall also be afforded to it in its capacity as such.

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

Section 6.02. *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 6.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

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

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

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

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may 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; *provided, however*, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity satisfactory to the Trustee from the Noteholders against such expenses or liability as a condition to so proceeding; the reasonable expenses of every such examination shall be paid by the Company or, if paid by the Trustee or any predecessor Trustee, shall be repaid by the Company upon demand;

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

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

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

(i) the Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers

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authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

In no event shall the Trustee be liable for any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than through the Trustee's willful misconduct or gross negligence. The Trustee shall not be charged with knowledge of any default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such default or Event of Default or (2) written notice of such default or Event of Default shall have been given to the Trustee by the Company or by any holder of the Notes at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture; and the permissive rights of the Trustee enumerated herein shall not be construed as duties.

Section 6.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Indenture or at the direction of the Company. Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum, prospectus or other disclosure material distributed with respect to the Notes.

Section 6.04. *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 6.05. *Monies to be Held in Trust.* Subject to the provisions of Section 11.04, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability

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for interest on any money received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 6.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 6.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except, subject to the effect of Section 5.03, funds held in trust herewith for the benefit of the holders of particular Notes prior to the date of the accrual of such unpaid compensation or identifiable claim. The Trustee's right to receive payment of any amounts due under this Section 6.06 shall not be subordinate to any other liability or Indebtedness of the Company. The obligation of the Company under this Section 6.06 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 6.06 shall extend to the officers, directors, agents and employees of the Trustee.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 5.01(i) or Section 5.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 6.07. *Officer's Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 6.08. *Conflicting Interests of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 6.09. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 6.09, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10. *Resignation or Removal of Trustee.*

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof to the Noteholders at their addresses as they shall appear on the Note register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment sixty (60) days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 5.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a

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

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

(i) the Trustee shall fail to comply with Section 6.08 within a reasonable time after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six (6) months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Noteholder; or

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

then, in any such case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 5.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 7.04, may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless within ten (10) days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Noteholder, upon the terms and conditions and otherwise as in Section 6.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 6.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 6.11.



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Section 6.11. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 6.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 6.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 6.06.

No successor trustee shall accept appointment as provided in this Section 6.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 6.08 and be eligible under the provisions of Section 6.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 6.11, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Noteholders at their addresses as they shall appear on the Note register. If the Company fails to mail such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 6.12. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee such corporation shall be qualified under the provisions of Section 6.08 and eligible under the provisions of Section 6.09.

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In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated, and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 6.13. *Limitation on Rights of Trustee as Creditor.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

Section 6.14. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in response to such proposal specifying the action to be taken or omitted.

ARTICLE 7  
CONCERNING THE NOTEHOLDERS

Section 7.01. *Action by Noteholders.* Notwithstanding anything to the contrary contained in this Indenture, all Notes issued under this Indenture shall vote and consent on all matters as one class; *provided, however*, that (i) for purposes of determining which Notes are outstanding for consent or voting

purposes hereunder, the provisions of Section 7.04 shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the holders of the requisite principal amount of outstanding Notes are present at a meeting of holders of Notes for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Notes which a Responsible Officer actually knows to be held by the Company or an Affiliate of the Company shall not be considered outstanding. Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the Noteholders voting in favor thereof at any meeting of Noteholders duly called and held in accordance with the provisions of Article 8, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders 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. 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 7.01. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Noteholders entitled to take such action. The record date if one is selected shall be not more than fifteen (15) days prior to the date of commencement of solicitation of such action. Any request, demand, authorization, direction, notice consent, waiver or other action by a holder of any Note shall bind every future holder of the same Note, and the holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted, or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

Section 7.02. *Proof of Execution by Noteholders.* Subject to the provisions of Section 6.01, Section 6.02 and Section 8.05, proof of the execution of any instrument by a Noteholder or his agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note register or by a certificate of the Note

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Registrar. The record of any Noteholders' meeting shall be proved in the manner provided in Section 8.06.

Section 7.03. *Who are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the person in whose name such Note shall be registered upon the Note register to be, and may treat him as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes, and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depository or any other person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 7.04. *Company-Owned Notes Disregarded.* In determining whether the holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company or any other obligor on the Notes or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on such Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 7.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Company, any other obligor on the Notes or a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described persons; and, subject to Section 6.01, the Trustee shall be

entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 7.05. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note that is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor.

#### ARTICLE 8 NOTEHOLDERS' MEETINGS

Section 8.01. *Purpose of Meetings.* A meeting of Noteholders may be called at any time and from time to time pursuant to the provisions of this Article 8 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to any of the provisions of Article 5;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 6;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 9.02; or

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

Section 8.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Noteholders to take any action specified in Section 8.01, to be held at such time and at such place as the Trustee shall determine. Notice of

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every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 7.01, shall be mailed to holders of such Notes at their addresses as they shall appear on the Note register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty (20) nor more than ninety (90) days prior to the date fixed for the meeting.

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

Section 8.03. *Call of Meetings by Company or Noteholders.* In case at any time the Company, pursuant to a resolution of its Board of Directors, or the holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty (20) days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 8.01, by mailing notice thereof as provided in Section 8.02.

Section 8.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Noteholders a person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a person appointed by an instrument in writing as proxy by a holder of one or more Notes. The only persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 8.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 8.03, in which case the

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Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 7.04, at any meeting of Noteholders each Noteholder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by him or instruments in writing as aforesaid duly designating him as the proxy to vote on behalf of other Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 8.02 or Section 8.03 may be adjourned from time to time by the holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 8.06. *Voting.* The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the Noteholders or of their representatives by proxy and the principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 8.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

Section 8.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 8 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or

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rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.

ARTICLE 9  
SUPPLEMENTAL INDENTURES

Section 9.01. *Supplemental Indentures without Consent of Noteholders.* The Company, when authorized by a Board Resolution, and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency or conform this Indenture to the description of notes contained in the Offering Memorandum;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under the Indenture pursuant to Article 10;
- (c) to provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);
- (d) to add guarantees with respect to the Notes;
- (e) to secure the Notes;
- (f) to add to the covenants of the Company for the benefit of the holders or surrender any right or power conferred upon the Company;
- (g) to make any change that does not materially adversely affect the rights of any holder; or
- (h) to comply with any requirements of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act.

Upon the written request of the Company, accompanied by a Board Resolution authorizing the execution of such supplemental indenture, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture



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which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding.

Section 9.02. *Supplemental Indentures with Consent of Noteholders.* With the consent (evidenced as provided in Article 7) of the holders of at least a majority in aggregate principal amount of the Notes at the time outstanding (determined in accordance with Article 7 and including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; *provided, however*, that no such supplemental indenture shall:

- (a) reduce the percentage in aggregate principal amount of Notes the holders of which must consent to an amendment;
- (b) reduce the rate or extend the stated time for payment of interest (including Additional Interest) on, or any Extension Fee with respect to any Note;
- (c) reduce the principal, or extend the Maturity Date, of any Note;
- (d) make any change that adversely affects the conversion rights of any Notes;
- (e) reduce the Designated Event Purchase Price of any Note or amend or modify in any manner adverse to the holders of the Notes the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) change the place or currency of payment of principal or interest in respect of any Note;
- (g) impair the right of any holder to receive payment of principal of, and interest (including Additional Interest), on, such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Note; or
- (h) make any change in the provisions of this Article 9 that require each holder's consent or in the waiver provisions in Section 5.01 and Section 5.07,

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

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

It shall not be necessary for the consent of the Noteholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof. After an amendment under the Indenture becomes effective, the Company shall mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

Section 9.03. *Effect of Supplemental Indentures.* Any supplemental indenture executed pursuant to the provisions of this Article 9 shall comply with the Trust Indenture Act, as then in effect, provided that this Section 9.03 shall not require such supplemental indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 9, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Noteholders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 9 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating

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agent duly appointed by the Trustee pursuant to Section 15.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 9.05. *Evidence of Compliance of Supplemental Indenture to be Furnished Trustee.* In addition to the documents required by Section 15.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9.

#### ARTICLE 10

##### CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 10.01. *Company May Consolidate, etc. on Certain Terms.* Subject to the provisions of Section 10.02, the Company shall not consolidate with, merge with or into, or convey, transfer or lease all or substantially all of its assets and properties to another Person, unless:

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

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

For purposes of this Section 10.01, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

Section 10.02. *Successor Corporation to be Substituted.* In case of any such consolidation, merger, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the

Notes, the due and punctual conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company shall succeed to and be substituted for the Company and the Company shall be released from those obligations, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes which such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, conveyance, transfer or lease, the person named as the "Company" in the first paragraph of this Indenture or any successor which shall thereafter have become such in the manner prescribed in this Article 10 may be dissolved, wound up and liquidated at any time thereafter and such person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

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

Section 10.03. *Officer's Certificate and Opinion of Counsel to be Given Trustee.* No merger, consolidation, sale transfer or lease shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, conveyance, transfer or lease and any such assumption complies with the provisions of this Article 10.

#### ARTICLE 11 SATISFACTION AND DISCHARGE OF INDENTURE

Section 11.01. *Discharge of Indenture.* When (a) the Company shall deliver to the Note Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Note Registrar for cancellation shall have become due and

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payable, whether on the Maturity Date or on any earlier Designated Event Purchase Date or otherwise, and the Company shall deposit with the Trustee, in trust, cash or shares of Common Stock, as applicable, sufficient to pay at maturity all of the Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and accrued and unpaid interest (including any Additional Interest) due thereon, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect except as to (i) the right of holders to receive payments of principal of and accrued and unpaid interest (including any Additional Interest), and any unpaid Conversion Obligation and Additional Shares, if any, on, the Notes and the other rights, duties and obligations of Noteholders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee, (ii) the rights, obligations and immunities of the Trustee hereunder and (iii) the obligations of the Company under Section 6.06, and the Trustee, on written demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel as required by Section 15.05 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 11.02. *Deposited Monies to be Held in Trust by Trustee.* Subject to Section 11.04, all monies deposited with the Trustee pursuant to Section 11.01 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the holders of the particular Notes for the payment of which such monies have been deposited with the Trustee, of all sums due thereon for principal and accrued and unpaid interest.

Section 11.03. *Paying Agent to Repay Monies Held.* Upon the satisfaction and discharge of this Indenture, all monies then held by any Paying Agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies.

Section 11.04. *Return of Unclaimed Monies.* Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee for payment of the principal of or accrued and unpaid interest on, Notes and not applied but remaining unclaimed by the Noteholders for two years after the date upon which the principal of or accrued and unpaid interest on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the

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Trustee on written request and all liability of the Trustee shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment which such holder may be entitled to collect unless an applicable abandoned property law designates another person. The Trustee shall, promptly after such payment of the principal of, and any accrued and unpaid interest, on Notes, as described in this Section 11.04 and upon written request of the Company, return to the Company any funds in excess of the amount required for such payment.

Section 11.05. *Reinstatement.* If (i) the Trustee or the Paying Agent is unable to apply any money in accordance with Section 11.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application and (ii) the holders of at least a majority in principal amount of the then outstanding Notes so request by written notice to the Trustee, the Company's obligations under this Indenture shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Section 11.02; *provided, however,* that if the Company makes any payment of interest (including any Additional Interest) on or principal of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Noteholders to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 12

### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of, or accrued and unpaid interest on, any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any Indebtedness represented thereby, shall be had against any past, present or future incorporator, stockholder, employee, agent, officer or director or Subsidiary of the Company as such or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13  
CONVERSION OF NOTES

Section 13.01. *Conversion Privilege.*

(a) Subject to the provisions of this Article 13, and upon the occurrence of any of the conditions described in clauses (i), (ii) and (iii) below, a Noteholder shall have the right, at such holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the close of business on the Scheduled Trading Day immediately preceding February 1, 2015, at a rate (the "**Conversion Rate**") of 35.6125 shares of Common Stock (subject to adjustment by the Company as provided in Section 13.04) per \$1,000 principal amount Note (the "**Conversion Obligation**"). On and after February 1, 2015, regardless of the conditions described in clauses (i), (ii) and (iii) below, and subject to the provisions of this Article 13, a Noteholder shall have the right, at such holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Maturity Date of such Note.

(i) Prior to February 1, 2015, the Notes shall be convertible during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes for each day of such Measurement Period was less than ninety-eight percent (98%) of the product of the Last Reported Sale Price of the Common Stock on such date and the applicable Conversion Rate on such date. The Trustee shall have no obligation to determine the Trading Price of Notes unless requested by the Company to do so in writing, and the Company shall have no obligation to make such request unless a Noteholder provides the Company with reasonable evidence that the Trading Price of the Notes would be less than ninety-eight percent (98%) of the product of (a) the then-applicable Conversion Rate of the Notes and (b) the Last Reported Sale Price at such time, at which time the Company shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per Note is greater than or equal to ninety-eight percent (98%) of the product of (a) the then-applicable Conversion Rate of the Notes and (b) the Last Reported Sale Price on such date. If the Trading Price condition set forth above has been met, the Company shall so notify the Noteholders. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than ninety-eight percent (98%) of the product of (a) the then-applicable

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Conversion Rate of the Notes and (b) the Last Reported Sale Price on such date, the Company shall so notify the Noteholders.

(ii) Prior to February 1, 2015, the Notes shall be convertible during any calendar quarter after the calendar quarter ending June 30, 2007, if the Last Reported Sale Price of the Common Stock for twenty (20) or more Trading Days in a period of thirty (30) consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter exceeds one hundred-thirty percent (130%) of the applicable Conversion Price in effect on the last Trading Day of the immediately preceding calendar quarter.

(iii) Prior to February 1, 2015, the Notes shall be convertible as provided in Section 13.01(b), Section 13.01(c) and Section 13.01(d).

(b) If the Company elects to:

(i) distribute to all or substantially all holders of Common Stock rights entitling them to purchase, for a period expiring within sixty (60) days after the date for such distribution, Common Stock at a price less than the Last Reported Sale Price of the Common Stock for the Trading Day immediately preceding the declaration date of such distribution; or

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

then, in either case, holders may surrender the Notes for conversion at any time on and after the date that the Company provides notice to holders referred to in the next sentence until the earlier of the close of business on the Business Day immediately preceding the Ex-Date for such distribution or the date the Company announces that such distribution will not take place. The Company shall notify holders of any distribution referred to in either clause (i) or clause (ii) above and of the resulting conversion right no later than the thirty-fifth (35<sup>th</sup>) Scheduled Trading Day prior to the Ex-Date for such distribution. Holders may not exercise this right if such holder participates in the distribution without conversion.

(c) If the Company consolidates with or merges with or into another Person or is a party to a binding share exchange or conveys, transfers, sells, leases or otherwise disposes of all or substantially all of its properties and assets in each case pursuant to which the Common Stock would be converted into cash,



securities and/or other property, then the holders shall have the right to convert Notes at any time beginning fifteen (15) calendar days prior to the date announced by the Company as the anticipated effective date of the transaction and until and including the date that is fifteen (15) calendar days after the date that is the effective date of such transaction; *provided* such transaction does not otherwise constitute a Designated Event to which the provisions of Section 13.01(d) shall apply. The Company will notify holders of Notes at least twenty (20) calendar days prior to the anticipated effective date of such transaction. The Board of Directors shall determine the anticipated effective date of the transaction, and such determination shall be conclusive and binding on the holders and shall be publicly announced by the Company and posted on its web site not later than two Business Day prior to such fifteenth (15<sup>th</sup>) day.

(d) If the Company is a party to any transaction or event that constitutes a Designated Event, a holder may surrender Notes for conversion at any time on or after the thirtieth (30<sup>th</sup>) Scheduled Trading Day prior to the anticipated effective date of such transaction or event until the related Designated Event Purchase Date and, upon such surrender, if such Designated Event also constitutes a Fundamental Change, the holder shall be entitled to the increase in the Conversion Rate, if any, specified in Section 13.01(e). The Company shall give notice in writing to all record Noteholders and the Trustee of the Designated Event no later than thirty (30) Scheduled Trading Days prior to the anticipated effective date of the Designated Event.

In the case of clause (c) or (d) above, if the transaction is not consummated or the event does not occur, from and after the time of the Company's announcement that the transaction or event will not be consummated or occur, as the case may be, the Notes which have not theretofore been tendered for conversion shall cease to be convertible by virtue of such transaction or event.

(e)(i) If a Noteholder elects to convert Notes in connection with a Fundamental Change, the Conversion Rate applicable to each \$1,000 principal amount of Notes so converted shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described below. Settlement of Notes tendered for conversion to which Additional Shares shall be added to the Conversion Rate as provided in this Section 13.01(e) shall be settled pursuant to Section 13.02(d) below. For purposes of this Section 13.01(e), a conversion shall be deemed to be "in connection" with a Fundamental Change to the extent that such conversion is effected during the time period specified in Section 13.01(d) (regardless of whether the provisions of clause (a)(i), (a)(ii), (b) or (c) of this Section 13.01 shall apply to such conversion).

(ii) The number of Additional Shares by which the Conversion Rate will be increased shall be determined by reference to the table attached as Schedule A hereto, based on the date on which the

Fundamental Change occurs or becomes effective (the “**Effective Date**”), and the Stock Price; *provided* that if the actual Stock Price is between two Stock Price amounts in the applicable table or the Effective Date is between two Effective Dates in the applicable table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the next higher and next lower Stock Price amounts and the two nearest Effective Dates set forth in such table, as applicable, based on a 365-day year; *provided further* that if (1) the Stock Price is greater than \$150.00, per share of Common Stock (subject to adjustment in the same manner as set forth in Section 13.04), no Additional Shares will be added to the Conversion Rate and (2) the Stock Price is less than \$14.04 per share, (subject to adjustment in the same manner as set forth in Section 13.04), no Additional Shares will be added to the Conversion Rate. Notwithstanding the foregoing, in no event will the additional number of shares of Common Stock issuable upon conversion exceed 35.6125 per \$1,000 principal amount of Notes (subject to adjustment in the same manner as set forth in Section 13.04).

(iii) The Stock Prices set forth in the first row of each table in Schedule A hereto shall be adjusted by the Company as of any date on which the Conversion Rate of the Notes is adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares within the table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 13.04 (other than by operation of an adjustment to the Conversion Rate by adding Additional Shares).

Section 13.02. *Conversion Procedure.*

(a) Subject to Section 13.02(b), the Company will satisfy the Conversion Obligation with respect to each \$1,000 principal amount of Notes tendered for conversion in cash and shares of fully paid Common Stock, if applicable, by delivering, on the third (3<sup>rd</sup>) Trading Day immediately following the last day of the related Observation Period, cash and shares of Common Stock, if any, equal to the sum of the Daily Settlement Amounts for each of the thirty (30) Trading Days during the related Observation Period; *provided* that the Company will deliver cash in lieu of fractional shares of Common Stock as set forth pursuant to clause (k) below. The Daily Settlement Amounts shall be determined by the Company promptly following the last day of the Observation Period.

(b) Notwithstanding Section 13.02(a), the Company shall satisfy the Conversion Obligation with respect to each \$1,000 principal amount of Notes tendered for conversion to which Additional Shares shall be added to the Conversion Rate as set forth in Section 13.01(e) pursuant to this clause (b).

(i)(A) If the last day of the applicable Observation Period related to Notes surrendered for conversion is prior to the third (3<sup>rd</sup>) Scheduled Trading Day preceding the Effective Date of the Fundamental Change, the Company will satisfy the related Conversion Obligation with respect to each \$1,000 principal amount of Notes tendered for conversion as described in Section 13.02(b) by delivering the cash and shares of Common Stock, if any (based on the Conversion Rate, but without regard to the number of Additional Shares to be added to the Conversion Rate pursuant to Section 13.01(e)), on the third (3<sup>rd</sup>) Trading Day immediately following the last day of the applicable Observation Period. As soon as practicable following the Effective Date of the Fundamental Change, the Company will deliver the increase in such amount of cash and Reference Property in lieu of shares of Common Stock, if any, as if the Conversion Rate had been increased by such number of Additional Shares during the related Observation Period (and based upon the related Daily VWAP prices during such Observation Period). If such increased amount of cash and shares, if any, results in an increase to the amount of cash to be paid to holders, the Company will pay such increase in cash, and if such increased amount results in an increase to the number of shares of Common Stock, the Company will deliver such increase by delivering Reference Property based on such increased number of shares.

(B) If the last day of the applicable Observation Period related to Notes surrendered for conversion is on or following the third (3<sup>rd</sup>) Scheduled Trading Day preceding the Effective Date of such Fundamental Change, the Company will satisfy the Conversion Obligation with respect to each \$1,000 principal amount of Notes tendered for conversion as described in Section 13.01(b) (based on the Conversion Rate as increased by the Additional Shares pursuant to Section 13.01(e) above) on the later to occur of (1) the Effective Date of the Fundamental Change and (2) the third (3<sup>rd</sup>) Trading Day immediately following the last day of the applicable Observation Period.

(c) Before any holder of a Note shall be entitled to convert the same as set forth above, such holder shall (1) in the case of a Global Note, comply with the procedures of the Depository in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 13.02(i) and, if required, pay all taxes or duties, if any, and (2) in the case of a Note issued in certificated form, (A)

complete and manually sign and deliver an irrevocable written notice to the Conversion Agent in the form on the reverse of such certificated Note (or a facsimile thereof) (a “**Notice of Conversion**”) at the office of the Conversion Agent and shall state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the Conversion Obligation to be registered, (B) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (C) if required, pay funds equal to interest payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 13.02(i), and (D) if required, pay all taxes or duties, if any. A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the holder has complied with the requirements set forth in this Section 13.02(c).

No Notice of Conversion with respect to any Notes may be tendered by a holder thereof if such holder has also tendered a Designated Event Purchase Notice and not validly withdrawn such Designated Event Purchase Notice in accordance with the applicable provisions of Section 14.01, as the case may be.

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

(d) Delivery of the amounts owing in satisfaction of the Conversion Obligation shall be made by the Company in no event later than the date specified in Section 13.02(a), except to the extent specified in Section 13.02(b). The Company shall make such delivery by paying the cash amount owed to the Conversion Agent or to the holder of the Note surrendered for conversion, or such holder’s nominee or nominees, and by issuing, or causing to be issued, and delivering to the Conversion Agent or to such holder, or such holder’s nominee or nominees, certificates or a book-entry transfer through the Depository for the number of full shares of Common Stock, if any, to which such holder shall be entitled as part of such Conversion Obligation (together with any cash in lieu of fractional shares).

(e) In case any Note 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 Note so surrendered, without charge to such holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

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

(g) Except as provided in Section 13.04, no adjustment shall be made for dividends on any shares issued upon the conversion of any Note as provided in this Article 13.

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

(i) Upon conversion, a Noteholder will not receive any separate cash payment for accrued and unpaid interest except as set forth below. The Company's settlement of the Conversion Obligations as described above shall be deemed to satisfy its obligation to pay the principal amount of the Note and accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the preceding sentence, if Notes are converted after the close of business on a record date and prior to the next succeeding Interest Payment Date, holders of such Notes as of the close of business on the record date will receive the interest (including any Additional Interest) payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any regular record date to the opening of business on the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest (including any Additional Interest) payable on the Notes so converted; *provided, however*, that no such payment need be made (i) if the Company has specified a Designated Event Purchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date; (ii) in respect of any conversion that occurs after the record date immediately preceding the applicable Maturity Date; or (iii) to the extent of any overdue interest (including any Additional Interest) existing at

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the time of conversion with respect to such Note. Except as described above, no payment or adjustment will be made for accrued interest on converted Notes.

(j) The Person in whose name the certificate for any shares of Common Stock issued upon conversion is registered shall be treated as a stockholder of record on and after the Conversion Date; *provided, however*, that no surrender of Notes on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the Person or Persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; such conversion shall be at the Conversion Rate in effect on the date that such Notes shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of Notes, such Person shall no longer be a Noteholder.

(k) No fractional shares of Common Stock shall be issued upon conversion of any Note or Notes. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock that would otherwise be issued upon conversion of any Note or Notes (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the Last Reported Sale Price of the Common Stock on the last day of the applicable Observation Period.

Section 13.03. *Exchange in Lieu of Conversion.*

(a) If at any time when a holder surrenders Notes for conversion prior to their Maturity Date and the Company:

(i) has designated a financial institution (a “**Designated Institution**”) to accept such Notes in exchange for cash and shares of Common Stock, if any, equal to the consideration due upon conversion as provided in Section 13.02; and

(ii) notifies the holder surrendering such Notes for conversion by the close of business on the Trading Day immediately preceding the start of the Observation Period, that it has directed the Designated Institution to exchange such Notes,

then, notwithstanding anything in this Indenture to the contrary, the Company may direct the Conversion Agent to surrender such Notes, on or prior to the commencement of the Observation Period to the Designated Institution for exchange.

(b) If the Designated Institution accepts Notes surrendered for conversion, it shall notify the Conversion Agent whether it shall deliver, upon exchange, cash and, if applicable, the appropriate number of shares of Common Stock, as specified in Section 13.02 to the Conversion Agent and the Conversion Agent shall deliver the cash and shares of Common Stock, if any, to the holder, within the time period specified in Section 13.02, which delivery shall be deemed to satisfy the Company's Conversion Obligation under this Article 13 with respect to such holder. Any Notes so exchanged by such Designated Institution shall remain outstanding for all purposes under this Indenture.

(c) If the Designated Institution agrees to accept any Notes for exchange but does not timely deliver the related consideration to the Conversion Agent, or if the Designated Institution does not accept such Notes for exchange, the Company shall, within the time period specified in Section 13.02, convert such Notes into cash and shares of Common Stock, if any, in accordance with the provisions of Section 13.02.

(d) For the avoidance of doubt, in no event will the Company's designation of a financial institution pursuant to this Section 13.03 require such financial institution to accept any Notes for exchange. The Company hereby agrees not to pay any consideration to, or otherwise enter into any agreement with, any Designated Institution with respect to its designation pursuant to this Section 13.03.

Section 13.04. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows:

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

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

where

$CR_0$  = the Conversion Rate in effect immediately prior to the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be;

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- CR<sub>1</sub> = the Conversion Rate in effect immediately after the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be;
  - OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be;
  - OS<sub>1</sub> = the number of shares of Common Stock outstanding immediately after the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be.

Such adjustment shall become effective immediately after 9:00 a.m., New York City time, on the Business Day following the Record Date fixed for such dividend or distribution or the date fixed for such share split or share combination. To the extent any dividend or distribution of the type described in this Section 13.04(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, split or share combination had not been declared.

(b) If the Company distributes to all or substantially all holders of its outstanding shares of Common Stock rights or warrants entitling them for a period of not more than sixty (60) calendar days to subscribe for or purchase shares of Common Stock at a price per share less than the Last Reported Sale Price of the Common Stock on the Business Day immediately preceding the date of announcement of such distribution, the Conversion Rate shall be adjusted based on the following formula:

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

where

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



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- $OS_0$  = the number of shares of Common Stock outstanding immediately prior to the Ex-Date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such rights or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise or convert such rights or warrants divided by the average of the Last Reported Sale Prices of Common Stock over the ten (10) consecutive Trading Day period ending on the Business Day immediately preceding the Ex-Date relating to such distribution.

Such adjustment shall be successively made whenever any such rights or warrants are distributed and shall become effective immediately after 9:00 a.m., New York City time, on the Business Day following the date fixed for such determination of Noteholders entitled to receive such rights or warrants. If such rights or warrants are not so distributed, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Record Date for such distribution had not been fixed. To the extent that shares of Common Stock are not delivered after the expiration of such rights, warrants or convertible securities, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered.

In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Last Reported Sale Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes to all or substantially all holders of its Common Stock shares of any class of Capital Stock of the Company evidences of its Indebtedness or other assets or property of the Company excluding (i) dividend or distribution rights or warrants referred to in Section 13.04(a) or 13.04(b), (ii) dividends or distributions paid exclusively in cash, and (iii) Spin-Offs described below in this Section 13.04 (any of such shares of Capital Stock, Indebtedness, or other asset or property hereinafter in this Section 13.04(c) called the “**Distributed Property**”), then, in each such case the Conversion Rate shall be adjusted based on the following formula:

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

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Date for such distribution;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the Ex-Date for such distribution;
- SP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on the Business Day immediately preceding the Ex-Date relating to such distribution; and
- FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of Indebtedness, assets or property distributed with respect to each outstanding share of Common Stock on the Ex-Date relating to such distribution.

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the Business Day following the date fixed for the determination of stockholders entitled to receive such distribution; *provided* that if the then fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP<sub>0</sub> as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive, for each \$1,000 principal amount of Notes upon conversion, the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 13.04(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in determining SP<sub>0</sub> above.

With respect to an adjustment pursuant to this Section 13.04(c) where there has been a payment of a dividend or other distribution on the Common Stock or shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit (a "**Spin-Off**"), the Conversion Rate in effect immediately before close of business after the tenth

(10<sup>th</sup>) Trading Day immediately following, and including the effective date of the Spin-Off will be increased based on the following formula:

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

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately after the tenth (10<sup>th</sup>) Trading Day immediately following, and including the effective date of the Spin-Off;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the tenth (10<sup>th</sup>) Trading Day immediately following, and including the effective date of the Spin-Off;
- FMV<sub>0</sub> = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first ten (10) consecutive Trading Day period after the effective date of the Spin-Off; and
- MP<sub>0</sub> = the average of the Last Reported Sale Prices of Common Stock over the first ten (10) consecutive Trading Day period after the effective date of the Spin-Off.

Such adjustment shall occur on the tenth (10<sup>th</sup>) Trading Day from, and including, the effective date of the Spin-Off; *provided* that in respect of any conversion within the ten (10) Trading Days following the effective date of any Spin-Off, references within this paragraph (c) to ten (10) Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between such Spin-Off and the Conversion Date in determining the applicable Conversion Rate.

(d) If the Company pays a dividend or makes a distribution consisting exclusively of cash to all or substantially all holders of its Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Ex-Date for such distribution;

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$CR_1$  = the Conversion Rate in effect immediately after the Ex-Date for such distribution;

$SP_0$  = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Date relating to such distribution; and

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

Such adjustment shall become effective immediately after the close of business, on the Record Date for such dividend or distribution; *provided* that if the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than  $SP_0$  as above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion of a Note (or any portion thereof) the amount of cash such holder would have received had such holder owned a number of shares equal to the Conversion Rate on the Record Date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 13.04(d), in the event of any reclassification of the Common Stock, as a result of which the Notes become convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 13.04(d), references in this Section to one share of Common Stock or Last Reported Sale Price of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which the Notes are then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for all or any portion of the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), the Conversion Rate shall be increased based on the following formula:

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

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where

$CR_0$  = the Conversion Rate in effect on the date such tender or exchange offer expires;

$CR_1$  = the Conversion Rate in effect on the day next succeeding the date such tender or exchange offer expires;

$AC$  = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

$OS_1$  = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires; and

$SP_1$  = the Last Reported Sale Price of Common Stock on the Trading Day next succeeding the date such tender or exchange offer expires.

such adjustment to become effective immediately prior to 9:00 a.m., New York City time, on the day following the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting all or any such purchases or all or any portion of such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had only been made in respect of the purchases that had been effected.

(f) In the event of an increase in the Conversion Rate pursuant to clauses (c) through (e) of this Section 13.04 or Section 13.01(e), that would result in the Notes, in the aggregate, becoming convertible into shares of Common Stock in excess of the limitation set forth in Section 312.03(c) of the Listed Company Manual of the New York Stock Exchange, or a successor to such rule, as may then be in effect and interpreted by the New York Stock Exchange, the Company shall, at its option, either obtain stockholder approval of such issuances or deliver cash in lieu of any shares otherwise deliverable upon conversions in excess of such limitations (based on the Last Reported Sale Price of the Common Stock on the Trading Day immediately prior to the date when such shares would otherwise be required to be distributed).

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(g) Notwithstanding any provision herein to the contrary, no adjustment to the Conversion Rate need be made:

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

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Notes were first issued;

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

(v) for accrued and unpaid interest (including any Additional Interest).

To the extent the Notes become convertible into cash, assets or property (other than Capital Stock of the Company or securities to which Section 13.01(e) applies), no adjustment shall be made thereafter as to the cash, assets or property. Interest shall not accrue on such cash, assets or property.

(h) All calculations and other determinations under this Article 13 shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment shall be made for the Company's issuance of Common Stock or convertible or exchangeable securities or rights to purchase Common Stock or convertible or exchangeable securities, other than as provided in this Section 13.04. No adjustment shall be made to the Conversion Rate unless such adjustment would require a change of at least one percent (1%) in the Conversion Rate then in effect at such time. The Company shall carry forward any adjustments that are less than one percent (1%) of the Conversion Rate and make such carried forward adjustments, regardless of whether the aggregate adjustment is less than one percent (1%), upon conversion, a Designated Event, a Fundamental Change, or upon maturity. If the application of the foregoing formulae in Section 13.04(a) through (e) (other than as a result of a share split or share combination) would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made.

(i) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. The Trustee and Conversion Agent may conclusively rely on the accuracy of the Conversion Rate adjustment provided by the Company. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at his last address appearing on the Note register provided for in Section 2.07 of this Indenture, within twenty (20) days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(j) Any case in which this Section 13.04 provides that an adjustment shall become effective immediately after (1) a Record Date for a dividend or distribution described in Section 13.04(a), Section 13.04(c), or Section 13.04(d), (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution, or effective date of a share split or combination pursuant to Section 13.04(a), (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 13.04(b), or (4) the last date on which tenders or exchanges may be made pursuant to any tender or exchange offer pursuant to Section 13.04(e) (each an "**Adjustment Determination Date**"), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the holder of any Note converted after such Adjustment Determination Date and before the occurrence of such Adjustment Event, the additional cash and, if applicable, shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the amounts deliverable upon such conversion before giving effect to such adjustment and (y) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 13.02(k). For purposes of this Section 13.04(j), the term "**Adjustment Event**" shall mean:

- (i) in any case referred to in clause (1) and (2) hereof, the occurrence of such event,
- (ii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and

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(iii) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(k) For purposes of this Section 13.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(l) For the avoidance of doubt, if a holder converts Notes prior to the effective date of a Fundamental Change, and the Fundamental Change does not occur, the holder will not be entitled to an increased Conversion Rate in connection with such conversion.

Section 13.05. *Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion.

Section 13.06. *Effect of Reclassification, Consolidation, Merger or Sale.*

In the event of (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split or combination), (ii) any consolidation, merger or combination involving the Company, or (iii) any sale or conveyance of all or substantially all of the property and assets of the Company to another Person, in each case as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock (any such event a “**Merger Event**”), then:

(a) the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) permitted under Section 9.01(b) providing for the conversion and settlement of the Notes as set forth in this Indenture. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 13 and the Trustee may conclusively rely on the determination by the Company of the equivalency of such adjustments. If, in the case of any Merger Event, the Reference Property includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation



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and shall contain such additional provisions to protect the interests of the holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent required by the Board of Directors and practicable the provisions providing for the purchase rights set forth in Article 14 herein.

In the event the Company shall execute a supplemental indenture pursuant to this Section 13.06, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefore, the kind or amount of cash, securities or property or asset that will constitute the Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Noteholders.

(b) Notwithstanding the provisions of Section 13.02(a) and Section 13.02(b), and subject to the provisions of Section 13.01, at the effective time of such Merger Event, the right to convert each \$1,000 principal amount of Notes will be changed to a right to convert such Note by reference to the kind and amount of cash, securities or other property or assets that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the "**Reference Property**") such that from and after the effective time of such transaction, a Noteholder will be entitled thereafter to convert its Notes into cash (up to the aggregate principal amount thereof) and the same type (and in the same proportion) of Reference Property, based on the Daily Settlement Amounts of Reference Property in an amount equal to the applicable Conversion Rate, as described under Section 13.02(b). For purposes of determining the constitution of Reference Property, the type and amount of consideration that a holder of Common Stock would have been entitled to in the case of reclassifications, consolidations, mergers, sales or conveyance of assets or other transactions that cause the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election) will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election. The Company shall not become a party to any such transaction unless its terms are consistent with the preceding. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes in accordance with the provisions of Article 13 hereof prior to the effective date.

(c) The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Noteholder, at his address appearing on the Note register provided for in this Indenture, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

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(d) The above provisions of this Section 13.06 shall similarly apply to successive Merger Events.

Section 13.07. *Certain Covenants.* Before taking any action which would cause an adjustment reducing the Conversion Rate below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate. The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

Section 13.08. *Responsibility of Trustee.* Notwithstanding any provision of this Indenture to the contrary, the Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Noteholder to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article.

Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 13.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 6.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

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Section 13.09. *Notice to Holders Prior to Certain Actions.*

In case:

- (a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 13.04;
- (b) the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants that would require an adjustment in the Conversion Rate pursuant to Section 13.04;
- (c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company,

the Company shall cause to be filed with the Trustee and to be mailed to each Noteholder at his address appearing on the Note register, provided for in Section 2.07 of this Indenture, as promptly as possible but in any event at least twenty (20) days prior to the applicable date specified in clause (x) or (y) below, as the case may be, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

Section 13.10. *Shareholder Rights Plans.* To the extent the Company has a rights plan in effect upon conversion of the Notes, the holders shall receive, in addition to any shares of Common Stock issuable upon such conversion, the associated rights issued under such rights plan unless, prior to conversion, the

rights have separated from the Common Stock, in which case, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of Common Stock shares of the Company's Capital Stock, evidences of Indebtedness or assets as described in Section 13.04(c) above, subject to readjustment in the event of the expiration, termination or redemption of such rights. In lieu of any such adjustment, the Company may amend such applicable rights plan to provide that upon conversion of the Notes the holders will receive, in addition to the Common Stock issuable upon such conversion, the rights which would have attached to such Common Stock if the rights had not become separated from the Common Stock under such applicable rights plan.

ARTICLE 14  
PURCHASE OF NOTES AT OPTION OF HOLDERS

Section 14.01. *Purchase at Option of Holders Upon a Designated Event.*

(a) If a Designated Event occurs at any time, then each Noteholder shall have the right, at such holder's option, to require the Company to purchase all of such holder's Notes or any portion thereof that is a multiple of \$1,000 principal amount, for cash on the date (the "**Designated Event Purchase Date**") specified by the Company that is not less than twenty (20) days and not more than thirty five (35) calendar days after the date of the Designated Event Purchase Notice at a purchase price equal to one hundred percent (100%) of the principal amount thereof, together with accrued and unpaid interest, including any Additional Interest to, but excluding, the Designated Event Purchase Date (unless the Designated Event Purchase Date is between a regular Record Date and the corresponding Interest Payment Date) (the "**Designated Event Purchase Price**"). Purchases of Notes under this Section 14.01 shall be made, at the option of the holder thereof, upon:

(i) delivery to the Trustee (or other Paying Agent appointed by the Company) by a holder of a duly completed notice (the "**Designated Event Purchase Notice**") in the form set forth on the reverse of the Note prior to the Designated Event Purchase Date; and

(ii) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Company) at any time after delivery of the Designated Event Purchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company), such delivery being a condition to receipt by the holder of the Designated Event Purchase Price therefor; *provided* that such Designated Event Purchase Price shall be so paid pursuant to this Section 14.01 only if the Note so delivered to the Trustee (or other Paying Agent appointed by the Company) shall conform

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in all respects to the description thereof in the related Designated Event Purchase Notice.

The Designated Event Purchase Notice shall state:

- (A) if certificated, the certificate numbers of Notes to be delivered for purchase;
- (B) the portion of the principal amount of Notes to be purchased, which must be \$1,000 or an integral multiple thereof; and
- (C) that the Notes are to be purchased by the Company pursuant to the applicable provisions of the Notes and the Indenture.

Any purchase by the Company contemplated pursuant to the provisions of this Section 14.01 shall be consummated by the delivery of the consideration to be received by the holder promptly following the later of the Designated Event Purchase Date and the time of the book-entry transfer or delivery of the Note.

The Trustee (or other Paying Agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Designated Event Purchase Notice or written notice of withdrawal thereof in accordance with the provisions of Section 14.01(c).

Any Note that is to be purchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal of the Note so surrendered.

(b) On or before the tenth (10<sup>th</sup>) day after the Effective Date of any Designated Event, the Company shall provide to all holders of record of the Notes and the Trustee and Paying Agent a notice (the “**Designated Event Company Notice**”) of the occurrence of such Designated Event and of the purchase right at the option of the holders arising as a result thereof. Such mailing shall be by first class mail. Simultaneously with providing such Designated Event Company Notice, the Company shall publish a notice containing the information included therein in a newspaper of general circulation in The City of New York or publish

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the information on the Company's website or through such other public medium as the Company may use at such time.

Each Designated Event Company Notice shall specify:

- (i) the events causing the Designated Event and whether such Designated Event also constituted a Fundamental Change;
- (ii) the date of the Designated Event;
- (iii) the Designated Event Purchase Date and the last date on which a holder may exercise the purchase right;
- (iv) the Designated Event Purchase Price;
- (v) the name and address of the Paying Agent and the Conversion Agent;
- (vi) the applicable Conversion Rate and any adjustments to the applicable Conversion Rate (including the number of Additional Shares, if any, in the case of a Fundamental Change);
- (vii) that the Notes with respect to which a Designated Event Purchase Notice has been delivered by a holder may be converted only if the holder withdraws the Designated Event Purchase Notice in accordance with the terms of the indenture;
- (viii) that the holder must exercise the purchase right on or prior to the close of business on the Designated Event Purchase Date (the "**Designated Event Expiration Time**");
- (ix) that the holder shall have the right to withdraw any Notes surrendered prior to the Designated Event Expiration Time; and
- (x) the procedures that holders must follow to require the Company to purchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Noteholders' purchase rights or affect the validity of the proceedings for the purchase of the Notes pursuant to this Section 14.01.

(c) A Designated Event Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Designated Event Company Notice at any time prior to the close of business on the Business Day prior to the Designated Event Purchase Date, specifying:

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- (i) if certificated Notes have been issued, the certificate numbers of the withdrawn Notes;
  - (ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted; and
  - (iii) the principal amount, if any, of such Note that remains subject to the original Designated Event Purchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

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

(d) On or prior to 11:00 a.m., New York City time on the Designated Event Purchase Date, the Company will deposit with the Trustee (or other Paying Agent appointed by the Company or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) an amount of cash sufficient to purchase on the Designated Event Purchase Date all of the Notes to be purchased on such date at the Designated Event Purchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for purchase (and not withdrawn) prior to the Designated Event Expiration Time will be made promptly after the later of (x) the Designated Event Purchase Date with respect to such Note (*provided* the holder has satisfied the conditions to the payment of the Designated Event Purchase Price in Section 14.01), and (y) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the holder thereof in the manner required by Section 14.01 by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear in the Note register, *provided, however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Designated Event Purchase Price.

(e) If the Trustee (or other Paying Agent appointed by the Company) holds money or securities sufficient to purchase on the Designated Event Purchase Date all the Notes or portions thereof that are to be purchased as of the Business Day following the Designated Event Purchase Date, then on and after the Designated Event Purchase Date (i) such Notes will cease to be outstanding, (ii) interest (including any Additional Interest) will cease to accrue on such Notes, and (iii) all other rights of the holders of such Notes will terminate, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent, other than the right to receive the Designated Event Purchase Price and previously accrued and unpaid interest (including any Additional Interest) upon delivery of the Notes.

ARTICLE 15  
MISCELLANEOUS PROVISIONS

Section 15.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 15.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

Section 15.03. *Addresses for Notices, Etc.* Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Noteholders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Advanced Micro Devices, Inc., One AMD Place, P.O. Box 3453, Sunnyvale, California 94088-3453, Attention: Assistant General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office.

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

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

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

Section 15.04. *Governing Law.* THIS INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF



Section 15.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 15.06. *Legal Holidays.* In any case where any Interest Payment Date, Designated Event Purchase Date, Conversion Date or Maturity Date will not be a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest (or Additional Interest, if any) shall accrue for the period from and after such date to the next succeeding Business Day.

Section 15.07. *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 15.08. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any person, other than the parties hereto, any Paying Agent, any authenticating agent, any Note Registrar and their successors hereunder, the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 15.09. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been

inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 15.10. *Authenticating Agent.* The Trustee may appoint an authenticating agent which shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.06, Section 2.07, Section 2.09 and Section 2.10, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a person eligible to serve as trustee hereunder pursuant to Section 6.09.

Any corporation into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 15.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

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

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

The provisions of Section 6.02, Section 6.03, Section 6.04, Section 7.03 and this Section 15.10 shall be applicable to any authenticating agent.

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Section 15.11. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 15.12. *Qualification of Indenture.* The Company shall qualify this Indenture under the Trust Indenture Act in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company, the Trustee and the holders) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Notes and the printing of this Indenture and the Notes.

Section 15.13. *Calculations.* Except as otherwise provided herein, the Company will be responsible for making all calculations called for under the Indenture and the Notes. The Company will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on holders. The Company upon request will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will deliver a copy of such schedule to any holder upon the request of such holder.

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

ADVANCED MICRO DEVICES, INC.

By: /s/ Robert J. Rivet  
Name: Robert J. Rivet  
Title: Executive Vice President, Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION as Trustee

By: /s/ Maddy Hall  
Name: Maddy Hall  
Title: Assistant Vice President



## [FORM OF FACE OF NOTE]

[Include only for Global Notes]

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

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO IN THE TERMS OF SECURITIES ATTACHED HERETO.]

[Include only for Notes in certificated form]

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

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[Include only for Notes that are Restricted Securities]

[THIS SECURITY AND THE SHARES OF ADVANCED MICRO DEVICES, INC. (THE "COMPANY") COMMON STOCK ("COMMON STOCK") ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, (1) AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LAST ORIGINAL ISSUE DATE HEREOF ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES WHERE REGISTRATION OR TRANSFER OF THIS SECURITY IS REQUIRED, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE AND (2) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED AFTER THE RESALE RESTRICTION TERMINATION DATE. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION

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OF THE FOREGOING RESTRICTION. IN ANY CASE, THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS SECURITY OR THE COMMON STOCK EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.]

[Include only for shares of Common Stock that are Restricted Securities]

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A ADOPTED UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY FURNISH TO THE TRANSFER AGENT AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]



ADVANCED MICRO DEVICES, INC.  
6.00% Convertible Senior Notes due 2015

No.

\$ \_\_\_\_\_

CUSIP No. [ ]

Advanced Micro Devices, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to CEDE & CO., or registered assigns, the principal sum of [\_\_\_\_\_] Dollars or such other principal amount as shall be set forth on the Schedule I hereto on May 1, 2015.

This Note shall bear interest at the rate of 6.00% per year from April 27, 2007, or from the most recent date to which interest had been paid or provided. Interest is payable semi-annually in arrears on each May 1 and November 1, commencing November 1, 2007, to holders of record at the close of business on the preceding April 15 and October 15, respectively. Interest payable on each Interest Payment Date shall equal the amount of interest accrued from and including the immediately preceding Interest Payment Date (or from and including April 27, 2007 if no interest has been paid hereon) to but excluding such Interest Payment Date.

Principal of, and interest (including Additional Interest, if any) on, Global Notes shall be paid in immediately available funds to the account of the Depositary or its nominee. Payment of principal of Notes in certificated form shall be made at the office or agency designated by the Company for such purpose. Interest (including Additional Interest, if any) on Notes in certificated form shall be paid (x) to holders having an aggregate principal amount of \$5,000,000 or less, by check mailed to the holders of these Notes or (y) to holders having an aggregate principal amount of more than \$5,000,000, either by check mailed to each holder or, upon application by a holder to the Note Registrar not later than the relevant record date, by wire transfer in immediately available funds to that holder's account within the United States, which application shall remain in effect until the holder notifies, in writing, the Note Registrar to the contrary.

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

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This Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of the State of New York applicable to contracts entered into and to be performed therein.

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

[Remainder of page intentionally left blank]

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

ADVANCED MICRO DEVICES, INC.

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

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

By: \_\_\_\_\_  
Name:  
Authorized Officer:

[FORM OF REVERSE OF NOTE]

ADVANCED MICRO DEVICES, INC.  
6.00% Convertible Senior Notes due 2015

This Note is one of a duly authorized issue of Notes of the Company, designated as its 6.00% Convertible Senior Notes due 2015 (herein called the “Notes”), issued under and pursuant to an Indenture dated as of April 27, 2007 (herein called the “Indenture”), between the Company and Wells Fargo Bank, National Association (herein called the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and accrued and unpaid interest on, all Notes, may be declared, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

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

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the holders of the Notes, and in other circumstances, with the consent of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as provided in the Indenture, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes; *provided, however*, that no such supplemental indenture shall make any of the changes set forth in Section 9.02 of the Indenture, without the consent of each holder of an outstanding Note affected thereby. It is also provided in the Indenture that, prior to any declaration accelerating the maturity of the Notes, the holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences except as provided in the Indenture. Any such

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consent or waiver by the holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

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

The Notes are issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations.

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

Upon the occurrence of a Designated Event, the holder has the right, at such holder's option, to require the Company to purchase all of such holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Designated Event Purchase Date at a price equal to one hundred (100%) of the principal amount of the Notes such holder elects to require the Company to purchase, together with accrued and unpaid interest to but excluding the Designated Event Purchase Date. The Company or, at the written request of the Company, the Trustee shall mail to all holders of record of the Notes a notice of the occurrence of a Designated Event and of the purchase right arising as a result thereof on or before the tenth (10<sup>th</sup>) day after the occurrence of any Designated Event.

Subject to the provisions of the Indenture, the holder hereof has the right, at its option, on and after February 1, 2015, or earlier upon the occurrence of certain conditions specified in the Indenture and prior to the close of business on the Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof which is \$1,000 or an integral multiple thereof, into cash and, if applicable, shares of Common Stock, in each case at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture, upon surrender of this Note, together with a Notice of Conversion, a form of which is attached to the Note, as provided in the Indenture and this Note,

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to the Company at the office or agency of the Company maintained for that purpose in Minneapolis, Minnesota, or at the option of such holder, the Corporate Trust Office, and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or by his duly authorized attorney. The initial Conversion Rate shall be 35.6125 shares for each \$1,000 principal amount of Notes. No fractional shares of Common Stock will be issued upon any conversion, but an adjustment in cash will be paid to the holder, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion. No adjustment shall be made for dividends or any shares issued upon conversion of such Note except as provided in the Indenture.

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

The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem and treat the registered holder hereof as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon), for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any Paying Agent nor any other Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Note.

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

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

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



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[FORM OF CONVERSION NOTICE]

To: ADVANCED MICRO DEVICES, INC.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended, if shares of Common Stock are to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

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

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(Name)

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(Street Address)

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(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): \$ \_\_\_\_\_.000

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Social Security or Other  
Taxpayer Identification Number:

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[TO BE ATTACHED TO GLOBAL NOTES]

**ASSIGNMENT FORM**

To assign this Note, fill in the form below:  
I or we assign and transfer this Note to

\_\_\_\_\_

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

\_\_\_\_\_

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

\_\_\_\_\_

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

(Signature must be guaranteed)

\_\_\_\_\_

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934, as amended.

In connection with any transfer or exchange of any of the Notes evidenced by this certificate occurring prior to the date that is two years after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Notes are being:

CHECK ONE BOX BELOW:

- 1 acquired for the undersigned's own account, or an account with respect to which the undersigned exercises sole investment discretion, without transfer; or
- 2 transferred to the Company; or
- 3 transferred pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"); or
- 4 transferred pursuant to and in compliance with Rule 144A under the Securities Act; or
- 5 transferred pursuant to another available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; *provided, however*, that if box (5) is checked, the Trustee or the Company may require, prior to registering any such transfer of the Notes, in their sole discretion, such legal opinions, certifications and other information as the Trustee or the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, as amended, such as the exemption provided by Rule 144 under such Act.

\_\_\_\_\_  
Signature:

Signature Guarantee:

\_\_\_\_\_  
(Signature must be guaranteed)

\_\_\_\_\_  
Signature:

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to Rule 17Ad-15 under the Exchange Act.

TO BE COMPLETED BY PURCHASER IF (1) OR (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the

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meaning of Rule 144A under the Securities Act, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

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Dated:

[FORM OF DESIGNATED EVENT PURCHASE NOTICE]

To: Advanced Micro Devices, Inc.

The undersigned registered holder of this Note hereby acknowledges receipt of a notice from Advanced Micro Devices, Inc. (the "Company") as to the occurrence of a Designated Event with respect to the Company and requests and instructs the Company to purchase this Note, or the portion thereof (which is \$1,000 principal amount or a multiple thereof) designated below, in accordance with the terms of the Indenture referred to in this Note and directs that the check or Common Stock of the Company, as applicable, in payment for this Note or the portion thereof and any Notes representing any unpurchased principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Note not purchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

\_\_\_\_\_

Signature(s)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15 under the Exchange Act.

Signature Guarantee

Fill in if a check is to be issued, or Notes are to be issued, other than to and in the name of registered holder:

(Name)

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

(Street Address)

(City state and zip code)

Please print name and address

Social Security or Other Taxpayer Number

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[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL NOTE

The following increases or decreases in this Global Note have been made:

<u>Date</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease or increase</u>	<u>Signature of authorized signatory of Trustee or Custodian</u>
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## Opening Transaction – Call

To: Advanced Micro Devices, Inc.  
One AMD Place  
Sunnyvale, California 94088

Attention: Caye Hursey  
Telephone No.: (408) 749-2489  
Facsimile No.: (408) 774-7010

Re: Capped Call Transaction

Global ID: 3016179

Dear Sir/Madam:

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the transaction entered into between Lehman Brothers OTC Derivatives Inc. (“**Dealer**”), represented by Lehman Brothers Inc. as its agent (“**Agent**”) and Advanced Micro Devices, Inc., a Delaware corporation (“**Counterparty**”), on the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous letter and serve as the final documentation for this Transaction. The Transaction is subject to early unwind if the closing of the Convertible Notes referred to below issued by Counterparty is not consummated for any reason, as set forth in this Confirmation. Lehman Brothers OTC Derivatives Inc. is not a member of the Securities Investor Protection Corporation.

This Confirmation is subject to, and incorporates, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the “**2000 Definitions**”) and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**,” and together with the 2000 Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Offering Memorandum dated April 24, 2007 (the “**Offering Memorandum**”) relating to the USD 2,000,000,000 principal amount of 6.00% Convertible Senior Notes due 2015 (the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty pursuant to an Indenture to be dated as of April 27, 2007 between Counterparty and Wells Fargo Association, as trustee (as in effect on the date of its execution, the “**Indenture**”). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. For the avoidance of doubt, references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended following its execution, any such amendment will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing.



Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement (the "**ISDA Form**") as if Dealer and Counterparty had executed an agreement in such form (without any Schedule but with the elections set forth in this Confirmation). For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	April 24, 2007
Option Style:	"Modified American," as set forth under "Procedures for Exercise" below.
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The common stock of Counterparty, par value USD 0.01 per share (Exchange symbol "AMD").
Number of Options:	2,000,000; <i>provided</i> that if Morgan Stanley & Co. Incorporated, as representative of the Initial Purchasers (as defined in the Purchase Agreement referred to below), exercises the option to purchase additional Convertible Notes pursuant to Section 2 of the Purchase Agreement, the Number of Options hereunder shall be automatically increased, effective upon payment by Counterparty of the Additional Premium on the Additional Premium Payment Date, by the Applicable Percentage <i>times</i> the number of Convertible Notes in denominations of USD 1,000 principal amount issued pursuant to such exercise (such Convertible Notes, the " <b>Additional Convertible Notes</b> "). The Number of Options shall be reduced by the Applicable Percentage <i>times</i> the number of Convertible Notes converted by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number equal to the Conversion Rate as of such date (as defined in the Indenture), for each Convertible Note.
Number of Shares:	The product of the Number of Options and the Option Entitlement.

Applicable Percentage:	100%
Strike Price:	USD 28.08 per Option
Cap Price:	USD 42.12 per Option
Premium:	USD 165,400,000; <i>provided</i> that if the Number of Options is increased pursuant to the proviso to the definition of "Number of Options" above, Counterparty shall pay on the Additional Premium Payment Date an additional Premium (the " <b>Additional Premium</b> ") equal to the product of the number of Options by which the Number of Options is so increased and USD 82.70.
Premium Payment Date:	April 27, 2007
Additional Premium Payment Date:	The closing date for the purchase and sale of the Additional Convertible Notes.
Exchange:	New York Stock Exchange
Related Exchange:	All Exchanges
Procedures for Exercise:	
Exercise Period(s):	Notwithstanding anything to the contrary in the Equity Definitions, an Exercise Period shall occur with respect to an Option hereunder only if such Option is an Exercisable Option (as defined below) and the Exercise Period shall be, in respect of such Exercisable Option, the period commencing on, and including, the relevant Conversion Date and ending on, and including, the Final Expiration Date.
Conversion Date:	As defined in the Indenture.
Exercisable Options:	Upon the occurrence of a Conversion Date, a number of Options equal to the Applicable Percentage <i>times</i> the number of Convertible Notes converted on such Conversion Date shall become Exercisable Options hereunder; <i>provided</i> that Convertible Notes surrendered for conversion prior to the 32nd Scheduled Trading Day prior to May 1, 2015 shall not cause any Options hereunder to become Exercisable Options and, in lieu thereof, Section 9(n) shall apply.
Expiration Time:	The Valuation Time
Final Conversion Date:	April 30, 2015
Final Expiration Date:	The earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) 5:00 p.m., New York City time, on the Final Conversion Date, subject to earlier exercise.
Multiple Exercise:	Applicable, as described under Exercisable Options above.
Automatic Exercise:	Applicable. For the avoidance of doubt, Exercisable Options for which the related Conversion Date occurs on

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or after the 32nd Scheduled Trading Day prior to May 1, 2015 shall be subject to Automatic Exercise.

Observation Period: The first 30 Trading Days beginning on and including the 32nd Scheduled Trading Day prior to May 1, 2015.

Trading Day: As defined in the Indenture.

Business Day: As defined in the Indenture.

Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in a commercially reasonable manner.

Market Disruption Event: Notwithstanding anything to the contrary in the Equity Definitions, as defined in the Indenture.

Settlement Terms:

Settlement Method: Net Share Settlement

Net Share Settlement: Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares (the “**Net Share Settlement Obligation**”) equal to the Net Shares in respect of any Exercisable Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.

Net Shares: In respect of any Exercisable Option exercised or deemed exercised, a number of Shares equal to the product of (i) the Option Entitlement multiplied by (ii)  $1/30^{\text{th}}$  of the sum of the quotients, for each Trading Day during the Observation Period, of (A) (1) the amount by which the Cap Price exceeds the Strike Price, if the Relevant Price on such Trading Day is equal to or greater than the Cap Price; (2) the amount by which such Relevant Price exceeds the Strike Price, if such Relevant Price is greater than the Strike Price but less than the Cap Price or (3) zero, if such Relevant Price is less than or equal to the Strike Price; *divided by* (B) such Relevant Price.

Dealer will deliver cash in lieu of any fractional Shares to be delivered with respect to any Net Shares, calculated as set forth in Section 13.02(k) of the Indenture.

Settlement Date: For any Exercisable Option, the date Shares will be delivered with respect to the Convertible Notes related to such Exercisable Options, under the terms of the Indenture.

Other Applicable Provisions in Respect of Net Share Settlement:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled.” “ <b>Net Share Settled</b> ” in relation to any Option means that Net Share Settlement is applicable to that Option.
Scheduled Trading Day:	As defined in the Indenture.
Relevant Price:	On any Trading Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “AMD <equity> AQR” (or its equivalent successor if such page is unavailable) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Trading Day, as determined in a commercially reasonable manner using a volume-weighted average method, by the Calculation Agent).
Settlement Currency:	USD
<b>3. Additional Terms Applicable to the Transaction:</b>	
Adjustments Applicable to the Transaction:	
Potential Adjustment Events:	Notwithstanding Section 11.2(e) of the Equity Definitions, a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in Section 13.04 of the Indenture, that would result in an adjustment to the Conversion Rate of the Convertible Notes.
Method of Adjustment:	Calculation Agent Adjustment, which means, notwithstanding anything to the contrary in the Equity Definitions, upon any adjustment to the Conversion Rate of the Convertible Notes pursuant to the Indenture (i) the Calculation Agent shall make a corresponding adjustment to any of the Strike Price, Number of Options and the Option Entitlement and (ii) the Calculation Agent may, in its sole discretion, make any adjustment consistent with the Calculation Agent Adjustment set forth in Section 11.2(c) of the Equity Definitions to the Cap Price or any other variable relevant to the exercise, settlement or payment for the Transaction (other than the Strike Price) to preserve the fair value of the Options to Dealer after taking into account such Potential Adjustment Event; provided further that in no event shall the Cap Price be less than the Strike Price.

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Extraordinary Events:

Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition described in Section 13.06 of the Indenture.
Tender Offers:	Applicable; <i>provided</i> that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in clause (1) of the definition of “Fundamental Change” under Section 1.01 of the Indenture.
Consequence of Merger Events/ Tender Offers:	Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer:  (i) the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, Strike Price, Number of Options and the Option Entitlement; and  (ii) the Calculation Agent may, in its sole discretion, make any adjustment consistent with the Modified Calculation Agent Adjustment set forth in Section 12.2(e) or 12.3(d) of the Equity Definitions, as applicable, to the Cap Price or any other variable relevant to the exercise, settlement or payment for the Transaction (other than the Strike Price); <i>provided</i> that in no event shall the Cap Price be less than the Strike Price;  <i>provided</i> that, with respect to a Merger Event, if the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person not organized under the laws of the United States, any State thereof or the District of Columbia, Cancellation and Payment (Calculation Agent Determination) shall apply.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); <i>provided</i> that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market

(or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:	
Change in Law:	Applicable
Failure to Deliver	Applicable
Determining Party:	For all applicable Additional Disruption Events, Dealer.
Non-Reliance:	Applicable
Agreements and Acknowledgements Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable
Additional Termination Events:	<p>If any event of default resulting in acceleration under the terms of the Convertible Notes, as set forth in Section 5.01 of the Indenture, shall occur with respect to Counterparty, then such event shall constitute an Additional Termination Event applicable to the Transaction with respect to which Counterparty shall be deemed to be the sole Affected Party and the Transaction shall be the sole Affected Transaction.</p> <p>If any provision of the Indenture or the Convertible Notes is amended, modified, supplemented or waived without the written consent of Dealer, Counterparty shall provide Dealer and the Calculation Agent with notice thereof on or prior to the effective date thereof and, if the Calculation Agent determines that such amendment, modification, supplement or waiver has a material effect on the Transaction or Dealer's ability to hedge all or a portion ("<b>Affected Portion</b>") of the Transaction, in each case determined in its reasonable judgment, then such event (an "<b>Amendment Event</b>") shall constitute an Additional Termination Event, in which case (x) the sole Affected Transaction shall consist of a transaction identical to the Transaction except that Number of Options for such Affected Transaction shall equal the Affected Portion and Counterparty shall be deemed the sole Affected Party and (y) the Transaction shall remain in full force and effect, except that the Number of Options subject to the Transaction immediately prior to such amendment, modification, supplement or waiver shall be reduced by the Affected Portion.</p> <p>If any Convertible Notes are repurchased (whether in connection with a put of Convertible Notes by holders thereof pursuant to the terms of the Indenture as a result of a fundamental change, howsoever defined, or for any other reason) by Counterparty or any of its subsidiaries or if Counterparty gives notice to Dealer that it intends to repurchase any Convertible Notes, then Counterparty may notify Dealer that it wishes to designate an Early Termination Date with respect to the portion of the Transaction relating to the number of Convertible Notes</p>

that cease to be outstanding in connection with or as a result of such repurchase and the parties shall negotiate in good faith and in a commercially reasonable manner the timing, pricing and other terms of such designation. For the avoidance of doubt, no such designation shall be made if, after such negotiation, the parties cannot agree on the terms of such designation.

With respect to any Additional Termination Event described above, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant event of default, amendment, modification, supplement, waiver or repurchase, as applicable, had not occurred, (y) the corresponding Convertible Notes remain outstanding and (z) notwithstanding anything to the contrary in this Confirmation or the Indenture, the Conversion Rate was not adjusted pursuant to Section 13.01(e) of the Indenture.

4. Calculation Agent: Dealer

5. Account Details:

- (a) Account for payments to Counterparty: To be provided by Counterparty  
(b) Account for payments to Dealer: To be provided by Dealer.

6. Offices:

The Office of Counterparty for the Transaction is: Inapplicable

The Office of Dealer for the Transaction is:

Lehman Brothers OTC Derivatives Inc.  
745 Seventh Avenue  
New York, NY 10019

7. Notices: For purposes of this Confirmation:

- (a) Address for notices or communications to Counterparty:  
To: Advanced Micro Devices, Inc.  
One AMD Place M/S 68  
P.O Box 3453  
Sunnyvale, CA 94088  
Attention: General Counsel  
T: (408) 749-4000  
Fax (408) 773-7002
- (b) Address for notices or communications to Dealer:  
To: Lehman Brothers Inc., acting as Agent  
Lehman Brothers OTC Derivatives Inc., acting as Principal  
745 Seventh Avenue  
New York, NY 10019

Attention: Andrew Yare – Transaction Management Group  
Telephone: (212) 526-9986  
Facsimile: (646) 885-9546

With a copy to:

Lehman Brothers Inc., acting as Agent  
Lehman Brothers OTC Derivatives Inc., acting as Principal  
745 Seventh Avenue  
New York, NY 10019  
Attention: Steve Roti – US Equity Linked  
Telephone: (212) 526-0055  
Facsimile: (917) 552-0561

#### 8. Representations, Warranties and Agreements of Counterparty:

The representations and warranties of Counterparty set forth in Section 3 of the Agreement and Section 1 of the Purchase Agreement dated as of April 24, 2007 between Counterparty and Morgan Stanley & Co. Incorporated, as representative of the initial purchasers party thereto (the “**Purchase Agreement**”) are true and correct as of the dates made therein and as of any Additional Premium Payment Date, and are hereby deemed to be repeated on such dates to Dealer as if set forth herein. In addition to the representations and warranties in the Purchase Agreement, the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

- (a) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (b) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended (the “CEA”) because one or more of the following is true:
  - It is a corporation, partnership, proprietorship, organization, trust or other entity and:
    - (A) it has total assets in excess of USD 10,000,000;
    - (B) its obligations hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
    - (C) it has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of its business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by it in the conduct of its business.
- (c) On the Trade Date and on any Additional Premium Payment Date, (A) Counterparty is not aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or



necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

- (d) Without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.
- (e) Counterparty is an “accredited investor” (as such term is defined in Section 2(a)(15)(ii) of the Securities Act).
- (f) On the Trade Date and on any Additional Premium Payment Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature.
- (g) Counterparty hereby agrees and acknowledges that the Transaction has not been registered with the Securities and Exchange Commission or any state securities commission and that the Options are being written by Dealer to Counterparty in reliance upon exemptions from any such registration requirements. Counterparty acknowledges that all Options acquired from Dealer will be acquired for investment purposes only and not for the purpose of resale or other transfer except in compliance with the requirements of the Securities Act. Counterparty will not sell or otherwise transfer any Option or any interest therein except in compliance with the requirements of the Securities Act and any subsequent offer or sale of the Options will be solely for Counterparty’s account and not as part of a distribution that would be in violation of the Securities Act.
- (h) Counterparty understands no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency.
- (i) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties with respect to the treatment of the Transaction under FASB Statements 133, as amended, or 150, EITF Issue No. 00-19 (or any successor issue statements) or under FASB’s Liabilities & Equity Project.
- (j) Each party makes to the other the representations and warranties set forth in Sections 3(a) through 3(f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to

dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

- (a) Opinions. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(a) of this Confirmation.
- (b) Repurchase Notices. Counterparty shall, at least 5 Scheduled Trading Days prior to any day on which it effects any repurchase of Shares, give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) if, following such repurchase, the Notice Percentage as determined on such day is (i) greater than 8% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The “**Notice Percentage**” as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 9(b) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider,” including without limitation any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to this Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Person may become subject, including without limitation, Section 16 of the Exchange Act), relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold harmless any Indemnified Person, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Person as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Person for all expenses (including reasonable counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding (including any governmental or regulatory investigation) arising therefrom, whether or not such Indemnified Person is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.
- (c) Conversion Rate Adjustments. Counterparty shall provide to Dealer written notice (such notice, a “**Conversion Rate Adjustment Event Notice**”) at least ten Scheduled Trading Days prior to consummating or otherwise executing or engaging in any transaction or event (a “**Conversion Rate Adjustment Event**”) that would lead to a change in the Conversion Rate (as such term is defined in the Indenture). Upon such Conversion Rate Adjustment Event becoming effective, Counterparty shall, on the day such Conversion Rate Adjustment Event becomes effective or as soon as practicable thereafter, provide to Dealer written notice (such notice, a “**Conversion Rate Adjustment Notice**”) setting forth the new, adjusted Conversion Rate (the “**New Conversion Rate**”). In connection with the delivery of any Conversion Rate Adjustment Event Notice to Dealer, Counterparty shall, (x) concurrently with or prior to such delivery, publicly announce and disclose the Conversion Rate Adjustment Event or (y) concurrently with such delivery, represent and warrant that the information set forth in such

Conversion Rate Adjustment Event Notice does not constitute material non-public information with respect to Counterparty or the Shares. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, Counterparty shall, concurrently with or prior to such delivery, publicly announce and disclose the New Conversion Rate.

- (d) Regulation M. Counterparty was not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Trade Date, and on any Additional Premium Payment Date engage in any such distribution.
- (e) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.
- (f) Rule 10b-18. During the period beginning on the Trade Date and ending on any Additional Premium Payment Date, or if no such Additional Premium Payment Date has occurred, on the last date on which Morgan Stanley & Co. Incorporated, as representative of the Initial Purchasers, may exercise the over-allotment option set forth in the Purchase Agreement, neither Counterparty nor any “affiliate” or “affiliated purchaser” (each as defined in Rule 10b-18 of the Exchange Act (“**Rule 10b-18**”)) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, unless Dealer, in its sole discretion, consents to any such transaction or activity.
- (g) Number of Repurchased Shares. Counterparty represents that it could have purchased a number of Shares equal to (i) the product of the Number of Options, Option Entitlement and the amount by which the Cap Price exceeds the Strike Price, divided by (ii) the Cap Price, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees and contractual agreements binding upon Counterparty, on the Trade Date.
- (h) Board Authorization. Each of this Transaction and the issuance of the Convertible Notes was approved by Counterparty’s board of directors and publicly announced, solely for the purposes stated in such board resolution and public disclosure and, prior to any exercise of Options hereunder, Counterparty’s board of directors will have duly authorized any repurchase of Shares pursuant to this Transaction. Counterparty further represents that there is no internal policy, whether written or oral, of Counterparty that would prohibit Counterparty from entering into any aspect of this Transaction, including, but not limited to, the purchases of Shares to be made pursuant hereto.
- (i) Transfer or Assignment. Dealer may transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, to any of its affiliates without the consent of Counterparty. If at any time at which the Equity Percentage exceeds 8%, Dealer, in its discretion, (i) shall have the right to transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, to any third party and (ii), if Dealer is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer such that the Equity Percentage is reduced to 8% or less, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of the Transaction, such that the Equity

Percentage following such partial termination will be equal to or less than 8%. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Terminated Transaction. The “**Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of the number of Shares that Dealer and its affiliates beneficially own (within the meaning of Section 13 of the Exchange Act) on such day, other than Shares owned as a hedge of the Transaction, and the Number of Shares and (B) the denominator of which is the number of Shares outstanding on such day. Counterparty may not transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, without the consent of Dealer.

- (j) **Staggered Settlement.** If, due to operational requirements or upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer’s hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the Settlement Date for the Transaction, Dealer may by notice to Counterparty prior to the Settlement Date (the “**Nominal Settlement Date**”), elect to deliver the Shares on two or more dates (each, a “**Staggered Settlement Date**”) or at two or more times on or prior to the Nominal Settlement Date as follows:
- (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date) or delivery times and how it will allocate the Shares it is otherwise required to deliver on such Settlement Date among the Staggered Settlement Dates or delivery times; and
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.
- (k) **Early Unwind.** In the event the sale by Counterparty of the Convertible Notes is not consummated with the initial purchasers pursuant to the Purchase Agreement for any reason by the close of business in New York on April 27, 2007 (or such later date as agreed upon by the parties) (April 27, 2007, or such later date being the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty thereunder shall be cancelled and terminated and (ii) if the sale of Convertible Notes is not consummated with the initial purchasers for any reason other than as a result of breach of the Purchase Agreement by any initial purchaser, Counterparty shall pay to Dealer an amount in cash equal to the aggregate amount of costs and expenses relating to the unwinding of Dealer’s hedging activities in respect of the Transaction (including market losses incurred in reselling any Shares purchased by Dealer or its affiliates in connection with such hedging activities). Following such termination, cancellation and payment, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Early Unwind and following the payment referred to above, all obligations with respect to the Transaction shall be deemed fully and finally discharged. For the avoidance of doubt, this Section 9(k) shall become effective as of the Trade Date and shall remain in effect whether or not the Effective Date of the Transaction occurs.
- (l) **Role of Agent.** Each party agrees and acknowledges that Agent is acting as agent for both parties but does not guarantee the performance of either party and neither Dealer nor

Counterparty shall contact the other with respect to any matter relating to the Transaction without the direct involvement of Agent; (ii) Agent is not a member of the Securities Investor Protection Corporation; (iii) Agent, Dealer and Counterparty each hereby acknowledges that any transactions by Dealer or Agent in the Shares will be undertaken by Dealer or Agent, as the case may, as principal for its own account; and (iv) all of the actions to be taken by Dealer and Agent in connection with the Transaction, including but not limited to any exercise of any rights with respect to the Options, shall be taken by Dealer or Agent independently and without any advance or subsequent consultation with Counterparty; and (iv) Agent is hereby authorized to act as agent for Counterparty only to the extent required to satisfy the requirements of Rule 15a-6 under the Exchange Act in respect of the Options described hereunder.

- (m) **Additional Provisions.** The following amendment shall be made to the Equity Definitions and to the Agreement: Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(x)” after the word “means” in the first line thereof and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor “or (y), if Dealer so elects, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”
- (n) **Additional Termination Events.** Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of a Conversion Date for any Convertible Notes prior to the 32nd Scheduled Trading Day prior to May 1, 2015 (an “**Early Conversion**”):
- (i) Counterparty shall within two Scheduled Trading Days of the relevant Conversion Date provide written notice (an “**Unwind Conversion Notice**”) to Dealer specifying the number of Convertible Notes converted on such Conversion Date and identifying the related conversions as Early Conversions;
  - (ii) such Early Conversion shall constitute an Additional Termination Event hereunder with respect to a number of Options equal to the Applicable Percentage *times* the number of Convertible Notes surrendered for conversion in connection with such Early Conversion (the “**Affected Number of Options**”), in which case (x) the sole Affected Transaction shall consist of a transaction identical to the Transaction except that Number of Options for such Affected Transaction shall equal the Affected Number of Options and Counterparty shall be deemed the sole Affected Party and (y) the Transaction shall remain in full force and effect, except that the Number of Options subject to the Transaction immediately prior to the Conversion Date for such Early Conversion shall as of such Conversion Date be reduced by the Affected Number of Options;
  - (iii) notwithstanding anything to the contrary in the Agreement, Dealer shall designate an Early Termination Date in respect of such Affected Transaction, which shall be no earlier than one Scheduled Trading Day following the Conversion Date for the related Early Conversion; and
  - (iv) in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion had not occurred, (y) the corresponding Convertible Notes remain outstanding and (z) notwithstanding anything to the contrary in this Confirmation or the Indenture, the Conversion Rate was not adjusted pursuant to Section 13.01(e) of the Indenture.
- (o) **Disclosure.** Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax

structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

- (p) Securities Contract; Swap Agreement. Each of Dealer and Counterparty agrees and acknowledges that Dealer is a “swap participant” and “financial participant” within the meaning of Sections 101(22), 101(53C) and 101(22A) of Title 11 of the United States Code (the “**Bankruptcy Code**”). The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder is a “settlement payment,” as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder is a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Section 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code.
- (q) Governing Law. New York law.
- (r) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (s) Right to Extend. Dealer may postpone any Exercise Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the number of Net Shares to be Delivered), if Dealer determines, based upon advice of counsel, that such extension is reasonably necessary or appropriate to preserve Dealer’s hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in each case in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer.
- (t) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, the Shares (the “**Hedge Shares**”) acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering, (B) provide accountant’s “comfort” letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty customary in form for registered offerings of equity securities, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a “due diligence” investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 9(t) shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement

agreement substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days, and in the amounts, as requested by Dealer. “**VWAP Price**” means, on any Exchange Business Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page AMD <equity> VAP (or any successor thereto) in respect of the period from 9:30 a.m. to 4:00 p.m. (New York City time) on such Exchange Business Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Exchange Business Day, as determined by the Calculation Agent using a volume-weighted method).

- (u) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If in respect of the Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or (ii) pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Counterparty may request Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) (except that Counterparty shall not make such an election in the event of a Nationalization, Insolvency or Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party, other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement or an Additional Termination Event as a result of an Early Conversion, in each case that resulted from an event or events outside Counterparty’s control) and shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable.

Share Termination Alternative: Applicable and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the “**Share Termination Payment Date**”), in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:	The value to Dealer of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	One Share or, if a Merger Event has occurred and a corresponding adjustment to the Transaction has been made, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Merger Event, as determined by the Calculation Agent.
Failure to Deliver:	Applicable
Other applicable provisions:	If the Transaction is to be Share Termination Settled, the provisions of Sections 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-Settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units.” “Share Termination Settled” in relation to the Transaction means that Share Termination Settlement is applicable to the Transaction.
(v)	ISDA Master Agreement Elections. For the purpose of Section 13(c) of the Agreement, Counterparty appoints as its Process Agent: Not applicable Dealer appoints as its Process Agent: Agent
(w)	<u>Regulatory Provisions</u> . Counterparty represents and warrants that it has received and read and understands the Notice of Regulatory Treatment and the OTC Option Risk Disclosure Statement. Agent will furnish Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by Agent in connection with the Transaction evidenced hereby.



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Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it by facsimile to the address provided in the Notices section of this Confirmation.

Very truly yours,

LEHMAN BROTHERS OTC DERIVATIVES INC.

By: /s/ Anatoly Kozlov

Name: Anatoly Kozlov

Title: Authorized Signatory

Accepted and confirmed  
as of the Trade Date:

**Advanced Micro Devices, Inc.**

By: /s/ Robert J. Rivet

Authorized Signatory

Name: Robert Rivet

**REGISTRATION RIGHTS AGREEMENT**

**dated as of April 27, 2007**

**between**

**ADVANCED MICRO DEVICES, INC.**

**and**

**MORGAN STANLEY & CO. INCORPORATED,**

**as representative of the Initial Purchasers**

REGISTRATION RIGHTS AGREEMENT dated as of April 27, 2007 between Advanced Micro Devices, Inc., a Delaware corporation (the “**Company**”), and Morgan Stanley & Co. Incorporated, as representative of the several initial purchasers listed on Schedule I (the “**Initial Purchasers**”) to the Purchase Agreement dated as of April 24, 2007 (the “**Purchase Agreement**”) with the Company. In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchasers, (i) for their benefit as Initial Purchasers and (ii) for the benefit of the beneficial owners (including the Initial Purchasers) from time to time of the Securities (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the Securities (each of the foregoing a “**Holder**” and together the “**Holders**”), as follows:

**Section 1. Definitions.** Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Additional Filing Deadline**” has the meaning set forth in Section 2(f)(v) hereof.

“**Additional Interest Amount**” has the meaning set forth in Section 2(f) hereof.

“**Affiliate**” means with respect to any specified person, an “affiliate,” as defined in Rule 144, of such person.

“**Amendment Effectiveness Deadline**” has the meaning set forth in Section 2(d) hereof.

“**Automatic Shelf Registration Statement**” has the meaning ascribed to it in Rule 405.

“**Business Day**” means any day, except a Saturday, Sunday or legal holiday on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

“**Common Stock**” means the shares of common stock, par value \$.01 per share, of the Company, and any other shares of common stock as may constitute “Common Stock” for purposes of the Indenture, including the Underlying Common Stock.

“**Conversion Price**” has the meaning assigned such term in the Indenture.

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“**Deferral Notice**” has the meaning set forth in Section 3(h) hereof.

“**Deferral Period**” has the meaning set forth in Section 3(h) hereof.

“**Effectiveness Deadline**” has the meaning set forth in Section 2(a) hereof.

“**Effectiveness Period**” means the period commencing on the first date that a Shelf Registration Statement is declared effective under the Securities Act hereof and ending on the date that all Securities and the Underlying Common Stock have ceased to be Registrable Securities.

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

“**Free Writing Prospectus**” has the meaning set forth in Rule 405.

“**Filing Deadline**” has the meaning set forth in Section 2(a) hereof.

“**Holder**” has the meaning set forth in the second paragraph of this Agreement.

“**Indenture**” means the Indenture dated as of the date hereof between the Company and the Trustee, pursuant to which the Securities are being issued.

“**Initial Purchasers**” means the Initial Purchasers named in Schedule I to the Purchase Agreement.

“**Interest Payment Date**” means each May 1 and November 1 of each year.

“**Issue Date**” means the first date of original issuance of the Securities.

“**Issuer Free Writing Prospectus**” has the meaning set forth in Rule 433.

“**Material Event**” has the meaning set forth in Section 3(h) hereof.

“**Notice and Questionnaire**” means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum of the Company dated as of April 24, 2007 relating to the Securities.

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

“**Purchase Agreement**” has the meaning set forth in the preamble hereof.

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**“Prospectus”** means a prospectus relating to a Shelf Registration Statement, as amended or supplemented, and all materials incorporated by reference in such Prospectus.

**“Record Date”** means each April 15 and October 15 of each year.

**“Record Holder”** means with respect to any Interest Payment Date relating to any Securities or Underlying Common Stock as to which any Additional Interest Amount has accrued, the registered holder of such Security on the Record Date immediately preceding the Interest Payment Date.

**“Registrable Securities”** means the Securities until such Securities have been converted into or exchanged for the Underlying Common Stock and, at all times subsequent to any such conversion, the Underlying Common Stock and any securities into or for which such Underlying Common Stock has been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event until, in the case of any such security, (A) the earliest of (i) its effective registration under the Securities Act and resale in accordance with a Shelf Registration Statement, (ii) expiration of the holding period that would be applicable thereto under Rule 144(k) or (iii) its sale to the public pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the Securities Act, and (B) as a result of the event or circumstance described in any of the foregoing clauses (i) through (iii), the legend with respect to transfer restrictions required under the Indenture is removed or removable in accordance with the terms of the Indenture or such legend, as the case may be.

**“Registration Default”** has the meaning set forth in Section 2(f) hereof.

**“Registration Default Period”** has the meaning set forth in Section 2(f) hereof.

**“Rule 144”** means Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

**“Rule 144A”** means Rule 144A under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

**“Rule 405”** means Rule 405 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

**“Rule 424”** means Rule 424 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

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“**Rule 433**” means Rule 433 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

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

“**Securities**” means the 6.00% Convertible Senior Notes due 2015 of the Company to be purchased pursuant to the Purchase Agreement, including any Securities purchased by the Initial Purchasers upon exercise of their option to purchase additional Securities.

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

“**Shelf Registration Statement**” has the meaning set forth in Section 2(a) hereof, including amendments to such registration statement, all exhibits to such registration statement and all materials incorporated by reference in such registration statement.

“**Special Counsel**” means Davis Polk & Wardwell or one such other successor counsel as shall be specified by the Holders of a majority of the Registrable Securities, but which may, with the written consent of the Initial Purchasers (which shall not be unreasonably withheld), be another nationally recognized law firm experienced in securities law matters designated by the Company. For purposes of determining Holders of a majority of the Registrable Securities in this definition, Holders of Securities shall be deemed to be the Holders of the number of shares of Underlying Common Stock into which such Securities are or would be convertible as of the date the consent is requested.

“**Trustee**” means Wells Fargo Bank, National Association, the Trustee under the Indenture.

“**Underlying Common Stock**” means the Common Stock into which the Securities are convertible or issued upon any such conversion.

**Section 2. Shelf Registration.** (a) The Company shall prepare and file or cause to be prepared and filed with the SEC, as soon as practicable but in any event by the date (the “**Filing Deadline**”) 90 days after the Issue Date, a registration statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders of the Registrable Securities (a “**Shelf Registration Statement**”). The Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of the Registrable Securities for resale by the Holders in accordance with the methods of distribution elected by the Holders and set forth in the Shelf Registration Statement. Each Shelf Registration Statement that is filed on Form S-3 shall be designated by the Company as an Automatic Shelf Registration Statement if the Company is then eligible to file an Automatic Shelf

Registration Statement on Form S-3 for the purposes contemplated by this Agreement. If the Company is eligible pursuant to Rule 430B(b) to omit from the related Prospectus the identities of selling securityholders and the amounts of securities to be registered on their behalf, the Company shall prepare and file each Shelf Registration Statement in a manner as to permit such omission and to allow for the subsequent filing of such information in a Prospectus pursuant to Rule 424(b) in the manner contemplated by Rule 430B(d). The Company shall use its reasonable best efforts to cause a Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable but in any event by the date (the “**Effectiveness Deadline**”) that is 180 days after the Issue Date, and to keep a Shelf Registration Statement continuously effective under the Securities Act until the expiration of the Effectiveness Period. Each Holder that became a Notice Holder within 20 days of receiving notice from the Company pursuant to Section 3(c) below of the filing of the Shelf Registration Statement shall be named as a selling securityholder in the initial Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver the Prospectus to purchasers of Registrable Securities in accordance with applicable law. None of the Company’s security holders (other than the Holders) shall have the right to include any of the Company’s securities in a Shelf Registration Statement.

(b) If a Shelf Registration Statement covering resales of the Registrable Securities ceases to be effective for any reason at any time during the Effectiveness Period (other than because all securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), or if such Shelf Registration Statement constituted an Automatic Shelf Registration Statement at the time it was filed with the SEC and ceases to constitute an Automatic Shelf Registration Statement, the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within 30 days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement so that all Registrable Securities outstanding as of the date of such filing are covered by a Shelf Registration Statement. If a new Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the new Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep the new Shelf Registration Statement continuously effective until the end of the Effectiveness Period.

(c) The Company shall amend and supplement the Prospectus and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or file a new Shelf Registration Statement, if required by the Securities Act, or any other documents necessary to name a Notice Holder as a selling securityholder pursuant to Section 2(e) below.

(d) The Company agrees that, unless it obtains the prior consent of the Holders of a majority of the Registrable Securities that are registered under the Shelf Registration Statement at such time or the consent of the managing underwriters in connection with any underwritten offering of Registrable Securities, and each Holder agrees that, unless it obtains the prior written consent of the Company and any such underwriters, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a Free Writing Prospectus required to be filed with the SEC. The Company represents that any Issuer Free Writing Prospectus prepared by it or authorized by it in writing for use by such Holder will not include any information that conflicts with the information contained in the Shelf Registration Statement or the Prospectus and, any such Issuer Free Writing Prospectus, when taken together with the information in the Shelf Registration Statement and the Prospectus, will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(e) Each Holder may sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus only in accordance with this Section 2(e) and Section 3(h). Each Holder wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus shall deliver a Notice and Questionnaire to the Company prior to any intended distribution of Registrable Securities under the Shelf Registration Statement. From and after the date the initial Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a fully completed Notice and Questionnaire is delivered, and in any event upon the later of (x) 30 calendar days after such date or (y) five Business Days after the expiration of any Deferral Period in effect when the fully completed Notice and Questionnaire is delivered or put into effect within 30 calendar Days of such delivery date:

(i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file a new Shelf Registration Statement or any other required document so that the Holder delivering such fully completed Notice and Questionnaire is named as a selling securityholder in a Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to a Shelf Registration Statement or shall file a new Shelf Registration Statement, the Company shall use its reasonable best efforts to cause such post-effective amendment or new Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date (the “**Amendment Effectiveness Deadline**”) that is 45 days after the date such post-effective



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amendment or new Shelf Registration Statement is required by this clause to be filed;

(ii) provide such Holder copies of any documents filed pursuant to Section 2(e)(i); and

(iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any new Shelf Registration Statement or post-effective amendment filed pursuant to Section 2(e)(i);

*provided* that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(h). Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in any Shelf Registration Statement or related Prospectus, (ii) the Amendment Effectiveness Deadline shall be extended by up to ten Business Days from the expiration of a Deferral Period, and (iii) the Company shall not be under any obligation to file more than one prospectus supplement or post-effective amendment to a Shelf Registration Statement in any calendar quarter or file a new Shelf Registration Statement if the latest existing Shelf Registration Statement was filed in the same calendar quarter.

(f) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if:

(i) a Shelf Registration Statement has not been filed on or prior to the Filing Deadline;

(ii) a Shelf Registration Statement has not been declared effective under the Securities Act on or prior to the Effectiveness Deadline;

(iii) the Company has failed to perform its obligations set forth in Section 2(e)(i) within the time period required therein (taking into account the last sentence of Section 2(e));

(iv) a new Shelf Registration Statement or a post-effective amendment to a Shelf Registration Statement filed pursuant to Section 2(e)(i) has not become effective under the Securities Act on or prior to the Amendment Effectiveness Deadline (taking into account the last sentence of Section 2(e));

(v) a supplement to a Prospectus is required to be filed with the SEC pursuant to Section 2(e)(i) and fails to be filed with the SEC within

the prescribed period and in the manner set forth in Section 2(e) above (a date such filing is required to be made, an “**Additional Filing Deadline**”);

(vi) the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(h) hereof; or

(vii) the number of Deferral Periods in any period exceeds the number permitted in respect of such period pursuant to Section 3(h) hereof.

Each event described in any of the foregoing clauses (i) through (vii) is individually referred to herein as a “**Registration Default**.” For purposes of this Agreement, each Registration Default set forth above shall begin and end on the dates set forth in the table set forth below:

Type of Registration Default by Clause	Beginning Date	Ending Date
(i)	Filing Deadline	the date a Shelf Registration Statement is filed
(ii)	Effectiveness Deadline	the date a Shelf Registration Statement becomes effective under the Securities Act
(iii)	the date by which the Company is required to perform its obligations under Section 2(e)(i) (taking into account the last sentence of Section 2(e))	the date the Company performs its obligations set forth in Section 2(e)(i)
(iv)	the Amendment Effectiveness Deadline (taking into account the last sentence of Section 2(e))	the date the applicable post-effective amendment to a Shelf Registration Statement or a new Shelf Registration Statement becomes effective under the Securities Act
(v)	the Additional Filing Deadline	the date the applicable supplement to a Prospectus is filed with the SEC in the manner set forth in Section 2(e)
(vi)	the date on which the aggregate	termination of the Deferral Period

Type of Registration Default by Clause	Beginning Date	Ending Date
	duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(h)	that caused the limit on the aggregate duration of Deferral Periods to be exceeded
(vii)	the date of commencement of a Deferral Period that causes the number of Deferral Periods to exceed the number permitted by Section 3(h)	termination of the Deferral Period that caused the number of Deferral Periods to exceed the number permitted by Section 3(h)

For purposes of this Agreement, Registration Defaults shall begin on the dates set forth in the table above and shall continue until the ending dates set forth in the table above.

Commencing on (and including) any date that a Registration Default has begun and ending on (but excluding) the next date on which there are no Registration Defaults that have occurred and are continuing (a “**Registration Default Period**”), the Company shall pay to Record Holders of Registrable Securities in respect of each day in the Registration Default Period, additional interest in respect of any Security, at a rate per annum equal to 0.25% of the aggregate principal amount of such Security for the first 90 days of such Registration Default and a rate per annum equal to 0.50% of the aggregate principal amount of such Security thereafter (the “**Additional Interest Amount**”); *provided* that in the case of a Registration Default Period that is in effect solely as a result of a Registration Default of the type described in clause (iii), (iv) or (v) of the preceding paragraph, such Additional Interest Amount shall be paid only to the Holders (as set forth in the succeeding paragraph) that have delivered Notices and Questionnaires that caused the Company to incur the obligations set forth in Section 2(e) the non-performance of which is the basis of such Registration Default. Notwithstanding the foregoing, no Additional Interest Amount shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the Additional Interest Amount with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Registration Defaults.

The Additional Interest Amount shall accrue from the first day of the applicable Registration Default Period, and shall be payable on each Interest Payment Date during the Registration Default Period (and on the Interest Payment Date next succeeding the end of the Registration Default Period if the Registration Default Period does not end on a Interest Payment Date) to the Record Holders of

the Registrable Securities entitled thereto; *provided* that any Additional Interest Amount accrued with respect to any Security or portion thereof redeemed by the Company on a redemption date, purchased by the Company on a repurchase date or converted into Underlying Common Stock on a conversion date prior to the Interest Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Security or portion thereof for redemption, purchase or conversion on the applicable redemption date, repurchase date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion), unless the redemption date or the repurchase date, as the case may be, falls after the Record Date immediately preceding the Interest Payment Date and on or prior to the corresponding Interest Payment Date; and *provided further*, that, in the case of a Registration Default of the type described in clause (iii), (iv) or (v) of the first paragraph of this Section 2(f) such Additional Interest Amount shall be paid only to the Holders entitled thereto by check mailed to the address set forth in the Notice and Questionnaire delivered by such Holder. The Trustee shall be entitled, on behalf of registered holders of Securities, to seek any available remedy for the enforcement of this Agreement, including for the payment of such Additional Interest Amount. Notwithstanding the foregoing, the parties agree that the sole damages payable for a violation of the terms of this Agreement with respect to which additional interest are expressly provided shall be such Additional Interest Amount. Nothing shall preclude any Holder from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

All of the Company's obligations set forth in this Section 2(f) that are outstanding with respect to any Registrable Security at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of this Agreement pursuant to Section 8(k)).

The parties hereto agree that the additional interest provided for in this Section 2(f) constitutes a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of a Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

**Section 3. *Registration Procedures.*** In connection with the registration obligations of the Company under Section 2 hereof, the Company shall:

(a) Before filing any Shelf Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, furnish to the Initial Purchasers and the Special Counsel of such offering, if any, copies of all such documents proposed to be filed at least three Business Days prior to the filing of such Shelf Registration Statement or amendment thereto or Prospectus or supplement thereto.

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(b) Subject to Section 3(h) prepare and file with the SEC such amendments and post-effective amendments to each Shelf Registration Statement as may be necessary to keep such Shelf Registration Statement continuously effective during the Effectiveness Period; cause the related Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and use its reasonable best efforts to comply with the provisions of the Securities Act applicable to it with respect to the disposition of all securities covered by such Shelf Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Shelf Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders, the Initial Purchasers and the Special Counsel, (i) when any Prospectus, prospectus supplement, Shelf Registration Statement or post-effective amendment to a Shelf Registration Statement has been filed with the SEC and, with respect to a Shelf Registration Statement or any post-effective amendment, when the same has been declared effective, (ii) of any request, following the effectiveness of the initial Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to any Shelf Registration Statement or related Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Shelf Registration Statement or the initiation or threatening of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (v) of the occurrence of, but not the nature of or details concerning, a Material Event and (vi) of the determination by the Company that a post-effective amendment to a Shelf Registration Statement will be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(h)) state that it constitutes a Deferral Notice, in which event the provisions of Section 3(h) shall apply.

(d) Use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Shelf Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in either case at the earliest possible moment, and provide immediate notice to each Notice Holder and the Initial Purchasers of the withdrawal of any such order.

(e) As promptly as practicable furnish to each Notice Holder, the Special Counsel and the Initial Purchasers, upon request and without charge, at least one conformed copy of each Shelf Registration Statement and any

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amendment thereto, including exhibits and all documents incorporated or deemed to be incorporated therein by reference.

(f) During the Effectiveness Period, deliver to each Notice Holder, the Special Counsel, if any, and the Initial Purchasers, in connection with any sale of Registrable Securities pursuant to a Shelf Registration Statement, without charge, as many copies of the Prospectus relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request; and the Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein.

(g) Prior to any public offering of the Registrable Securities pursuant to a Shelf Registration Statement, use its reasonable best efforts to register or qualify or cooperate with the Notice Holders and the Special Counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to a Shelf Registration Statement, use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the Shelf Registration Statement and the related Prospectus; *provided* that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement or (ii) take any action that would subject it to general service of process in suits or to taxation in any such jurisdiction where it is not then so subject.

(h) Upon (A) the issuance by the SEC of a stop order suspending the effectiveness of a Shelf Registration Statement or the initiation of proceedings with respect to a Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a "**Material Event**") as a result of which a Shelf Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they

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were made, not misleading, or (C) the occurrence or existence of any pending corporate development that, in the reasonable discretion of the Company, makes it appropriate to suspend the availability of a Shelf Registration Statement and the related Prospectus:

(i) in the case of clause (B) above, as promptly as practicable prepare and file, if necessary pursuant to applicable law, a post-effective amendment to such Shelf Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Shelf Registration Statement and Prospectus so that such Shelf Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Shelf Registration Statement, use its reasonable best efforts to cause it to be declared effective as promptly as is practicable, and

(ii) give notice to the Notice Holders, and the Special Counsel, if any, that the availability of a Shelf Registration Statement is suspended (a “**Deferral Notice**”).

The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as in the reasonable discretion of the Company, such suspension is no longer appropriate. The Company shall be entitled to exercise its right under this Section 3(h) to suspend the availability of a Shelf Registration Statement or any Prospectus, without incurring or accruing any obligation to pay additional interest pursuant to Section 2(f), no more than once in any 90-day period or three times in any twelve month period, and any such period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the “**Deferral Period**”) shall, without incurring any obligation to pay additional interest pursuant to Section 2(f), not exceed 30 days; *provided* that the aggregate duration of any Deferral Periods shall not exceed 30 days in any 90-day period (or 60 days in any 90-day period in the event of a Material Event pursuant to which the Company has delivered a second notice as required below) or 90 days in any 12-month period; *provided* that in the case of a Material Event relating to an acquisition or a probable acquisition or financing,

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recapitalization, business combination or other similar transaction, the Company may, without incurring any obligation to pay additional interest pursuant to Section 2(f), deliver to Notice Holders a second notice to the effect set forth above, which shall have the effect of extending the Deferral Period by up to an additional 30 days, or such shorter period of time as is specified in such second notice.

(i) If requested in writing in connection with a disposition of Registrable Securities pursuant to a Shelf Registration Statement, make reasonably available for inspection during normal business hours by a representative for the Notice Holders of such Registrable Securities, any broker-dealers, attorneys and accountants retained by such Notice Holders, and any attorneys or other agents retained by a broker-dealer engaged by such Notice Holders, all relevant financial and other records and pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate officers, directors and employees of the Company and its subsidiaries to make reasonably available for inspection during normal business hours on reasonable notice all relevant information reasonably requested by such representative for the Notice Holders, or any such broker-dealers, attorneys or accountants in connection with such disposition, in each case as is customary for similar “due diligence” examinations; *provided* that such persons shall first agree in writing with the Company that any non-public information shall be used solely for the purposes of satisfying “due diligence” obligations under the Securities Act and exercising rights under this Agreement and shall be kept confidential by such persons, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) in the opinion of Special Counsel, disclosure of such information is required by law (including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Shelf Registration Statement or the use of any prospectus referred to in this Agreement), (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement, and *provided further* that the foregoing inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of all the Notice Holders and the other parties entitled thereto by the Special Counsel. Any person legally compelled to disclose any such confidential information made available for inspection shall as soon as practicable provide the Company with prior written notice of such requirement so that the Company may seek a protective order or other appropriate remedy and such person shall take such actions as reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such action is otherwise not inconsistent with, an impairment of or in derogation of the rights and interest of the Holder.



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(j) Comply with all applicable rules and regulations of the SEC and make generally available to its securityholders earning statements (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) for a 12-month period commencing on the first day of the first fiscal quarter of the Company commencing after the effective date of a Shelf Registration Statement, which statements shall be made available no later than 45 days after the end of the 12-month period or 90 days if the 12-month period coincides with the fiscal year of the Company.

(k) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold or to be sold pursuant to a Shelf Registration Statement, which certificates shall not bear any restrictive legends, and cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least one Business Day prior to any sale of such Registrable Securities.

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

(m) Cooperate and assist in any filings required to be made with the National Association of Securities Dealers, Inc.

**Section 4. *Holder's Obligations.*** (a) Each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to a Shelf Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to

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make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

(b) Upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to any Shelf Registration Statement until such Notice Holder's receipt of copies of the supplemented or amended Prospectus provided for in Section 3(h)(i), or until it is advised in writing by the Company that the Prospectus may be used.

**Section 5. *Registration Expenses.*** The Company shall bear all fees and expenses incurred in connection with the performance by the Company of its obligations under Sections 2 and 3 of this Agreement whether or not any Shelf Registration Statement is declared effective. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (x) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (y) of compliance with federal and state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of the Special Counsel in connection with Blue Sky qualifications of the Registrable Securities under the laws of such jurisdictions as Notice Holders of a majority of the Registrable Securities being sold pursuant to a Shelf Registration Statement may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company), (iii) duplication expenses relating to copies of any Shelf Registration Statement or Prospectus delivered to any Holders hereunder, (iv) reasonable fees and disbursements of counsel for the Company in connection with any Shelf Registration Statement, (v) reasonable fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock, (vi) Securities Act liability insurance obtained by the Company in its sole discretion and (vii) the reasonable fees and disbursements of Special Counsel. In addition, the Company shall pay the internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing by the Company of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company. Notwithstanding the provisions of this Section 5, each seller of Registrable Securities shall pay any broker's commission, agency fee or underwriter's discount or commission in connection with the sale of the Registrable Securities under a Shelf Registration Statement.

**Section 6. Indemnification and Contribution.**

(a) The Company agrees to indemnify and hold harmless each Notice Holder, each person, if any, who controls any Notice Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Notice Holder within the meaning of Rule 405 under the

Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in any Shelf Registration Statement or any amendment thereof, any preliminary prospectus or any Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any Issuer Free Writing Prospectus prepared by it or authorized by it in writing for use by such Notice Holder (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Notice Holder furnished to the Company in writing by such Notice Holder expressly for use therein; *provided* that the foregoing indemnity shall not inure to the benefit of any Notice Holder (or to the benefit of any person controlling such Notice Holder) from whom the person asserting such losses, claims or liabilities purchased the Registrable Securities, if a copy of the Prospectus or the Issuer Free Writing Prospectus (both as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Notice Holder to such person, if required by law so to have been delivered at or prior to the written confirmation of the sale of the Registrable Securities to such person, and if the Prospectus or the Issuer Free Writing Prospectus (both as so amended or supplemented) would have cured the defect giving rise to such losses, claims, damages or liabilities, unless such failure is the result of noncompliance by the Company with Section 2(b) hereof.

(b) Each Notice Holder agrees severally and not jointly to indemnify and hold harmless the Company and its directors, its officers who sign any Shelf Registration Statement and each person, if any, who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) or any other Notice Holder, to the same extent as the foregoing indemnity from the Company to such Notice Holder, but only with reference to information relating to such Notice Holder furnished to the Company in writing by such Notice Holder expressly for use in such Shelf Registration Statement, Prospectus or Issuer Free Writing Prospectus or amendment or supplement thereto. In no event shall the liability of any Notice Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Notice Holder upon the sale of the Registrable Securities pursuant to the Shelf Registration Statement giving rise to such indemnification obligation.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b) hereof, such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be

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sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by, in the case of parties indemnified pursuant to Section 6(a), the Holders of a majority (with Holders of Securities deemed to be the Holders, for purposes of determining such majority, of the number of shares of Underlying Common Stock into which such Securities are or would be convertible as of the date on which such designation is made) of the Registrable Securities covered by the Shelf Registration Statement held by Holders that are indemnified parties pursuant to Section 6(a) and, in the case of parties indemnified pursuant to Section 6(b), the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) To the extent that the indemnification provided for in Section 6(a) or 6(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand or (ii) if the allocation provided by clause (i) above is not permitted by applicable

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law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company shall be deemed to be equal to the total net proceeds from the initial placement pursuant to the Purchase Agreement (before deducting expenses) of the Registrable Securities to which such losses, claims, damages or liabilities relate. The relative benefits received by any Holder shall be deemed to be equal to the value of receiving registration rights under this Agreement for the Registrable Securities. The relative fault of the Holders on the one hand and the Company on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Holders or by the Company, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Holders' respective obligations to contribute pursuant to this Section 6(d) are several in proportion to the respective number of Registrable Securities they have sold pursuant to a Shelf Registration Statement, and not joint.

The parties hereto agree that it would not be just and equitable if 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 immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding this Section 6(d), no indemnifying party that is a selling Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by it and distributed to the public were offered to the public exceeds the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity, hereunder, under the Purchase Agreement or otherwise.

(f) The indemnity and contribution provisions contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any

termination of this Agreement, (ii) any investigation made by or on behalf of any Holder, any person controlling any Holder or any affiliate of any Holder or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) the sale of any Registrable Securities by any Holder pursuant to the Shelf Registration Statement.

**Section 7. Information Requirements.** The Company covenants that, if at any time before the end of the Effectiveness Period, the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder and take such further reasonable action as any Holder may reasonably request in writing (including, without limitation, making such reasonable representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities (other than the Common Stock) under the Exchange Act.

**Section 8. Miscellaneous.**

(a) *No Conflicting Agreements.* The Company is not, as of the date hereof, a party to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders in this Agreement. The Company represents and warrants that the rights granted to the Holders hereunder do not in any way conflict with the rights granted to the holders of the Company's securities under any other agreements.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of a majority of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of Securities deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such Securities are or would be convertible as of the date on which such consent is requested). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose securities are being sold pursuant to a Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Shelf Registration Statement; *provided that the*

provisions of this sentence may not be amended, modified or supplemented except in accordance with the provisions of the immediately preceding sentence. Notwithstanding the foregoing sentence, this Agreement may be amended by written agreement signed by the Company and the Initial Purchasers, without the consent of the Holders of Registrable Securities, to cure any ambiguity or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising under this Agreement that shall not adversely affect the interests of the Holders of Registrable Securities. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b) whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by fax, by courier or by first-class mail, return receipt requested, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopier, (iii) one Business Day after being deposited with such courier, if made by overnight courier or (iv) on the date indicated on the notice of receipt, if made by first-class mail, to the parties as follows:

(i) if to a Holder, at the most current address given by such Holder to the Company in a Notice and Questionnaire or any amendment thereto;

(ii) if to the Company, to:

Advanced Micro Devices, Inc.  
One AMD Place  
Sunnyvale, California 94088  
Attention: Faina Medzonsky, Asst. General Counsel  
Fax: (408) 774-7002

with a copy to:

Latham & Watkins LLP  
140 Scott Drive  
Menlo Park, California 94025  
Attention: Tad Freese  
Fax: (650) 463-3022

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(iii) if to the Initial Purchasers, to:

Morgan Stanley & Co. Incorporated  
1585 Broadway  
New York, New York 10036  
Attention: Convertible Debt Syndicate Desk  
Fax: (212) 761-0538

with copies to:

Morgan Stanley & Co. Incorporated  
1585 Broadway  
New York, New York 10036  
Attention: Legal Department  
Fax: (212) 761-0538

and:

Davis Polk & Wardwell  
1600 El Camino Real  
Menlo Park, California 94025  
Attention: Alan Denenberg  
Fax: (650) 752-3604

or to such other address as such person may have furnished to the other persons identified in this Section 8(c) in writing in accordance herewith.

(d) *Approval of Holders.* Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) (other than the Initial Purchasers or subsequent Holders if such subsequent Holders are deemed to be such affiliates solely by reason of their holdings of such Registrable Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(e) *Successors and Assigns.* Any person who purchases any Registrable Securities from the Initial Purchasers shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchasers. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder of any Registrable Securities, *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Indenture. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such person



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shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such person shall be entitled to receive the benefits hereof.

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

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

(h) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(i) *Severability.* If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(j) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such registration rights. No party hereto shall have any rights, duties or obligations other than those specifically set forth in this Agreement. In no event will such methods of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

(k) *Termination.* This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Effectiveness Period, except for any liabilities or obligations under Section 4, 5 or 6 hereof and the obligations to make payments of and provide for additional interest under Section 2(f) hereof to the extent such additional interest accrues prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ADVANCED MICRO DEVICES, INC.**

By: /s/ Robert J. Rivet

Name: Robert J. Rivet

Title: Executive Vice President, Chief Financial Officer

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Confirmed and accepted as of  
the date first above written, for itself  
and as representative of the several Initial Purchasers:

**MORGAN STANLEY & CO. INCORPORATED**

By: /s/ Matthew Hein  
Name: Matthew Hein  
Title: Managing Director

*News Release*

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**drew.prairie@amd.com**

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**mike.haase@amd.com**

**Irmina Blaszczyk**  
**(408) 749-3398**  
**irmina.blaszczyk@amd.com**

**Advanced Micro Devices, Inc. Closes \$2.2 Billion  
Offering of Convertible Senior Notes**

**SUNNYVALE, Calif, April 27, 2007** — Advanced Micro Devices, Inc. (NYSE:AMD) today announced the closing of its offering of \$2.2 billion aggregate principal amount of 6.00% Convertible Senior Notes due 2015, including \$200 million of notes that were issued in connection with the exercise in full of the initial purchasers' over-allotment option. The notes were privately offered to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act").

In connection with the offering, AMD entered into capped call transactions with an affiliate of one of the initial purchasers. The capped call transactions are intended to reduce the potential dilution to AMD's stockholders upon any future conversion of the notes. The capped call transaction effectively will increase the conversion price of the convertible notes to \$42.12 per share of AMD's common stock, representing a 300% premium relative to the last reported sale price of \$14.04 per share of the common stock on April 23, 2007.

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AMD estimates that the net proceeds from the offering, will be approximately \$2,169 million, after deducting discounts, commissions and estimated offering expenses. AMD used approximately \$182 million of the net proceeds of the offering to fund the cost of the capped call transactions. AMD used \$500 million of the remaining net proceeds to repay a portion of the term loan AMD entered into with Morgan Stanley Senior Funding, Inc. to finance a portion of the purchase price of, and expenses related to, the acquisition of ATI Technologies Inc. AMD will use the remaining amount for general corporate purposes, including working capital and capital expenditures.

This press release is neither an offer to sell or a solicitation of an offer to buy the notes nor shall there be any sale of the notes in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to the registration or qualification thereof under the securities laws of any such state or jurisdiction. Any offers of the notes will be made only by means of a private offering memorandum. The notes and AMD's common stock issuable upon the conversion of the notes have not been registered under the Securities Act or the securities laws of any other jurisdiction and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

This press release contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Forward-looking statements are based on management's current preliminary expectations and are subject to risks, uncertainties and assumptions. Information on potential risk factors that could affect AMD, its business and its financial results are detailed in the company's periodic filings with the Securities and Exchange Commission (SEC), including, but not limited to, those risks and uncertainties listed in the section entitled "Risk Factors," which can be found in AMD's annual report on Form 10-K for the year ended December 31, 2006 filed with the SEC on March 1, 2007.

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*About AMD*

Advanced Micro Devices (NYSE: AMD) is a leading global provider of innovative processing solutions in the computing, graphics and consumer electronics markets. AMD is dedicated to driving open innovation, choice and industry growth by delivering superior customer-centric solutions that empower consumers and businesses worldwide. For more information, visit [www.amd.com](http://www.amd.com).

**AMD and the AMD Arrow logo are trademarks of Advanced Micro Devices, Inc. Other names used are for identification purposes only and may be trademarks of their respective owners.**