
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2003

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission file number: 0-28104

JAKKS Pacific, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

95-4527222
(I.R.S. Employer
Identification No.)

22619 Pacific Coast Highway
Malibu, California
(Address of principal executive offices)

90265
(Zip Code)

Registrant's telephone number, including area code: (310) 456-7799

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

The number of shares outstanding of the issuer's common stock is 24,588,747 (as of August 13, 2003).

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DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This report includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. For example, statements included in this report regarding our financial position, business strategy and other plans and objectives for future operations, and assumptions and predictions about future product demand, supply, manufacturing, costs, marketing and pricing factors are all forward-looking statements. When we use words like "intend," "anticipate," "believe," "estimate," "plan" or "expect," we are making forward-looking statements. We believe that the assumptions and expectations reflected in such forward-looking statements are reasonable, based on information available to us on the date hereof, but we cannot assure you that these assumptions and expectations will prove to have been correct or that we will take any action that we may presently be planning. We are not undertaking to publicly update or revise any forward-looking statement if we obtain new information or upon the occurrence of future events or otherwise.

JAKKS PACIFIC, INC. AND SUBSIDIARIES

Condensed Consolidated Balance Sheets

ASSETS

	December 31, 2002	June 30, 2003
	(*)	(unaudited)
Current assets		
Cash and cash equivalents	\$ 68,412,826	\$144,414,492
Marketable Securities	—	219,733
Accounts receivable, net of allowances for uncollectible accounts of \$6,781,324 and \$6,669,503, respectively	56,195,578	72,814,416
Inventory, net of reserves for potential product obsolescence of \$4,782,021 and \$5,166,497, respectively	38,009,747	37,986,869
Prepaid expenses and other current assets	6,410,278	10,575,298
Notes Receivable—Officers	1,113,000	—
Income taxes receivable	2,205,882	—
Deferred income taxes	4,445,658	4,445,658
Total current assets	176,792,969	270,456,466
Office furniture and equipment	5,932,385	6,383,228
Molds and tooling	31,068,888	32,835,325
Leasehold improvements	2,463,875	2,655,470
Total	39,465,148	41,874,023
Less accumulated depreciation and amortization	24,639,593	28,897,810
Property and equipment, net	14,825,555	12,976,213
Investment in joint venture	8,118,645	2,738,281
Goodwill, net	189,335,933	205,046,519
Trademarks, net	11,567,679	11,567,679
Intangibles and other, net	8,169,168	11,664,306
Total assets	\$408,809,949	\$514,449,464
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable and accrued expenses	\$ 41,967,851	\$ 43,378,532
Income taxes payable	5,624,532	6,138,185
Current portion of long term debt	17,805	18,410
Total current liabilities	47,610,188	49,535,127
Long term debt, net of current portion	59,683	98,050,324
Deferred income taxes	562,948	562,948
Total liabilities	48,232,819	148,148,399
Stockholders' equity		
Preferred shares, \$.001 par value; 5,000,000 shares authorized; nil outstanding	—	—
Common stock, \$.001 par value; 100,000,000 shares authorized; 24,472,884 and 24,587,327 shares issued, respectively	24,473	24,587
Additional paid-in capital	240,101,458	240,878,034
Treasury stock, at cost; nil and 412,000 shares, respectively	—	(4,220,773)
Retained earnings	120,451,199	129,619,217
Total stockholders' equity	360,577,130	366,301,065
Total liabilities and stockholders' equity	\$408,809,949	\$514,449,464

See accompanying notes to condensed consolidated financial statements.

(*) Derived from audited financial statements

JAKKS PACIFIC, INC. AND SUBSIDIARIES

Condensed Consolidated Statements of Operations

For the Three and Six Months Ended June 30, 2002 and 2003 (Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2003	2002	2003
Net sales	\$78,991,479	\$73,290,206	\$138,886,969	\$141,049,651
Cost of sales	43,799,876	45,384,347	77,225,515	85,701,328
Gross profit	35,191,603	27,905,859	61,661,454	55,348,323
Selling, general and administrative expenses	23,779,195	21,141,070	42,208,116	41,079,961
Acquisition shut-down and recall costs	1,500,000	2,700,000	8,121,497	2,700,000
Income from operations	9,912,408	4,064,789	11,331,841	11,568,362
Profit from joint venture	(672,170)	(190,825)	(1,968,865)	(366,481)
Interest, net	(264,346)	34,023	(532,941)	(128,340)
Income before provision for income taxes and minority interest	10,848,924	4,221,591	13,833,647	12,063,183
Provision for income taxes	2,929,210	1,013,183	3,735,085	2,895,165
Income before minority interest	7,919,714	3,208,408	10,098,562	9,168,018
Minority interest	87,915	—	110,662	—
Net income	\$ 7,831,799	\$ 3,208,408	\$ 9,987,900	\$ 9,168,018
Earnings per share — basic	\$ 0.37	\$ 0.13	\$ 0.50	\$ 0.38
Earnings per share — diluted	\$ 0.36	\$ 0.13	\$ 0.47	\$ 0.37

See accompanying notes to condensed consolidated financial statements.

JAKKS PACIFIC, INC. AND SUBSIDIARIES

Condensed Consolidated Statements of Cash Flows
For the Six Months Ended June 30, 2002 and 2003 (Unaudited)

	Six Months Ended June 30,	
	2002	2003
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 9,987,900	\$ 9,168,018
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	4,892,679	4,668,207
Earned Compensation from stock option grants	(174,787)	59,172
Investment in joint venture	4,061,995	5,380,364
Forgiveness of officer note receivable	285,000	—
Minority interest	110,662	—
Change in operating assets and liabilities		
Sale of marketable securities	37,119,071	—
Accounts receivable	(17,623,320)	(14,918,838)
Inventory	(12,513,181)	3,759,194
Prepaid expenses and other current assets	1,264,439	(3,978,155)
Accounts payable and accrued expenses	6,758,756	962,317
Income taxes payable	4,022,855	2,719,535
Deferred income taxes	(463,304)	—
Total adjustments	27,740,865	(1,348,204)
Net cash provided by operating activities	37,728,765	7,819,814
CASH FLOWS FROM INVESTING ACTIVITIES		
Cash paid for net assets acquired	(37,262,017)	(21,037,358)
Purchase of property and equipment	(1,582,148)	(2,450,245)
Other assets	1,237,679	(77,461)
Purchase of marketable securities	(5,813,342)	(219,733)
Repayment of Notes receivable from officers	—	1,113,000
Net cash used by investing activities	(43,419,828)	(22,671,797)
CASH FLOWS FROM FINANCING ACTIVITIES		
Net proceeds from sale of common stock	59,307,347	—
Proceeds from stock options and warrants exercised	2,631,975	717,519
Repurchase of common shares	—	(4,220,773)
Repayment of long term debt	(7,685)	(8,754)
Net proceeds from issuance of convertible notes payable	—	94,365,657
Net cash provided by financing activities	61,931,637	90,853,649
Net increase in cash and cash equivalents	56,240,574	76,001,666
Cash and cash equivalents, beginning of period	25,036,203	68,412,826
Cash and cash equivalents, end of period	\$ 81,276,777	\$ 144,414,492
Supplemental disclosure of cash flow information:		
Cash paid during the period for:		
Income taxes	\$ 181,450	\$ 2,811,689
Interest	\$ 81,743	\$ 17,439

Non cash investing and financing activity:

In March 2002, the Company issued 646,384 shares of its common stock valued at approximately \$12.1 million in connection with the acquisition of Toymax.

See accompanying notes to condensed consolidated financial statements.

JAKKS PACIFIC, INC. AND SUBSIDIARIES

Notes to Condensed Consolidated Financial Statements (Unaudited)

June 30, 2003

Note 1 — Basis of presentation

The accompanying 2002 and 2003 unaudited interim condensed consolidated financial statements included herein have been prepared by us, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles in the United States of America have been condensed or omitted pursuant to such rules and regulations. However, we believe that the disclosures are adequate to prevent the information presented from being misleading. These financial statements should be read in conjunction with the financial statements and the notes thereto included in our Form 10-K, which contains financial information for the three years in the period ended December 31, 2002.

The information provided in this report reflects all adjustments (consisting solely of normal recurring accruals) that are, in the opinion of management, necessary to present fairly the results of operations for this period. The results for this period are not necessarily indicative of the results to be expected for the full year.

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries.

Basic earnings per share has been computed using the weighted average number of common shares. Diluted earnings per share has been computed using the weighted average number of common shares and common share equivalents (which consist of warrants, options, and convertible debt to the extent they are dilutive).

Note 2 — Business Segments and Geographic Data

JAKKS Pacific is a worldwide producer and marketer of children's toys and related products, principally engaged in the design, development, production and marketing of traditional toys, including boys action figures, vehicles and playsets, craft and activity products, writing instruments, compounds, girls toys, and infant and preschool toys. Our reportable segments are North America Toys, International and Other.

The North America Toys segment, which includes the United States and Canada, and the International toy segment, which includes sales to non-North American markets, include the design, development, production and marketing of children's toys and related products. We also have an additional segment classified as Other, which sells various products to the specialty markets in the United States.

Segment performance is measured at the operating income level. All sales are made to external customers, and general corporate expenses have been attributed to the North America Toy segment, which is a dominant segment. Segment assets are comprised of all assets, net of applicable reserves and allowances.

Results are not necessarily those that would be achieved were each segment an unaffiliated business enterprise. Information by segment and a reconciliation to reported amounts for the three and six months ended June 30, 2002 and 2003 are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2003	2002	2003
Net Sales				
North America Toys	\$70,182,964	\$63,983,884	\$121,903,112	\$124,778,954
International	8,630,149	9,273,332	16,665,788	16,211,840
Other	178,366	32,990	318,069	58,857
	<u>\$78,991,479</u>	<u>\$73,290,206</u>	<u>\$138,886,969</u>	<u>\$141,049,651</u>

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2003	2002	2003
Operating Income				
North America Toys	\$8,807,053	\$3,548,646	\$10,032,743	\$10,136,914
International	1,082,972	514,313	1,273,405	1,426,754
Other	22,383	1,830	25,693	4,694
	<u>\$9,912,408</u>	<u>\$4,064,789</u>	<u>\$11,331,841</u>	<u>\$11,568,362</u>

	June 30,	
	2002	2003
Assets		
North America Toys	\$360,978,990	\$449,125,154
International	44,388,300	65,092,744
Other	917,406	231,566
	<u>\$406,284,696</u>	<u>\$514,449,464</u>

The following tables present information about the Company by geographic area as of and for the three and six months ended June 30, 2002 and 2003:

	June 30,	
	2002	2003
Long-lived Assets		
United States	\$139,855,550	\$177,601,157
Hong Kong	23,321,690	58,318,842
Europe	581,077	3,305,833
	<u>\$163,758,317</u>	<u>\$239,225,832</u>

	Three Months ended June 30,		Six Months Ended June 30,	
	2002	2003	2002	2003
Net Sales by Geographic Area				
United States	\$69,243,868	\$64,016,874	\$119,844,766	\$123,536,714
Europe	7,147,105	7,144,965	14,861,922	13,489,363
Canada	1,117,462	1,099,013	2,376,416	2,400,110
Hong Kong	71,057	58,916	71,057	181,818
Other	1,411,987	970,438	1,732,808	1,441,646
	<u>\$78,991,479</u>	<u>\$73,290,206</u>	<u>\$138,886,969</u>	<u>\$141,049,651</u>

Note 3 — Inventories

Net inventories include the ex-factory cost of goods and in-bound freight and duty and are stated at the lower of cost (first-in, first-out) or market and consist of the following:

	December 31, 2002	June 30, 2003
Deposits and raw materials	\$ 606,429	\$ 1,176,238
Finished goods	37,403,318	36,810,631
	<u>\$38,009,747</u>	<u>\$37,986,869</u>

Note 4 — Convertible Senior Notes

Pursuant to the terms of a Purchase Agreement, dated June 9, 2003, we sold an aggregate of \$98 million of 4.625% Convertible Senior Notes due June 15, 2023. The holders of the notes may convert the notes into shares of our common stock at any time at an initial conversion price of \$20.00 per share, subject to certain circumstances described in the notes. This is equivalent to a conversion rate of 50.0 shares per \$1,000 principal amount of notes. We will pay cash interest on the notes at an annual rate of 4.625% of the principal amount at issuance, from the issue date to June 15, 2010, payable on June 15 and December 15 of each year, commencing on December 15, 2003. After June 15, 2010, we will not pay cash interest on the notes. At maturity, on June 15, 2023, we will redeem the notes at their accreted principal amount, which will be equal to \$1,811.95 (181.195%) per \$1,000 principal amount at issuance. The “accreted principal amount” of a note will be equal to the principal amount of the note at issuance plus accretion, beginning June 15, 2010, on the principal amount at issuance so that the yield to maturity of the note will remain at 4.625% per year (equal to the cash interest prior to June 15, 2010), calculated on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30-day months. The notes will mature on June 15, 2023.

We may redeem the notes at our option in whole or in part beginning on June 15, 2010, at 100% of their accreted principal amount plus accrued and unpaid interest (including contingent interest and additional amounts), if any, payable in cash. Holders of the notes may also require us to repurchase all or part of their notes on June 15, 2010, for cash, at a repurchase price of 100% of the principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any. Holders of the notes may also require us to repurchase all or part of their notes on June 15, 2013 and June 15, 2018 at a repurchase price of 100% of the accreted principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any. Any repurchases at June 15, 2013 and June 15, 2018 may be paid in cash, in shares of common stock or a combination of cash and shares of common stock. If a fundamental change of the Company occurs (as defined in the notes), holders of the notes may require us to purchase all or part of their notes, for cash, at a repurchase price of 100% of the accreted principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any.

Net proceeds received from the issuance of these convertible notes payable were approximately \$94.4 million.

Note 5 — Credit Facility

In October 2001, we and all of our subsidiaries jointly and severally secured a syndicated line of credit totaling \$50.0 million with a consortium of banks led by Bank of America, N.A. (“Line of Credit”). On June 3, 2003, we and the banks amended the loan agreements governing the Line of Credit (the “Loan Agreements”), pursuant to which amendment (i) the banks suspended certain of our covenants under the Loan Agreements, including those that prohibited us from consummating the Convertible Senior Notes offering (See Note 4) without the banks’ consent, and (ii) the banks’ obligations to extend credit under the Line of Credit were simultaneously suspended. The amendment contemplates that we and the banks will attempt to negotiate revised terms for the Line of Credit, to be reflected in a further amendment to the Loan Agreements, while waiving the requirement for obtaining consent for this offering. Neither we nor the banks, however, have any obligation to enter into such further amendment to the Loan Agreements. The amendment did not otherwise effect our right under the Loan Agreements to voluntarily reduce or terminate the Line of Credit. There have never been any outstanding borrowings under the Line of Credit since its inception.

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Note 6 — Earnings per share

The following table is a reconciliation of the weighted average shares used in the computation of basic and diluted earnings per share for the periods presented:

	THREE MONTHS ENDED JUNE 30,					
	2002			2003		
	INCOME	WEIGHTED AVERAGE SHARES	PER-SHARE	INCOME	WEIGHTED AVERAGE SHARES	PER-SHARE
Earnings per share — basic						
Income available to common stockholders	\$7,831,799	20,984,929	\$0.37	\$3,208,408	24,174,875	\$0.13
Effect of dilutive securities						
Options, warrants and convertible debt	—	968,239	—	—	508,537	—
Earnings per share — diluted						
Income available to common stockholders plus assumed exercises	\$7,831,799	21,953,168	\$0.36	\$3,208,408	24,683,412	\$0.13
	SIX MONTHS ENDED JUNE 30,					
	2002			2003		
	INCOME	WEIGHTED AVERAGE SHARES	PER-SHARE	INCOME	WEIGHTED AVERAGE SHARES	PER-SHARE
Earnings per share — basic						
Income available to common stockholders	\$9,987,900	20,004,500	\$ 0.50	\$ 9,168,018	24,285,649	\$ 0.38
Effect of dilutive securities						
Options, warrants and convertible debt	—	1,076,370	—	—	502,865	—
Earnings per share — diluted						
Income available to common stockholders plus assumed exercises	\$9,987,900	21,080,870	\$ 0.47	\$ 9,168,018	24,788,514	\$ 0.37

JAKKS PACIFIC, INC. AND SUBSIDIARIES

Notes to Condensed Consolidated Financial Statements (Unaudited) (Continued)

June 30, 2003

Note 7 — Common stock and preferred stock

We have 105,000,000 authorized shares of stock consisting of 100,000,000 shares of \$.001 par value common stock and 5,000,000 shares of \$.001 par value preferred stock. In September 2002, our stockholders approved increases in our authorized shares from 25,000,000 of common stock and 1,000,000 of preferred stock.

Pursuant to an underwritten public offering, we sold 3,000,000 shares of our common stock in May 2002 and 525,000 shares of our common stock in June 2002 (to cover over-allotments by the underwriters), for total net proceeds of \$59.3 million. We retired 1,493,600 shares of treasury stock for reissuance pursuant to this public offering.

In March 2002, we issued 646,384 shares of our common stock in connection with our acquisition of a controlling interest in Toymax International, Inc. ("Toymax"). In October 2002, the merger was completed and an additional 520,000 shares of common stock were issued.

In February 2003, our Board of Directors approved a buyback of up to \$20 million of our Common Stock. As of June 30, 2003, we repurchased 412,000 shares of our Common Stock for a total of approximately \$4.2 million.

Note 8 — Acquisitions

We acquired the following entities to further enhance our existing product lines and to continue diversification into other seasonal business.

In March 2002, we purchased a controlling interest in Toymax International, Inc. In October 2002, we completed that acquisition by acquiring the remaining outstanding common shares in a merger transaction. The total purchase price of approximately \$62.2 million consisted of 1,166,360 shares of the Company's common stock, 598,697 options and approximately \$41.0 million in cash.

In November 2002, we purchased certain product lines, assets and assumed certain specific liabilities from Trendmasters, Inc. ("Trendmasters"). The total purchase price of approximately \$27.7 million consisted of cash paid in the amount of \$19.0 million and assumed liabilities of \$8.7 million. Our results of operations have included Trendmasters from the date of acquisition.

On May 31, 2003, we purchased the product lines, related assets and assumed certain liabilities from P&M Products Inc. ("P&M"). The total purchase price of approximately \$20.9 million consisted of cash paid in the amount of \$20.3 million and liabilities of \$0.6 million and resulted in goodwill of \$14.5 million. Our results of operations have included P&M from the date of acquisition.

The following unaudited pro forma information represents our consolidated results of operations as if the acquisitions of Toymax, Trendmasters and P&M had occurred on January 1, 2002 and after giving effect to certain adjustments including the elimination of certain general and administrative expenses and other income and expense items not attributable to on-going operations, interest expense, and related tax effects. Such pro forma information does not purport to be indicative of operating results that would have been reported had the acquisitions of Toymax, Trendmasters and P&M occurred on January 1, 2002 or future operating results.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2003	2002	2003
Net Sales	\$97,549,095	\$77,295,206	\$187,955,535	\$151,378,651
Net income (loss)	\$ 6,141,556	\$ 2,170,375	\$ 5,718,561	\$ 7,342,469
Earnings (loss) per share — basic	\$ 0.29	\$ 0.09	\$ 0.27	\$ 0.30
Weighted average shares outstanding — basic	21,504,929	24,174,875	21,094,634	24,285,649
Earnings (loss) per share — diluted	0.27	0.09	0.25	0.30
Weighted average shares and equivalents outstanding — diluted	23,071,865	24,683,412	22,787,170	24,788,514

Note 9 — Notes Receivable From Officers

On March 27, 2003, the balance of the notes receivable from two of our officers totaling \$1,113,000 plus accrued interest at interest rates of 6.5% per annum each, were paid in full.

Note 10 — Stock Option Plans

In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148 "Accounting for Stock-Based Compensation — Transition and Disclosure an Amendment of FASB Statement No. 123" (SFAS 148). SFAS 148 Statement amends Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation (SFAS 123), to provide alternative methods of transition for an entity that voluntarily changes to the fair value based method of accounting for stock-based employee compensation. It also amends the disclosure provisions of that Statement to require prominent disclosure about the effects on reported net income of an entity's accounting policy decisions with respect to stock-based employee compensation. Finally, SFAS 148 amends APB Opinion No. 28, Interim Financial Reporting, to require disclosure about those effects in interim financial information.

At June 30, 2003 we have stock-based employee compensation plans and account for those plans under the recognition and measurement principles of APB Opinion No. 25, Accounting for Stock Issued to Employees, and related Interpretations. No stock-based employee compensation cost is reflected in net income, as all options granted under those plans had an exercise price equal to the market value of the underlying common stock on the date of grant. However, certain options had been repriced resulting in compensation adjustments, which have been reflected in net income. The following table illustrates the effect on net income and earnings per share if we had applied the fair value recognition provisions of SFAS 123, to stock-based employee compensation.

In 2002 and 2003, the fair value of each employee option grant was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions used: risk-free rate of interest of 4%; dividend yield of 0%, with volatility of 87%; and expected lives of five years.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2003	2002	2003
Net income, as reported	\$7,831,799	\$3,208,408	\$9,987,900	\$9,168,018
Add (Deduct): Stock-based employee compensation expense (income) included in reported net income	(983,951)	1,093,228	(174,787)	59,172
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards net of related tax effects	—	—	(45,831)	—
Pro forma net income	\$6,847,848	\$4,301,636	\$9,767,282	\$9,227,190
Earnings per share:				
Basic — as reported	\$ 0.37	\$ 0.13	\$ 0.50	\$ 0.38
Basic — pro forma	\$ 0.33	\$ 0.18	\$ 0.49	\$ 0.38
Diluted — as reported	\$ 0.36	\$ 0.13	\$ 0.47	\$ 0.37
Diluted — pro forma	\$ 0.31	\$ 0.17	\$ 0.46	\$ 0.37

Note 11 — Recent Accounting Pronouncements

In June 2001, the FASB issued Statement No. 143, “Accounting for Asset Retirement Obligations” (SFAS No. 143). The objective of SFAS No. 143 is to establish an accounting standard for the recognition and measurement of an asset retirement obligation on certain long-lived assets. The retirement obligation must be one that results from the acquisition, construction or normal operation of a long-lived asset. SFAS 143 was adopted effective January 1, 2003. The adoption of this statement did not have a material effect on the consolidated financial statements.

In April 2002, the FASB issued Statement No. 145, “Rescission of Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Correction” (SFAS 145). SFAS 145 eliminates extraordinary accounting treatment for reporting gains or losses on debt extinguishments, and amends other existing authoritative pronouncements to make various technical corrections, clarify meanings, or describe their applicability under changed conditions. The provisions of this SFAS was adopted effective January 1, 2003. The adoption of SFAS 145 did not have a material effect on its consolidated results of operations in accordance with APB 30, “Reporting the Results of Operations – Reporting the Effects of Disposal of a Segment of a Business and Extraordinary, Unusual and Infrequently Occurring Events and Transactions”.

In June 2002, the FASB issued Statement No. 146, “Accounting for Costs Associated with Exit or Disposal Activities” (SFAS No. 146), which changes the accounting for costs such as lease termination costs and certain employee severance costs that are associated with a restructuring, discontinued operation, plant closing, or other exit or disposal activity initiated after December 31, 2002. The standard requires companies to recognize the fair value of costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS 146 was adopted effective January 1, 2003 and did not have a material effect on the Company’s financial position or results of operations.

In May 2003, the FASB issued Statement No. 150, “Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity” (SFAS No. 150), which establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. The provisions of this SFAS were adopted effective June 9, 2003. The adoption of SFAS 150 did not have a material effect on the Company’s financial position or results of operations.

JAKKS PACIFIC, INC. AND SUBSIDIARIES

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of financial condition and results of operations should be read together with our Condensed Consolidated Financial Statements and Notes thereto which appear elsewhere herein.

RECENT DEVELOPMENTS

On March 11, 2002, we purchased a controlling interest in Toymax. On October 25, 2002, we completed that acquisition by acquiring the remaining outstanding common shares. The total purchase price of approximately \$62.2 million consisted of 1,166,360 shares of our common stock, 598,697 stock options and approximately \$41.0 million in cash and resulted in additional goodwill of \$64.9 million. Our results of operations have included Toymax from March 12, 2002, however for the period March 12, 2002 through October 25, 2002 the minority interest's share of Toymax's earnings were excluded.

On November 27, 2002, we purchased certain product lines, assets and assumed certain liabilities from Trendmasters. The total purchase price of approximately \$27.7 million consisted of cash paid in the amount of \$19.0 million and assumed liabilities of \$8.7 million and resulted in goodwill of \$26.2 million. Our results of operations have included Trendmasters from the date of acquisition.

On May 31, 2003, we purchased the product lines, related assets and assumed certain liabilities from P&M Products Inc. ("P&M"). The total purchase price of approximately \$20.9 million consisted of cash paid in the amount of \$20.3 million and liabilities of \$0.6 million and resulted in goodwill of \$14.5 million. Our results of operations have included P&M from the date of acquisition.

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RESULTS OF OPERATIONS

The following unaudited table sets forth, for the periods indicated, certain statement of operations data as a percentage of net sales.

	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	2002	2003	2002	2003
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	55.5%	61.9	55.6	60.8
Gross profit	44.5	38.1	44.4	39.2
Selling, general and administrative expenses	30.1	28.9	30.4	29.1
Acquisition shut-down and recall costs	1.9	3.7	5.8	1.9
Income from operations	12.5	5.5	8.2	8.2
Profit from joint venture	(0.9)	(.3)	(1.4)	(0.3)
Interest, net	(0.3)	—	(0.4)	(0.1)
Income before income taxes and minority interest	13.7	5.8	10.0	8.6
Provision for income taxes	3.7	1.4	2.7	2.1
Income before minority interest	10.0	4.4	7.3	6.5
Minority interest	0.1	—	0.1	—
Net income	9.9%	4.4%	7.2%	6.5%

THREE MONTHS ENDED JUNE 30, 2003 AND 2002

Net Sales. Net sales were \$73.3 million in 2003 compared to \$79.0 million in 2002, representing a decrease of 7.2%. The contribution to net sales by our traditional products, including action figures, dolls and vehicles, and writing instruments, was offset by a decrease in sales of our crafts and activities and our seasonal products, including Go Fly a Kite, Funnoodle and sports toys.

Gross Profit. Gross profit decreased \$7.3 million, or 20.7%, to \$27.9 million, or 38.1% of net sales, in 2003 from \$35.2 million, or 44.5% of net sales, in 2002. The overall decrease in gross profit was attributable to the decrease in net sales and a decrease in gross profit margin. The decrease in gross profit margin of 6.5% of net sales was due to an increase in net sales of lower margin traditional products and a decrease in net sales of higher margin crafts and activities products, which was partially offset by a decrease in amortization expense of molds and tools used in the manufacture of our products and a decrease in royalty expense as a percentage of net sales due to changes in the product mix resulting from the sale of more products with lower royalty rates or proprietary products with no royalties.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$21.1 million in 2003 and \$23.8 million in 2002, constituting 28.9% and 30.1% of net sales, respectively. The overall decrease of \$2.6 million in such costs was primarily due to the decrease in overhead costs resulting from efficiencies with the integration of our Toymax acquisition and a decrease in direct selling expenses, partially offset by an increase in product development costs. The decrease as a percentage of net sales is primarily attributable to gained cost efficiencies. We produced and aired television commercials in support of several of our products, including World Wrestling Entertainment action figures and Flying Colors products, in 2002 and 2003. From time to time, we may increase our advertising efforts, if we deem it appropriate for particular products.

Acquisition Shut-down and Recall Costs. Acquisition shut-down costs in 2002 relate to shut-down costs, including lease termination, fixed asset abandonment and other costs, of certain operations of Toymax and Kidz Biz. There were no such costs in 2003. Operations impacted by these shut-downs were sales, design, distribution and administration. The integrations of Toymax and Kidz Biz were completed in 2002. In June 2003, we accrued \$2.7 million for the recall of one of our products, compared to having accrued \$1.5 million in June 2002 for the recall of the same product.

The remaining component of the acquisition shut-down and recall costs is as follows:

	Accrued Balance March 31, 2003	Accrual	Actual	Accrued Balance June 30, 2003
Lease abandonment costs	\$ 1,410,780	\$ —	\$ 620,825	\$ 789,955
Recall costs	—	2,700,000	350,376	2,349,624
Total	\$ 1,410,780	\$ 2,700,000	\$ 971,201	\$ 3,139,579

Profit from Joint Venture. Profit from joint venture decreased by \$0.5 million in 2003 due to lower unit sales of both new titles at lower price points and existing titles, whereas in 2002 the joint venture released a new Xbox titled "RAW" and a new GameCube titled "Wrestlemania X8" with higher unit sales at a higher price point.

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Interest, Net. Interest income resulting from higher average cash balances during 2003 than in 2002 was offset by lower interest rates and accrued interest of \$0.3 million for the convertible notes sold in June 2003.

Provision for Income Taxes. Provision for income taxes included Federal, state and foreign income taxes in 2002 and 2003, at effective tax rates of 27.0% in 2002 and 24.0% in 2003, benefiting from a flat 16.5% and 17.0% Hong Kong Corporation Tax on our income arising in, or derived from, Hong Kong for 2002 and 2003, respectively. As of June 30, 2003, we had deferred tax assets of approximately \$4.4 million for which no allowance has been provided since, in the opinion of management, realization of the future benefit is probable. In making this determination, management considered all available evidence, both positive and negative, as well as the weight and importance given to such evidence.

SIX MONTHS ENDED JUNE 30, 2003 AND 2002

Net Sales. Net sales were \$141.0 million in 2003 compared to \$138.9 million in 2002, representing an increase of 1.6%. The contribution to net sales by our seasonal products, including Go Fly a Kite, Funnoodle and sports toys, were offset in part by a decrease in sales in our traditional products, including action figures, dolls and vehicles, our crafts and activities, our writing instruments and international sales.

Gross Profit. Gross profit decreased \$6.3 million, or 10.2%, to \$55.3 million, or 39.2% of net sales, in 2003 from \$61.7 million, or 44.4% of net sales, in 2002. The overall decrease in gross profit was attributable to the increase in net sales of lower margin seasonal products and a decrease in gross profit margin. The decrease in gross profit margin of 5.2% of net sales was due to lower margins for seasonal products, which was partially offset by a decrease in amortization expense of molds and tools used in the manufacture of our products and a decrease in royalty expense as a percentage of net sales due to changes in the product mix resulting from the sale of more products with lower royalty rates or proprietary products with no royalties.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$41.1 million in 2003 and \$42.2 million in 2002, constituting 29.1% and 30.4% of net sales, respectively. The overall decrease of \$1.1 million in such costs was primarily due to the decrease in direct selling expenses, partially offset by an increase in product development costs. The decrease as a percentage of net sales is primarily attributable to the fixed nature of certain expenses with a concurrent increase in net sales. We produced and aired television commercials in support of several of our products, including World Wrestling Entertainment action figures and Flying Colors products in 2002 and 2003. From time to time, we may increase our advertising efforts, if we deem it appropriate for particular products.

Acquisition Shut-down and Recall Costs. Acquisition shut-down costs in 2002 relate to shut-down costs, including lease termination, fixed asset abandonment and other costs, of certain operations of Toymax and Kidz Biz. There were no such costs in 2003. Operations impacted by these shut-downs were sales, design, distribution, and administration. The integrations of Toymax and Kidz Biz were completed in 2002. In June 2003, we accrued \$2.7 million for the recall of one of our products, compared to having accrued \$1.5 million in June 2002 for the recall of the same product.

The remaining component of the acquisition shut-down and recall costs is as follows:

	Accrued Balance December 31, 2002	Accrual	Actual	Accrued Balance June 30, 2003
Lease abandonment costs	\$ 2,309,800	\$ —	\$ 1,519,845	\$ 789,955
Recall costs	—	2,700,000	350,376	2,349,624
Total	\$ 2,309,800	\$ 2,700,000	\$ 1,870,221	\$ 3,139,579

Profit from Joint Venture. Profit from joint venture decreased by \$1.6 million in 2003 due to lower unit sales of both new titles at lower price points and existing titles, whereas in 2002 the joint venture released a new Xbox titled "RAW" and a new GameCube titled "Wrestlemania X8" with higher unit sales at a higher price point.

Interest, Net. Interest income resulting from higher average cash balances during 2003 than in 2002 was offset by lower interest rates and accrued interest of \$0.3 million for the convertible notes sold in June 2003.

Provision for Income Taxes. Provision for income taxes included Federal, state and foreign income taxes in 2002 and 2003, at effective tax rates of 27.0% in 2002 and 24.0% in 2003, benefiting from a flat 16.5% and 17.0% Hong Kong Corporation Tax on our income arising in, or derived from, Hong Kong for 2002 and 2003, respectively. As of June 30, 2003, we had deferred tax assets of approximately \$4.4 million for which no allowance has been provided since, in the opinion of management, realization of the future benefit is probable. In making this determination, management considered all available evidence, both positive and negative, as well as the weight and importance given to such evidence.

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SEASONALITY AND BACKLOG

The retail toy industry is inherently seasonal. Generally, in the past, our sales have been highest during the third and fourth quarters, and collections for those sales have been highest during the succeeding fourth and first fiscal quarters. Sales of writing instrument products are likewise seasonal with sales highest during the second and third quarters as are our Go Fly a Kite, Funnoodle and Storm outdoor products which are largely sold in the first and second quarters. Our working capital needs have been highest during the third and fourth quarters.

While we have taken steps to level sales over the entire year, sales are expected to remain heavily influenced by the seasonality of our toy products. The result of these seasonal patterns is that operating results and demand for working capital may vary significantly by quarter. Orders placed with us for shipment are cancelable until the date of shipment. The combination of seasonal demand and the potential for order cancellation makes accurate forecasting of future sales difficult and causes us to believe that backlog may not be an accurate indicator of our future sales. Similarly, financial results for a particular quarter may not be indicative of results for the entire year.

RECENT ACCOUNTING PRONOUNCEMENTS

In June 2001, the FASB issued Statement No. 143, "Accounting for Asset Retirement Obligations" (SFAS No. 143). The objective of SFAS No. 143 is to establish an accounting standard for the recognition and measurement of an asset retirement obligation on certain long-lived assets. The retirement obligation must be one that results from the acquisition, construction or normal operation of a long-lived asset. SFAS 143 was adopted effective January 1, 2003. The adoption of this statement did not have a material effect on the consolidated financial statements.

In April 2002, the FASB issued Statement No. 145, "Rescission of Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Correction" (SFAS 145). SFAS 145 eliminates extraordinary accounting treatment for reporting gains or losses on debt extinguishments, and amends other existing authoritative pronouncements to make various technical corrections, clarify meanings, or describe their applicability under changed conditions. The provisions of this SFAS was adopted effective January 1, 2003. The adoption of SFAS 145 did not have a material effect on its consolidated results of operations in accordance with APB 30, "Reporting the Results of Operations — Reporting the Effects of Disposal of a Segment of a Business and Extraordinary, Unusual and Infrequently Occurring Events and Transactions".

In June 2002, the FASB issued Statement No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS No. 146), which changes the accounting for costs such as lease termination costs and certain employee severance costs that are associated with a restructuring, discontinued operation, plant closing, or other exit or disposal activity initiated after December 31, 2002. The standard requires companies to recognize the fair value of costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS 146 was adopted effective January 1, 2003 and did not have a material effect on the Company's financial position or results of operations.

In May 2003, the FASB issued Statement No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" (SFAS No. 150), which establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. The provisions of this SFAS were adopted effective June 9, 2003. The adoption of SFAS 150 did not have a material effect on the Company's financial position or results of operations.

LIQUIDITY AND CAPITAL RESOURCES

As of June 30, 2003, we had working capital of \$220.9 million, as compared to \$129.2 million as of December 31, 2002. This increase was primarily attributable to the receipt of the net proceeds from the sale of convertible notes payable, our operating results and the receipt of the preferred return from the joint venture with THQ, though offset in part by disbursements related to the repurchase of our common shares.

Operating activities provided net cash of \$7.8 million in 2003, as compared to \$37.7 million in 2002, which included \$37.1 million provided from the sale of marketable securities. Net cash was provided primarily by net income and a non-cash charge consisting of depreciation and amortization, as well as an increase in the cash received from the preferred return from THQ joint venture, a decrease in inventory and increases in accounts payable and accrued expenses and income taxes payable, which were offset in part by increases in accounts receivable and prepaid expenses and other current operating assets. As of June 30, 2003, we had cash and cash equivalents of \$144.4 million.

Our investing activities used net cash of \$22.7 million in 2003, as compared to \$43.4 million in 2002, consisting primarily of the purchase of office furniture and equipment and molds and tooling used in the manufacture of our products, cash paid in excess of the fair value of the net assets acquired for P&M, and the purchase of marketable securities, partially offset by the repayment of notes receivable from officers. In 2002, our investing activities consisted primarily of cash paid for net assets acquired in the Toymax acquisition, the purchase of office furniture and equipment and molds and tooling used in the manufacture of our products and the purchase of marketable securities. As part of our strategy to develop and market new products, we have entered into various character and product licenses with royalties ranging from 1% to 18% payable on net sales of such products. As of June 30, 2003, these agreements required future aggregate minimum guarantees of \$16.2 million, exclusive of \$4.2 million in advances already paid.

Our financing activities provided net cash of \$90.9 million in 2003, consisting primarily of proceeds from the exercise of stock options and warrants and net proceeds from the sale of convertible notes, partially offset by the repurchase of our common stock. In 2002, financing activities provided net cash of \$61.9 million, consisting of proceeds from the sale of our common stock and the exercise of stock options and warrants, partially offset by the repayment of long term debt.

In March 2002, we purchased 8,100,065 shares of the common stock of Toymax primarily from four of its stockholders. The aggregate purchase price for these shares was approximately \$24.3 million in cash and 646,384 shares of our common stock. Prior to that date, we had acquired 132,754 shares of Toymax common stock, so that, until the completion of the merger, we owned 8,232,819 shares of Toymax common stock, representing approximately 66.8% of the outstanding shares of Toymax common stock. The second phase of the acquisition was completed on October 2002, when we purchased the remaining approximately 4,100,000 outstanding shares of Toymax in a merger transaction. Consideration paid for each share of Toymax not owned was \$3.00 per share in cash for a total amount of \$12.4 million and approximately 520,000 shares of our common stock.

In February 2003, our Board of Directors approved a buyback of up to \$20 million of our common stock. As of June 30, 2003, we repurchased 412,000 shares of our common stock for a total of approximately \$4.2 million.

On May 31, 2003, we purchased the product lines, related assets and assumed certain liabilities from P&M Products Inc. ("P&M"). The total purchase price of approximately \$20.9 million consisted of cash paid in the amount of \$20.3 million and liabilities of \$0.6 million and resulted in goodwill of \$14.5 million. Results of operations have included P&M from the date of acquisition.

Pursuant to the terms of a Purchase Agreement, dated June 9, 2003, we sold an aggregate of \$98 million of 4.625% Convertible Senior Notes due June 15, 2023. The holders of the notes may convert the notes into shares of our common stock at any time at an initial conversion price of \$20.00 per share, subject to certain circumstances described in the notes. This is equivalent to a conversion rate of 50.0 shares per \$1,000 principal amount of notes. We will pay cash interest on the notes at an annual rate of 4.625% of the principal amount at issuance, from the issue date to June 15, 2010, payable on June 15 and December 15 of each year, commencing on December 15, 2003. After June 15, 2010, we will not pay cash interest on the notes. At maturity, on June 15, 2023, we will redeem the notes at their accreted principal amount, which will be equal to \$1,811.95 (181.195%) per \$1,000 principal amount at issuance. The "accreted principal amount" of a note will be equal to the principal amount of the note at issuance plus accretion,

beginning June 15, 2010, on the principal amount at issuance so that the yield to maturity of the note will remain at 4.625% per year (equal to the cash interest prior to June 15, 2010), calculated on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30-day months. The notes will mature on June 15, 2023.

We may redeem the notes at our option in whole or in part beginning on June 15, 2010, at 100% of their accreted principal amount plus accrued and unpaid interest (including contingent interest and additional amounts), if any, payable in cash. Holders of the notes may also require us to repurchase all or part of their notes on June 15, 2010, for cash, at a repurchase price of 100% of the principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any. Holders of the notes may also require us to repurchase all or part of their notes on June 15, 2013 and June 15, 2018 at a repurchase price of 100% of the accreted principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any. Any repurchases at June 15, 2013 and June 15, 2018 may be paid in cash, in shares of common stock or a combination of cash and shares of common stock. If a fundamental change of the Company occurs (as defined in the notes), holders of the notes may require us to purchase all or part of their notes, for cash, at a repurchase price of 100% of the accreted principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any.

Net proceeds received from the issuance of these convertible notes payable were approximately \$94.4 million.

In October 2001, we and all of our subsidiaries jointly and severally secured a syndicated line of credit totaling \$50.0 million with a consortium of banks led by Bank of America, N.A. ("Line of Credit"). On June 3, 2003, we and the banks amended the loan agreements governing the Line of Credit (the "Loan Agreements"), pursuant to which amendment (i) the banks suspended certain of our covenants under the Loan Agreements, including those that prohibited us from consummating the Convertible Senior Notes offering (see Note 4) without the banks' consent, and (ii) the banks' obligations to extend credit under the Line of Credit were simultaneously suspended. The amendment contemplates that we and the banks will attempt to negotiate revised terms for the Line of Credit, to be reflected in a further amendment to the Loan Agreements, while waiving the requirement for obtaining consent for this offering. Neither we nor the banks, however, have any obligation to enter into such further amendment to the Loan Agreements. The amendment did not otherwise effect our right under the Loan Agreements to voluntarily reduce or terminate the Line of Credit. There have never been any outstanding borrowings under the Line of Credit since its inception.

We believe that our cash flow from operations, cash and cash equivalents on hand will be sufficient to meet our working capital and capital expenditure requirements and provide us with adequate liquidity to meet our anticipated operating needs for at least the next 12 months. Although operating activities are expected to provide cash, to the extent we grow significantly in the future, our operating and investing activities may use cash and, consequently, this growth may require us to obtain additional sources of financing. There can be no assurance that any necessary additional financing will be available to us on commercially reasonable terms, if at all.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows due to adverse changes in financial and commodity market prices and rates. We are exposed to market risk in the areas of changes in United States and international borrowing rates and changes in foreign currency exchange rates. In addition, we are exposed to market risk in certain geographic areas that have experienced or remain vulnerable to an economic downturn, such as China. We purchase substantially all of our inventory from companies in China, and, therefore, we are subject to the risk that such suppliers will be unable to provide inventory at competitive prices. While we believe that, if such an event were to occur we would be able to find alternative sources of inventory at competitive prices, we cannot assure you that we would be able to do so. These exposures are directly related to our normal operating and funding activities. Historically and as of June 30, 2003, we have not used derivative instruments or engaged in hedging activities to minimize our market risk.

INTEREST RATE RISK

As of June 30, 2003, we did not have any outstanding balances on our Line of Credit. On June 9, 2003, we issued convertible notes payable of \$98,000,000 with a fixed interest rate of 4.625% per annum. Accordingly, we are not generally subject to any direct risk of loss arising from changes in interest rates.

FOREIGN CURRENCY RISK

We have wholly-owned subsidiaries in Hong Kong and in the United Kingdom. Sales by these operations made on a FOB China or Hong Kong basis are denominated in U.S. dollars. However, purchases of inventory and Hong Kong operating expenses are typically denominated in Hong Kong dollars and domestic sales and operating expenses made in the United Kingdom are typically denominated in British Pounds, thereby creating exposure to changes in exchange rates. Changes in the British Pound or Hong Kong dollar/U.S. dollar exchange rates may positively or negatively affect our gross margins, operating income and retained earnings. The exchange rate of the Hong Kong dollar to the U.S. dollar has been fixed by the Hong Kong government since 1983 at HK\$7.80 to US\$1.00 and, accordingly, has not represented a currency exchange risk to the U.S. dollar. We do not believe that near-term changes in these exchange rates, if any, will result in a material effect on our future earnings, fair values or cash flows, and therefore, we have chosen not to enter into foreign currency hedging transactions. We cannot assure you that this approach will be successful, especially in the event of a significant and sudden change in the value of the Hong Kong dollar or British Pound.

ITEM 4. CONTROLS AND PROCEDURES

(a) Evaluation of disclosure controls and procedures.

Our chief executive officer and our chief financial officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-14(c) and 15-d-14(c) as of a date within 90 days of the filing date of the quarterly report (the "Evaluation Date") have concluded that as of the Evaluation Date, our disclosure controls and procedures were adequate and effective to ensure that material information relating to us and our consolidated subsidiaries would be made known to them by others within those entities, particularly during the period in which this quarterly report was being prepared.

(b) Changes in internal controls.

There were no significant changes in our internal controls or in other factors that could significantly affect our disclosure controls and procedures subsequent to the Evaluation Date, nor any significant deficiencies or material weaknesses in such disclosure controls and procedures requiring corrective actions. As a result, no corrective actions were taken.

PART II. OTHER INFORMATION

ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

Pursuant to the terms of a Purchase Agreement, dated June 9, 2003, we sold an aggregate of \$98 million of 4.625% Convertible Senior Notes due June 15, 2023. The holders of the notes may convert the notes into shares of our common stock at any time at an initial conversion price of \$20.00 per share, subject to certain circumstances described in the notes. This is equivalent to a conversion rate of 50.0 shares per \$1,000 principal amount of notes. We will pay cash interest on the notes at an annual rate of 4.625% of the principal amount at issuance, from the issue date to June 15, 2010, payable on June 15 and December 15 of each year, commencing on December 15, 2003. After June 15, 2010, we will not pay cash interest on the notes. At maturity, on June 15, 2023, we will redeem the notes at their accreted principal amount, which will be equal to \$1,811.95 (181.195%) per \$1,000 principal amount at issuance. The “accreted principal amount” of a note will be equal to the principal amount of the note at issuance plus accretion, beginning June 15, 2010, on the principal amount at issuance so that the yield to maturity of the note will remain at 4.625% per year (equal to the cash interest prior to June 15, 2010), calculated on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30-day months. The notes will mature on June 15, 2023.

We may redeem the notes at our option in whole or in part beginning on June 15, 2010, at 100% of their accreted principal amount plus accrued and unpaid interest (including contingent interest and additional amounts), if any, payable in cash. Holders of the notes may also require us to repurchase all or part of their notes on June 15, 2010, for cash, at a repurchase price of 100% of the principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any. Holders of the notes may also require us to repurchase all or part of their notes on June 15, 2013 and June 15, 2018 at a repurchase price of 100% of the accreted principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any. Any repurchases at June 15, 2013 and June 15, 2018 may be paid in cash, in shares of common stock or a combination of cash and shares of common stock. If a fundamental change of the Company occurs (as defined in the notes), holders of the notes may require us to purchase all or part of their notes, for cash, at a repurchase price of 100% of the accreted principal amount per note plus accrued and unpaid interest (including contingent interest and additional amounts), if any.

The issuance and sale of the notes and the subsequent offering of the notes by the initial purchaser were exempt from the registration provisions of the Securities Act of 1933 pursuant to Section 4(2) of such Act and Rule 144A promulgated thereunder. The aggregate commission to the initial purchaser was approximately \$3.8 million.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

NUMBER	DESCRIPTION
3.1.1	Restated Certificate of Incorporation of the Company(1)
3.1.2	Certificate of Amendment of Restated Certificate of Incorporation of the Company(2)
3.2.1	By-Laws of the Company(1)
3.2.2	Amendment to By-Laws of the Company(3)
4.1	Indenture, dated as of June 9, 2003, by and between the Registrant and Wells Fargo Bank, N.A.(4)
4.2	Form of 4.625% Convertible Senior Note(4)
4.3	Registration Rights Agreement, dated as of June 9, 2003, by and among the Registrant and Bear, Stearns & Co. Inc.(4)
31.1	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer(4)
31.2	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer(4)
32.1	Section 1350 Certification of Chief Executive Officer(4)
32.2	Section 1350 Certification of Chief Financial Officer(4)

(1) Filed previously as an exhibit to the Company’s Registration Statement on Form SB-2 (Reg. No. 333-2048-LA), effective May 1, 1996, and incorporated herein by reference.

(2) Filed previously as exhibit 4.1.2 of the Company’s Registration Statement on Form S-3 (Reg. No. 333-74717), filed on March 9, 1999, and incorporated herein by reference.

(3) Filed previously as an exhibit to the Company’s Registration Statement on Form SB-2 (Reg. No. 333-22583), effective May 1, 1997, and incorporated herein by reference.

(4) Filed herewith.

(b) Reports on Form 8-K

We filed Current Reports on Form 8-K on (i) April 22, 2003 relating to the Company’s announcement of earnings for the first quarter of 2003; and (ii) each of June 4 and June 12, 2003 relating to the Company’s Convertible Senior Note Offering.

SIGNATURES

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

Registrant:

JAKKS PACIFIC, INC.

Date: August 14, 2003

By: /s/ Joel M. Bennett

Executive Vice President and
Chief Financial Officer
(Duly Authorized Officer and
Principal Financial Officer)

Exhibit Index

NUMBER	DESCRIPTION
3.1.1	Restated Certificate of Incorporation of the Company(1)
3.1.2	Certificate of Amendment of Restated Certificate of Incorporation of the Company(2)
3.2.1	By-Laws of the Company(1)
3.2.2	Amendment to By-Laws of the Company(3)
4.1	Indenture, dated as of June 9, 2003, by and between the Registrant and Wells Fargo Bank, N.A.(4)
4.2	Form of 4.625% Convertible Senior Note(4)
4.3	Registration Rights Agreement, dated as of June 9, 2003, by and among the Registrant and Bear, Stearns & Co. Inc.(4)
31.1	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer(4)
31.2	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer(4)
32.1	Section 1350 Certification of Chief Executive Officer(4)
32.2	Section 1350 Certification of Chief Financial Officer(4)

(1)	Filed previously as an exhibit to the Company's Registration Statement on Form SB-2 (Reg. No. 333-2048-LA), effective May 1, 1996, and incorporated herein by reference.
(2)	Filed previously as exhibit 4.1.2 of the Company's Registration Statement on Form S-3 (Reg. No. 333-74717), filed on March 9, 1999, and incorporated herein by reference.
(3)	Filed previously as an exhibit to the Company's Registration Statement on Form SB-2 (Reg. No. 333-22583), effective May 1, 1997, and incorporated herein by reference.
(4)	Filed herewith.

JAKKS PACIFIC, INC., as Issuer,

and

WELLS FARGO BANK, N.A., as Trustee

INDENTURE

Dated as of June 9, 2003

\$98,000,000

Convertible Senior Notes due 2023

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SIGNATURES AND SEALS

ACKNOWLEDGMENTS

EXHIBIT A Form of Restricted Securities Transfer Certificate

EXHIBIT B Form of Unrestricted Securities Certificate

cxxii

Reconciliation and tie between Trust Indenture Act of 1939
and Indenture, dated as of May 20, 2003

Trust Indenture Act Section	Indenture Section
Section 310 (a)	610, 611
(a)(1)	608
(a)(2)	608
(b)	607, 609
Section 311 (a)	612
Section 312 (a)	701
(b)	702
(c)	702
Section 313 (a)	703
(c)	703, 704
Section 314 (a)	704
(a)(4)	1021
(c)(1)	103
(c)(2)	103
(e)	103
Section 315 (a)	602, 903
(b)	601, 602, 903
(c)	602, 903
(d)	602, 903
(e)	514
Section 316 (a)(last sentence)	101
(a)(1)(A)	("Outstanding")
(a)(1)(B)	502, 512
(b)	513
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	105
Section 317 (a)(1)	503
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(b)	1003
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Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Indenture.

INDENTURE, dated as of June 9, 2003, between JAKKS Pacific, Inc., a Delaware corporation, and Wells Fargo Bank, N.A., as trustee (the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of Convertible Senior Notes due 2023 (the "Securities," each one a "Security") of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture and the Securities.

This Indenture is subject to, and shall be governed by, the provisions of the Trust Indenture Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

All acts and things necessary have been done to make (i) the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and (ii) this Indenture a valid agreement of the Company in accordance with the terms of this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. Definitions.

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

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

(b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

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

(e) all references to \$, US\$, dollars or United States dollars shall refer to the lawful currency of the United States of America.

"Accreted Conversion Price per Share" as of any day is an amount equal to the Accreted Principal Amount of a Security on that day, divided by the number of shares of Common Stock issuable upon conversion of a Security on that day based on the then-applicable Conversion Rate.

"Accreted Principal Amount" of a Security as of any day is an amount equal to the sum of (i) the Principal Amount at Issuance of such Security plus (ii) the accrued Principal Accretion on such Security on such date. For purposes of clarity, the Accreted Principal Amount of each \$1,000 in Principal Amount at Issuance of the Securities on the following dates is set forth below (and the Accreted Principal Amount between the dates listed below will include an additional amount reflecting the additional Principal Accretion that has accrued on such Securities since the immediately preceding date on the table):

Redemption Date	(1) Principal Amount at Issuance	(2) Accrued Principal Accretion	(3) Accreted Principal Amount (1)+(2)
June 15, 2010	\$1,000.00	\$0.00	\$1,000.00
December 15, 2010	\$1,000.00	\$23.13	\$1,023.13
June 15, 2011	\$1,000.00	\$46.78	\$1,046.78
December 15, 2011	\$1,000.00	\$70.99	\$1,070.99
June 15, 2012	\$1,000.00	\$95.76	\$1,095.76
December 15, 2012	\$1,000.00	\$121.10	\$1,121.10
June 15, 2013	\$1,000.00	\$147.02	\$1,147.02
December 15, 2013	\$1,000.00	\$173.55	\$1,173.55
June 15, 2014	\$1,000.00	\$200.69	\$1,200.69
December 15, 2014	\$1,000.00	\$228.45	\$1,228.45
June 15, 2015	\$1,000.00	\$256.86	\$1,256.86
December 15, 2015	\$1,000.00	\$285.93	\$1,285.93
June 15, 2016	\$1,000.00	\$315.66	\$1,315.66
December 15, 2016	\$1,000.00	\$346.09	\$1,346.09
June 15, 2017	\$1,000.00	\$377.22	\$1,377.22
December 15, 2017	\$1,000.00	\$409.06	\$1,409.06
June 15, 2018	\$1,000.00	\$441.65	\$1,441.65
December 15, 2018	\$1,000.00	\$474.99	\$1,474.99
June 15, 2019	\$1,000.00	\$509.09	\$1,509.09
December 15, 2019	\$1,000.00	\$543.99	\$1,543.99
June 15, 2020	\$1,000.00	\$579.70	\$1,579.70
December 15, 2020	\$1,000.00	\$616.23	\$1,616.23
June 15, 2021	\$1,000.00	\$653.60	\$1,653.60
December 15, 2021	\$1,000.00	\$691.84	\$1,691.84
June 15, 2022	\$1,000.00	\$730.97	\$1,730.97

Redemption Date	(1) Principal Amount at Issuance	(2) Accrued Principal Accretion	(3) Accreted Principal Amount (1)+(2)
December 15, 2022	\$1,000.00	\$771.00	\$1,771.00
June 15, 2023	\$1,000.00	\$811.95	\$1,811.95

"Affiliate" means, with respect to any specified Person, (i) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, (ii) any other Person that owns, directly or indirectly, 5% or more of such Person's Equity Interests or any officer or director of any such Person or other Person or, with respect to any natural Person, any Person having a relationship with such Person or other Person by blood, marriage or adoption not more remote than first cousin or (iii) any other Person 10% or more of the voting Equity Interests of which are beneficially owned or held directly or indirectly by such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

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

"Bankruptcy Law" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"Bid Solicitation Agent" means the bid solicitation agent selected by the Company (which may be the Trustee if the Trustee consents to accept such position) or any replacement designated by the Company.

"Board of Directors" means the board of directors of the Company or any duly authorized committee of such board.

"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 of such entity and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the City of New York, the State of Delaware or the city in which the Corporate Trust Office is located are authorized or obligated by law or executive order to close.

"Calendar Quarter" means a three month period ending on March 31, June 30, September 30 or December 31.

"Cash Equivalents" means (i) any evidence of Indebtedness with a maturity of one year or less from the date of acquisition issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof); (ii) certificates of deposit or acceptances with a maturity of one year or less from the date of acquisition of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500,000,000; (iii) commercial paper with a maturity of one year or less from the date of acquisition issued by a corporation that is not an Affiliate of the Company organized under the laws of any state of the United States or the District of Columbia and rated A-1 (or higher) according to S&P or P-1 (or higher) according to Moody's or at least an equivalent rating category of another nationally recognized securities rating agency; (iv) any money market deposit accounts issued or offered by a domestic commercial bank having capital and surplus in excess of \$500,000,000; and (v) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the government of the United States of America or issued by any agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within one year from the date of acquisition; provided that the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions With Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Stock" means the common stock of the Company, \$.001 par value per share, as it exists on the date of this Indenture and any shares of any class or classes of Equity Interests of the Company resulting from any reclassification or reclassifications thereof.

"Company" means JAKKS Pacific, Inc., a corporation incorporated under the laws of Delaware, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any one of its Chairman of the Board, its Vice Chairman, its President or a Vice President (regardless of vice presidential designation), and by any one of its Chief Financial Officer, Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Contingent Interest" has the meaning specified in the form of Security set forth in Section 202.

"Conversion Agent" means Wells Fargo Bank, N.A., or any alternative or additional conversion agent designated by the Company or any replacement designated by the Company.

"Conversion Rate" means the number of shares of Common Stock into which each \$1,000 of Principal Amount at Issuance of Securities is convertible, which is initially fifty (50) shares, subject to adjustments as set forth in this Indenture.

"Conversion Value" means the product of the Sale Price of a share of Common Stock on any given day times the then current Conversion Rate.

"Corporate Trust Office" means the office of the Trustee or an Affiliate or agent thereof at which at any particular time the corporate trust business for the purposes of this Indenture shall be principally administered, which office at the date of execution of this Indenture is located at Wells Fargo Bank, National Association, 707 Wilshire Boulevard, 17th Floor, Los Angeles, CA 90017, Attention: Corporate Trust Department.

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

"Depository" means, with respect to the Securities issued in the form of Global Securities, if any, The Depository Trust Company, a New York limited purpose corporation, its nominees and successors, or any other Person designated as the Depository by the Company pursuant to Section 305(b), in each case registered as a "clearing agency" under the Exchange Act and maintaining a book-entry system that qualifies for treatment as "registered form" under Section 163(f) of the Code.

"Disqualified Equity Interests" means any Equity Interests that, either by their terms or by the terms of any security into which they are convertible or exchangeable or otherwise, are, or upon the happening of an event or passage of time would be, required to be redeemed prior to any Stated Maturity of the principal of the Securities or are redeemable at the option of the holder thereof at any time prior to any such Stated Maturity (other than upon a Fundamental Change or sale of assets by the Company in circumstances where the holders of the Securities would have similar rights), or are convertible into or exchangeable for debt securities at any time prior to any such Stated Maturity at the option of the holder thereof.

"Equity Interest" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person, including any Preferred Equity Interests.

"Event of Default" has the meaning specified in Article Five.

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

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

"Fair Market Value" means, with respect to any asset or property, the sale value that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy.

"Five-Trading-Day Measurement Period" means the five Trading Days ending on the second Trading Day immediately preceding the first day of the applicable Contingent Interest Period.

"Fundamental Change" means the occurrence of any of the following events: (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total outstanding Voting Stock of the Company, (ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Company (together with any new directors whose election to such Board or whose nomination for election by the shareholders of the Company, was approved by a vote of at least 66-2/3% of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of Directors then in office; (iii) the Company consolidates with or merges with or into any Person or conveys, transfers or leases all or substantially all of its assets to any Person, or any corporation consolidates with or merges into or with the Company, in any such event pursuant to a transaction in which the outstanding Voting Stock of the Company is changed into or exchanged for cash, securities or other property, other than any such transaction where the outstanding Voting Stock of the Company is not changed or exchanged at all (except to the extent necessary to reflect a change in the jurisdiction of incorporation of the Company) or where (A) the outstanding Voting Stock of the Company is changed into or exchanged for (x) Voting Stock of the surviving corporation which is not Disqualified Equity Interests or (y) cash, securities and other property (other than Equity Interests of the surviving corporation) and (B) no "person" or "group" owns immediately after such transaction, directly or indirectly, more than 50% of the total outstanding Voting Stock of the surviving corporation, (iv) the Company is liquidated or dissolved or adopts a plan of liquidation or dissolution other than in a transaction which complies with the provisions described under Article Eight; or (v) the Company's Common Stock ceases to be listed on a national securities exchange or quoted on the Nasdaq National Market or another established automated over-the-counter trading market in the United States.

A Fundamental Change will not be deemed to have occurred if either:

(1) the last Sale Price of the Common Stock for any five Trading Days within:

(i) the period of the ten consecutive Trading Days immediately after the later of the Fundamental Change or the public announcement of the Fundamental Change, in the case of a Fundamental Change resulting solely from a Fundamental Change in clause (i) of the definition of Fundamental Change; or

(ii) the period of the ten consecutive Trading Days immediately preceding the Fundamental Change, in the case of a Fundamental Change resulting from a Fundamental Change in clauses (ii), (iii) or (iv) of the definition of Fundamental Change,

is at least equal to 105% of the quotient where the numerator is the Accreted Principal Amount and the denominator is the Conversion Rate in effect on such Trading Day; or

(2) in the case of a merger or consolidation, at least 95% of the consideration, excluding cash payments for fractional shares in the merger or consolidation constituting the Fundamental Change, consists of common stock traded on a United States national securities exchange or quoted on the Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change) and as a result of such transaction or transactions the Securities become convertible solely into such common stock.

For purposes of clarification, a "Fundamental Change" will not be deemed to occur solely as a result of the transfer of all or substantially all of the Company's assets to a Wholly-Owned Subsidiary of the Company where that Subsidiary assumes all or substantially all of the Indebtedness of the Company (other than the Securities).

"Generally Accepted Accounting Principles" or "GAAP" means generally accepted accounting principles in the United States, consistently applied, which are in effect on the date of this Indenture.

"Global Security" means a Security in book-entry form in the form prescribed in Sections 202 through 204 evidencing all or part of the Securities, issued to the Depository or its nominee and registered in the name of the Depository or such nominee.

"Holder" means a Person in whose name a Security is registered in the Security Register.

"Indebtedness" means, with respect to any Person, without duplication, (i) all obligations for borrowed money, (ii) all obligations evidenced by notes or other similar instruments, (iii) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto) (iv) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the

ordinary course of business, (v) all obligations as lessee which are capitalized in accordance with GAAP, and (vi) all Indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others). The amount of Indebtedness of any Person at any date shall be, without duplication, the principal amount that would be shown on a balance sheet of such Person prepared as of such date in accordance with GAAP and the maximum determinable liability of any Indebtedness guaranteed by such Person at such date.

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

"Indenture Obligations" means the obligations of the Company and any other obligor under this Indenture or under the Securities, to pay principal, Principal Amount at Issuance, Principal Accretion, Accreted Principal Amount, and interest (including Contingent Interest and Additional Amounts, if any) when due and payable, and all other amounts due or to become due under or in connection with this Indenture, the Securities and the performance of all other obligations to the Trustee and the Holders under this Indenture and the Securities, according to the terms hereof and thereof.

"Initial Purchaser" means Bear, Stearns & Co. Inc as initial purchaser of the Securities.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Securities.

"Issue Date" means June 9, 2003.

"Lien" means any mortgage, charge, pledge, lien (statutory or otherwise), privilege, security interest, hypothecation or other encumbrance upon or with respect to any property of any kind (including any conditional sale or other title retention agreement, any leases in the nature thereof, and any agreement to give any security interest), real or personal, movable or immovable, now owned or hereafter acquired.

"Market Price" as of any date of determination means the average of the Sale Prices of the shares of Common Stock for the five Trading Day period ending on (if the third Business Day prior to the applicable date of determination is a Trading Day, or if not, then on the last Trading Day prior to), the third Business Day prior to the applicable Optional Repurchase Date appropriately adjusted to take into account the occurrence, during the period commencing on the first of such Trading Days during such five Trading Day period and ending on such date of determination, of any event described in Section 406; subject, however, to the conditions set forth in Section 407.

"Maturity" when used with respect to any Security, means the date on which the Accreted Principal Amount of such Security becomes due and payable as therein provided or as provided in this Indenture, whether at Stated Maturity or a Redemption Date and whether by declaration of acceleration, Fundamental Change, call for redemption or otherwise.

"Moody's" means Moody's Investors Service, Inc. or any successor rating agency.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, Vice Chairman, the President or a Vice President (regardless of vice presidential designation), and by the Chief Financial Officer, Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company or the Trustee, unless an Opinion of Independent Counsel is required pursuant to the terms of this Indenture, and who shall be acceptable to the Trustee.

"Opinion of Independent Counsel" means a written opinion of counsel issued by someone who is not an employee or consultant of the Company and who shall be acceptable to the Trustee.

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

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

(b) Securities, or portions thereof, for whose payment or redemption, money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company or any Affiliate thereof) in trust or set aside and segregated in trust by the Company or such Affiliate (if the Company or such Affiliate shall act as the Paying Agent) for the Holders; provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor reasonably satisfactory to the Trustee has been made; and

(c) Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof reasonably satisfactory to it that such Securities are held by a bona fide purchaser or protected purchaser in whose hands the Securities are valid obligations of the Company; provided, however, that in determining whether the Holders of the requisite Principal Amount at Issuance of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith

may be regarded as Outstanding if the pledgee establishes to the reasonable satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor. If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following the Optional Repurchase Date, Fundamental Change Repurchase Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and Principal Accretion or any cash interest (including Contingent Interest and Additional Amounts) on such Securities shall cease to accrue; provided, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to the Indenture. If a Security is converted in accordance with the Indenture, then from and after the time of conversion on the Conversion Date, such Security shall cease to be Outstanding and Principal Accretion or cash interest (including Contingent Interest and Additional Amounts) shall cease to accrue on such Security.

"Paying Agent" means any Person authorized by the Company to pay the principal of, premium, if any, or interest on any Securities on behalf of the Company.

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

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 308 in exchange for a mutilated Security or in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Security.

"Preferred Equity Interest" as applied to the Equity Interest of any Person, means an Equity Interest of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such person, over Equity Interests of any other class of such Person.

"Principal Accretion" of any Security as of any day means the accretion beginning on June 15, 2010 on such Security in an amount that is calculated so that, the resulting yield to Maturity on such Security is 4.625% per year (calculated on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30 day months) taking into account the 4.625% cash interest payable on the Securities until June 15, 2010. For purposes of clarity, the Principal Accretion for every \$1,000 of Principal Amount at Issuance of the Securities on the dates listed below is set forth below (and the Principal Accretion between the dates listed below will include an additional amount reflecting the additional Principal Accretion that has accrued on such Securities since the immediately preceding date on the table).

Redemption Date	Accrued Principal Accretion per \$1,000 Note
June 15, 2010	\$0.00
December 15, 2010	\$23.13
June 15, 2011	\$46.78
December 15, 2011	\$70.99
June 15, 2012	\$95.76
December 15, 2012	\$121.10
June 15, 2013	\$147.02
December 15, 2013	\$173.55
June 15, 2014	\$200.69
December 15, 2014	\$228.45
June 15, 2015	\$256.86
December 15, 2015	\$285.93
June 15, 2016	\$315.66
December 15, 2016	\$346.09
June 15, 2017	\$377.22
December 15, 2017	\$409.06
June 15, 2018	\$441.65
December 15, 2018	\$474.99
June 15, 2019	\$509.09
December 15, 2019	\$543.99
June 15, 2020	\$579.70
December 15, 2020	\$616.23
June 15, 2021	\$653.60
December 15, 2021	\$691.84
June 15, 2022	\$730.97
December 15, 2022	\$771.00
June 15, 2023	\$811.95

"Principal Amount at Issuance" of a Security means the initial issue price of the Security as set forth on the face of the Security.

"Prospectus" means the prospectus included in a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including any such prospectus supplement with respect to the terms of the offering of any portion of the Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to such prospectus, including post-effective amendments, and in each case including all material incorporated by reference therein.

"Redemption Date" when used with respect to any Security to be redeemed pursuant to any provision in this Indenture means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price" when used with respect to any Security to be redeemed pursuant to any provision in this Indenture means the price at which it is to be redeemed pursuant to this Indenture.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of June 9, 2003, between the Company and the Initial Purchaser, as amended from time to time.

"Registration Statement" means any registration statement of the Company which covers any of the Securities pursuant to the provisions of the Registration Rights Agreement, and all amendments and supplements to any such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"Regular Record Date" for the interest payable on any Interest Payment Date means the 30th day (whether or not a Business Day) next preceding such Interest Payment Date.

"Responsible Officer" when used with respect to the Trustee means any officer assigned to the Corporate Trust Office or the agent of the Trustee appointed hereunder, including any vice president, assistant vice president, assistant secretary, or any other officer or assistant officer of the Trustee or the agent of the Trustee appointed hereunder to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject.

"Restricted Securities Legend" means a legend substantially in the form of the legend required in the form of Security set forth in Section 202 to be placed upon a Restricted Security.

"Restricted Securities Transfer Certificate" means a certificate substantially in the form set forth in Exhibit A.

"Restricted Security" means each Security required pursuant to Section 306 to bear a Restricted Securities Legend.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 144A Global Securities" means one or more permanent Global Securities in registered form representing the aggregate principal amount of Securities sold in reliance on Rule 144A under the Securities Act.

"Rule 144A Information" shall be such information with respect to the Company as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

"Sale Price" of the shares of Common Stock on any date means:

(1) if the shares of Common Stock are listed on a United States national or regional securities exchange, the closing per share sale price of Common Stock (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such date as reported in the composite transactions for the principal United States securities exchange on which the shares of Common Stock are traded, or

(2) if the shares of Common Stock are reported by the Nasdaq National Market, as reported by the National Association of Securities Dealers Automated Quotation System or its successors.

If the Common Stock is not listed for trading on a United States national or regional security exchange and not reported by the Nasdaq National Market on the relevant date, the "Sale Price" will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Stock is not so quoted, the "Sale Price" will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. If no Sale Price is available as described above, the Sale price will be the value of a share of Common Stock as determined by the Board of Directors (which shall be evidenced by an Officer's Certificate delivered to the Initial Purchaser at closing).

"S&P" means Standard & Poor's Ratings Services, or any successor rating agency.

"Securities" has the meaning specified in the Recitals.

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

"Security Price" on any date of determination means the average of the secondary market bid quotations for Securities obtained by the Company or the Bid Solicitation Agent for \$5,000,000 Principal Amount at Issuance of the Securities at approximately 4:00 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company, provided that if at least three such bids cannot reasonably be obtained by the Company, 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 Company, such bid shall be used. If the Company cannot reasonably obtain at least one bid for \$5,000,000 Principal Amount at Issuance of the Securities from a nationally recognized securities dealer or if, in the Company's reasonable judgment, the bid quotations are not indicative of the secondary market value of the Securities, then the Security Price will equal (a) the then-applicable Conversion Rate of the Securities multiplied by (b) the Sale Price of the Common Stock on such determination date. Bids used to determine the Security Price will be solicited by the Bid Solicitation Agent from securities dealers that the Company believes are willing to bid for the Securities.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 306.

"Shelf Registration Statement" means a "shelf" registration statement of the Company pursuant to the Registration Rights Agreement, which covers all or a portion of the Registrable Securities (as defined in the Registration Rights Agreement) on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the Commission, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 309.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon, means the date specified in such Indebtedness as the fixed date on which the principal (or Accreted Principal Amount, if applicable) of such Indebtedness or such installment of interest (including Contingent Interest and Additional Amounts) is due and payable.

"Subsidiary" means any Person a majority of the equity ownership or the Voting Stock of which is at the time owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries.

"Successor Security" of any particular Security means every Security issued after, and evidencing all or a portion of the same debt as that evidenced by, such particular Security. For the purposes of this definition, any Security authenticated and delivered under Section 308 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Tax Original Issue Discount" means the amount of ordinary interest income on a Security that must be accrued as original issue discount for United States federal income tax purposes pursuant to Treas. Reg. Sec. 1.1275-4.

"Temporary Cash Investments" means (i) any evidence of Indebtedness, maturing not more than one year after the date of acquisition, issued by the United States of America, or an instrumentality or agency thereof and guaranteed fully as to principal, premium, if any, and interest by the United States of America, (ii) any certificate of deposit, maturing not more than one year after the date of acquisition, issued by, or time deposit of, a commercial banking institution (including the Trustee) that is a member of the Federal Reserve System and that has combined capital and surplus and undivided profits of not less than \$500,000,000, whose debt has a rating, at the time as of which any investment therein is made, of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P, (iii) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate or Subsidiary of the Company) (including the Trustee) organized and existing under the laws of the United States of America with a rating, at the time as of which any investment therein is made, of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P and (iv) any money market deposit accounts issued or offered by a domestic commercial bank (including the Trustee) having capital and surplus in excess of \$500,000,000.

"Trading Day" means a day on which the Common Stock: (i) is not suspended from trading on any national or regional securities exchange or association or over-the-counter market as of the close of business, and (ii) had traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the Common Stock.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

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

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

"Wholly-Owned Subsidiary" means a Subsidiary all the Equity Interests of which are owned by the Company or another Wholly-Owned Subsidiary.

Section 102. Other Definitions.

Term -----	Defined in Section -----
"Act"	105
"Additional Amounts"	202
"Agent Members"	305 (a)
"Combined Amount"	406 (d)
"Contingent Interest Payment Date"	1602
"Contingent Interest Period"	1601
"Conversion Date"	402
"Conversion Trigger Price"	401 (a)
"current market price per share"	406 (g)
"Defaulted Interest"	309
"Determination Date"	406 (d)
"Expiration Date"	406 (e)
"Expiration Time"	406 (e)
"Fundamental Change Repurchase Date"	1401(a)
"Fundamental Change Repurchase Notice"	1401(c)
"Fundamental Change Repurchase Price"	1401
"Optional Repurchase Date"	1501
"Optional Repurchase Notice"	1501
"Optional Repurchase Price"	1501
"Physical Securities"	305
"Purchased Shares"	406 (e)

"Required Filing Dates"	1008
"Surviving Entity"	801(a)
"tender offer"	406(f)
"tendered shares"	406(f)
"Triggering Distribution"	406(d)

Section 103. Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company and any other obligor on the Securities shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture (including any covenants compliance with which constitutes a condition precedent) 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, if any, have been complied with, except that, in the case of any such application or request as to which the furnishing of such documents, certificates and/or opinions is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, 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
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 104. Form of Documents Delivered to Trustee.

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

Any certificate or opinion of an officer of the Company or other obligor of the Securities may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or

representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or other obligor of the Securities stating that the information with respect to such factual matters is in the possession of the Company or other obligor of the Securities, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous. Opinions of Counsel required to be delivered to the Trustee may have qualifications customary for opinions of the type required and counsel delivering such Opinions of Counsel may rely on certificates of the Company or government or other officials customary for opinions of the type required, including certificates certifying as to matters of fact, including that various financial covenants have been complied with.

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

Section 105. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments (which may take the form of an electronic writing or messaging or otherwise be in accordance with customary procedures of the Depository or the Trustee) of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing (which may be in electronic form); 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. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture, if made in the manner provided in this Section. The fact and date of the execution by any person of any such instrument or writing or the authority of the person executing the same, may also be proved in any other manner which the Trustee deems sufficient in accordance with such reasonable rules as the Trustee may determine.

(b) The ownership of Securities shall be proved by the Security Register.

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

(d) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by

or pursuant to a Board Resolution, fix in advance a record date for the determination of such Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. Notwithstanding Trust Indenture Act Section 316(c), any such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not more than 30 days prior to the first solicitation of Holders generally in connection therewith and no later than the date such solicitation is completed.

In the absence of any such record date fixed by the Company, regardless as to whether a solicitation of the Holders is occurring on behalf of the Company or any Holder, the Trustee may, at its option, fix in advance a record date for the determination of such Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Trustee shall have no obligation to do so. Any such record date shall be a date not more than 30 days prior to the first solicitation of Holders generally in connection therewith and no later than a date such solicitation is completed.

If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of Securities then Outstanding have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for this purpose the Securities then Outstanding shall be computed as of such record date; provided that no such request, demand, authorization, direction, notice, consent, waiver or other Act by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

Section 106. Notices, etc., to Trustee and the Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder or by the Company or any other obligor of the Securities shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, or delivered by recognized overnight courier, to or with the Trustee at the Corporate Trust Office, Attention: Corporate Trust Division, or at any other address previously furnished in writing to the Holders, the Company, any other obligor of the Securities, by the Trustee; or

(b) the Company shall be sufficient for every purpose (except as provided in Section 501(c)) hereunder if in writing and mailed, first-class postage prepaid, or delivered by recognized overnight courier, to the Company addressed to it at JAKKS Pacific, Inc., 22619 Pacific Coast Highway, Malibu, California, 90265, Attention: President, or at any other address previously furnished in writing to the Trustee by the Company.

Section 107. Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, or delivered by recognized overnight courier, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice when mailed to a Holder in the aforesaid manner shall be conclusively deemed to have been received by such Holder whether or not actually received by such Holder. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event as required by any provision of this Indenture, then any method of giving such notice as shall be reasonably satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 108. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with any provision of the Trust Indenture Act or another provision which is required or deemed to be included in this Indenture by any of the provisions of the Trust Indenture Act, the provision or requirement of the Trust Indenture Act shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 109. Effect of Headings and Table of Contents.

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

Section 110. Successors and Assigns.

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

Section 111. Separability Clause.

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

Section 112. Benefits of Indenture.

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

Section 113. Governing Law.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF).

Section 114. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity or other payment date of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal or premium, if any, need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity or other payment date, and no interest shall accrue with respect to such payment for the period from and after such Interest Payment Date, Redemption Date, Stated Maturity, or other payment date to the next succeeding Business Day.

Section 115. Schedules and Exhibits.

All schedules and exhibits attached hereto are by this reference made a part hereof with the same effect as if herein set forth in full.

Section 116. 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.

ARTICLE TWO

SECURITY FORMS

Section 201. Forms Generally.

The Securities and the Trustee's certificate of authentication shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange, any organizational document or governing instrument or applicable law or as may, consistently

herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. Any portion of the text of any Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Security.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Securities offered and sold in reliance on Rule 144A shall be issued initially in the form of one or more Rule 144A Global Securities, substantially in the form set forth in Section 202, deposited upon issuance with the Trustee, as custodian for the Depository, registered in the name of the Depository or its nominee, in each case for credit to an account of a direct or indirect participant of the Depository, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository or its nominee, as hereinafter provided.

The terms and provisions contained in the form of Securities set forth in Sections 202 through 204 shall constitute, and are 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 202. Form of Face of Security.

(a) The form of the face of any Security authenticated and delivered hereunder shall be substantially as follows.

All Securities which are Global Securities must contain the Global Securities legend provided below. Unless and until a Security is sold under an effective Registration Statement pursuant to the Registration Rights Agreement, then each Security shall bear the legend for Restricted Securities provided below on the face thereof. In addition, all Securities must contain the tax legend identified below.

JAKKS PACIFIC, INC.

CONVERTIBLE SENIOR NOTE DUE 2023

[IF THE SECURITY IS A GLOBAL SECURITY, INSERT THE FOLLOWING LEGEND] -- THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF

THE DEPOSITARY, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT AND ANY SUCH 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.

[IF THIS SECURITY IS A RESTRICTED SECURITY INSERT THE FOLLOWING LEGEND (THE "RESTRICTED SECURITIES LEGEND")] -- THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN 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 AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATED PERSON OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) UNLESS SUCH OFFER, SALE OR OTHER TRANSFER IS (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON THE HOLDER 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 WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHT 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, SUBJECT TO A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THIS SECURITY BEING COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE THEN HOLDER OF THIS SECURITY AFTER THE RESALE RESTRICTION TERMINATION DATE.

[ALL SECURITIES MUST INCLUDE THE FOLLOWING TAX LEGEND] THE COMPANY AGREES, AND BY ACCEPTANCE OF BENEFICIAL OWNERSHIP INTEREST IN THE SECURITIES EACH BENEFICIAL HOLDER OF SUCH SECURITIES WILL BE DEEMED TO HAVE AGREED, FOR UNITED STATES FEDERAL INCOME TAX PURPOSES (1) TO TREAT THE SECURITIES AS INDEBTEDNESS THAT IS SUBJECT TO TREAS. REG. SEC. 1.1275-4 (THE "CONTINGENT PAYMENT REGULATIONS") AND, FOR PURPOSES OF THE CONTINGENT PAYMENT REGULATIONS, TO TREAT THE FAIR MARKET VALUE OF ANY STOCK BENEFICIALLY RECEIVED BY A BENEFICIAL HOLDER UPON ANY CONVERSION OR REPURCHASE OF SUCH SECURITIES AS A CONTINGENT PAYMENT AND (2) TO BE BOUND BY THE COMPANY'S DETERMINATION OF THE "COMPARABLE YIELD" AND "PROJECTED PAYMENT SCHEDULE," WITHIN THE MEANING OF THE CONTINGENT PAYMENT REGULATIONS, WITH RESPECT TO THE SECURITIES. A HOLDER OF SECURITIES MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, YIELD TO MATURITY, COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE FOR SUCH SECURITIES BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE COMPANY AT THE FOLLOWING ADDRESS: JAKKS PACIFIC, INC., 22619 PACIFIC COAST HIGHWAY, MALIBU, CA 90265-5080, ATTENTION: CHIEF FINANCIAL OFFICER.

JAKKS PACIFIC, INC.

CONVERTIBLE SENIOR NOTE DUE 2023

Cusip No.:47012EAA4

No: _____ \$ _____

JAKKS PACIFIC, INC., a corporation duly existing and qualified under the laws of the State of Delaware (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, on June 15, 2023, the Accreted Principal Amount of this Security on such date. For the sake of clarity, the Accreted Principal Amount of this Security on June 15, 2023 will be \$1,811.95 for every \$1,000.00 of Principal Amount at Issuance of this Security, which, assuming that the Principal Amount at Issuance of this Security is \$98,000,000.00, is \$177,571,100.00. The Principal Amount at Issuance of this Security is \$98,000,000.00.

In addition, for value received, the Company hereby promises to pay to Cede & Co., or registered assigns, (i) from June 9, 2003, or from the most recent Interest Payment Date to which interest has been paid or provided for, to, but not including June 15, 2010, cash interest at an annual rate of 4.625% of the Principal Amount at Issuance and (ii) from and after June 15, 2010 no cash interest shall be paid. Cash interest on this Security is payable semi-annually in arrears on June 15 and December 15 in each year, with the first Interest Payment Date being December 15, 2003, and will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each payment of cash interest on this Security will include interest accrued through the day before the applicable Interest Payment Date (or Optional Repurchase Date,

Fundamental Change Repurchase Date, Redemption Date or, in certain circumstances, Conversion Date, as the case may be).

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest payment, which shall be the May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid, or duly provided for, and interest on such Defaulted Interest at the interest rate borne by the Securities, to the extent lawful, shall forthwith cease to be payable to the Holder on such Regular Record Date, and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Subject to the conditions of the Indenture and the accrual and record date provisions specified below, the Company shall pay contingent interest ("Contingent Interest") to the Holders during any six-month period from June 15 to December 14 and from December 15 to June 14, commencing with the six-month period beginning June 15, 2010, if the average Security Price for the Five-Trading-Day Measurement Period with respect to such six month period equals 120% or more of the Accreted Principal Amount of such Securities to, but excluding, the day immediately preceding the first day of the relevant six month period. Contingent Interest will be paid only in cash.

Contingent Interest, if any, will accrue from June 15 or December 15, as applicable, and will be payable on the next succeeding Interest Payment Date. Contingent Interest will be paid to the Person in whose name a Security is registered on the next preceding Regular Record Date on which Contingent Interest is payable.

The amount of Contingent Interest payable per Security in respect of any six-month period will equal 0.375% per annum of the average Security Price for the Five-Trading-Day Measurement Period.

The Holder of this Security is entitled to the benefits of the Registration Rights Agreement, dated as of June 9, 2003, between the Company and the Initial Purchaser, including the provisions contained therein regarding the payment of Additional Amounts (as defined therein). Any Additional Amounts due pursuant to the Registration Rights Agreement will be payable in cash on the Interest Payment Dates related to the Securities. The Additional Amounts will be determined by multiplying the applicable Additional Amounts rate by the Accreted Principal Amount of the Securities, multiplied by a fraction the numerator of which is the number of days such Additional Amounts rate was applicable during the period, and the denominator of which is 360.

Payment of the Accreted Principal Amount (including Contingent Interest and Additional Amounts) and interest on this Security will be made at the office or agency of the Company maintained for that purpose, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the address of the Person entitled thereto as such address shall appear on the Security Register. If any of the Securities are held by the Depository, payments of interest (including Contingent Interest and Additional Amounts) to the Depository may be made by wire transfer to the Depository.

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

All references in this Security or in the Indenture to "interest" or "accrued and unpaid interest" shall be deemed to include, to the extent applicable, a reference to Additional Amounts and Contingent Interest.

Unless the certificate of authentication hereon has been duly executed by the Trustee referred to on the reverse hereof or by the authenticating agent appointed as provided in the Indenture by manual signature, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed by the manual or facsimile signature of its authorized officers.

Dated: June 9, 2003

JAKKS PACIFIC, INC.

By: _____

Attest:

Secretary

Section 203. Form of Reverse of Securities.

The form of the reverse of the Securities shall be substantially as follows:

JAKKS PACIFIC, INC.

CONVERTIBLE SENIOR NOTE DUE 2023

1. Indenture.

This Security is one of a duly authorized issue of Securities of the Company designated as its Convertible Senior Notes due 2023 (herein called the "Securities"), limited in Principal Amount at Issuance to \$98,000,000, which may be issued under an indenture (herein called the "Indenture"), dated as of June 9, 2003, between the Company and Wells Fargo Bank, National Association, as trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties, obligations and immunities thereunder of the Company, the Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. The Indenture does not limit other Indebtedness of the Company or its Subsidiaries, secured or unsecured.

2. Ranking.

This Security constitutes a senior unsecured general obligation of the Company, ranking equally with other existing and future senior unsecured Indebtedness the Company has incurred or may incur, ranking senior in right of payment to any future Indebtedness that is expressly made subordinate to the Securities and ranking subordinate to secured Indebtedness the Company has incurred.

3. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are subject to redemption for cash in whole or from time to time in part on or after June 15, 2010, at the option of the Company, on not less than 30 nor more than 60 days' prior notice by first-class mail at a redemption price equal to the Accreted Principal Amount of the Security so redeemed plus accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any, to but excluding the Redemption Date.

The Redemption Prices on June 15, 2010 and on each subsequent December 15 and June 15 thereafter prior to June 15, 2023 and on June 15, 2023 are set forth in the table below. In addition to the Redemption Prices set forth on such table, the Redemption Price on any Redemption Date that falls between the dates listed would be the Accreted Principal Amount as of such Redemption Date plus accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) to but excluding the Redemption Date (subject to the right of Holders of record on relevant Interest Payment Dates to receive interest due on an Interest Payment Date) that has accrued on a Security since the immediately preceding date on which interest was paid.

Redemption Date	(1) Principal Amount at Issuance	(2) Accrued Principal Accretion	(3) Accreted Principal Amount (1)+(2)
June 15, 2010	\$1,000.00	\$ 0.00	\$1,000.00
December 15, 2010	\$1,000.00	\$23.13	\$1,023.13
June 15, 2011	\$1,000.00	\$46.78	\$1,046.78

Redemption Date	(1) Principal Amount at Issuance	(2) Accrued Principal Accretion	(3) Accreted Principal Amount (1)+(2)
December 15, 2011	\$1,000.00	\$ 70.99	\$1,070.99
June 15, 2012	\$1,000.00	\$ 95.76	\$1,095.76
December 15, 2012	\$1,000.00	\$121.10	\$1,121.10
June 15, 2013	\$1,000.00	\$147.02	\$1,147.02
December 15, 2013	\$1,000.00	\$173.55	\$1,173.55
June 15, 2014	\$1,000.00	\$200.69	\$1,200.69
December 15, 2014	\$1,000.00	\$228.45	\$1,228.45
June 15, 2015	\$1,000.00	\$256.86	\$1,256.86
December 15, 2015	\$1,000.00	\$285.93	\$1,285.93
June 15, 2016	\$1,000.00	\$315.66	\$1,315.66
December 15, 2016	\$1,000.00	\$346.09	\$1,346.09
June 15, 2017	\$1,000.00	\$377.22	\$1,377.22
December 15, 2017	\$1,000.00	\$409.06	\$1,409.06
June 15, 2018	\$1,000.00	\$441.65	\$1,441.65
December 15, 2018	\$1,000.00	\$474.99	\$1,474.99
June 15, 2019	\$1,000.00	\$509.09	\$1,509.09
December 15, 2019	\$1,000.00	\$543.99	\$1,543.99
June 15, 2020	\$1,000.00	\$579.70	\$1,579.70
December 15, 2020	\$1,000.00	\$616.23	\$1,616.23
June 15, 2021	\$1,000.00	\$653.60	\$1,653.60
December 15, 2021	\$1,000.00	\$691.84	\$1,691.84
June 15, 2022	\$1,000.00	\$730.97	\$1,730.97
December 15, 2022	\$1,000.00	\$771.00	\$1,771.00
June 15, 2023	\$1,000.00	\$811.95	\$1,811.95

If less than all of the Securities are to be redeemed, the Trustee shall select the Securities or portions thereof to be redeemed by lot, or in its discretion, on a pro rata basis or by any other method the Trustee shall deem fair and reasonable. If any Security is to be redeemed in part only, a new Security in Principal Amount at Issuance equal to the unredeemed portion of Principal Amount at Issuance will be issued. If a portion of a Holder's Securities is selected for partial redemption and such Holder converts a portion of its Securities, the converted portion will be deemed to be of the portion selected for redemption.

In the case of any redemption of Securities, interest installments whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities of record as of the close of business on the relevant record date referred to on the face hereof. Securities (or portions thereof) whose redemption and payment is made in accordance with the Indenture shall cease to bear interest from and after the date of redemption.

4. Repurchase by the Company at the Option of the Holder.

Each Holder may require the Company to repurchase on June 15, 2010, June 15, 2013 and June 15, 2018, all or a portion of such Holder's Securities, at a repurchase price equal to 100% of the Accreted Principal Amount plus any accrued and unpaid interest (including Contingent Interest and Additional Amounts) to but excluding the Optional Repurchase Date. Any Securities purchased on June 15, 2010 will be paid for in cash. Securities purchased on June 15, 2013 and June 15, 2018 may be purchased in cash, shares of Common Stock or a combination of cash and shares of Common Stock at the Company's option, provided, however that any accrued and unpaid interest (including Contingent Interest and Additional Amounts) will be paid in cash.

In addition, upon the occurrence of a Fundamental Change, each Holder may require the Company to repurchase for cash all or a portion of such Holder's Securities, at a purchase price in cash equal to the Accreted Principal Amount on the Fundamental Change Repurchase Date plus any accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any, to, but excluding, the date of repurchase. Securities submitted for repurchase must have a Principal Amount at Issuance equal to \$1,000 or multiples of \$1,000.

Holder's have the right to withdraw any Optional Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

5. Conversion.

Under the circumstances provided for in, and subject to compliance with the provisions of, the Indenture, a Holder of a Security may, at such Holder's option, convert such Security (or any portion thereof equal to \$1,000 Principal Amount at Issuance or multiples of \$1,000 in excess thereof) into shares of Common Stock at the Conversion Rate in effect at the time of conversion; provided, however, that if the Security is called for redemption pursuant to Article Eleven of the Indenture or is submitted or presented for repurchase pursuant to Articles Fourteen or Fifteen of the Indenture, the conversion right will terminate at the close of business on the second Business Day immediately preceding the Redemption Date, Optional Repurchase Date or the Fundamental Change Repurchase Date, as the case may be, for such Security or such earlier date as the Holder presents such Security for redemption or repurchase (unless the Company shall default in paying the redemption payment, Optional Repurchase Price or Fundamental Change Repurchase Price, as the case may be, when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed or purchased, as the case may be).

The Company will notify Holders of any event triggering the right to convert the Security as specified above in accordance with the Indenture.

A Security in respect of which a Holder has delivered an Optional Repurchase Notice or a Fundamental Change Repurchase Notice exercising the option of such Holder to require the Company to repurchase such Security may be converted only if such notice is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is fifty (50) shares of Common Stock per \$1,000 Principal Amount at Issuance (with no adjustment provided for any accretion from and after June 15, 2010), subject to adjustment under certain circumstances. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Sale Price of the Common Stock on the Trading Day immediately prior to the Conversion Date.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice set forth below and deliver such notice to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any transfer or similar tax, if required. The Conversion Agent may assume that any Holder that delivers a conversion notice is entitled to convert this Security without independent verification.

A Holder may convert a portion of the Securities of this series only if the Principal Amount at Issuance of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment shall be made for dividends on the Common Stock except as provided in the Indenture. On conversion of Securities of this series, that portion of accrued and unpaid interest, including Contingent Interest and Additional Amounts, if any, and accrued Principal Accretion on such Securities attributable to the period from the most recent Interest Payment Date (or, if no Interest Payment Date has occurred, from the original issue date) through the Conversion Date and Tax Original Issue Discount accrued through the Conversion Date with respect to such converted Securities shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the Common Stock (together with any cash payment in lieu of fractional shares) in exchange for such Securities being converted pursuant to the provisions hereof, and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for accrued and unpaid interest (including Contingent Interest and Additional Amounts, if any), accrued Principal Accretion and Tax Original Issue Discount accrued through the Conversion Date and the balance, if any, of such fair market value of such Common Stock (and any such cash payment), shall be treated as issued in exchange for the Principal Amount at Issuance of such Securities being converted pursuant to the provisions hereof.

6. Calculations.

The Company will be responsible for making all calculations called for under this Security. These calculations include, but are not limited to, determinations of accrued interest, including Contingent Interest and Additional Amounts, the Redemption Price, the Conversion Price, the Optional Repurchase Price, the Fundamental Change Repurchase Price, the Sale Price of the Company's Common Stock and other calculations related to a Holder's conversion rights. The Company will make these calculations in good faith and, absent manifest error, the

calculations will be final and binding on any Holder of this Security. The Company will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent is entitled to rely upon the accuracy of such calculations with independent verification. The Trustee may forward the Company's calculations to any Holder of this Security upon request.

7. Events of Default.

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

8. Transfer; Exchange; Registration.

If this Security is in certificated form, then as provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable on the Security Register of the Company, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in denominations of \$1,000 of the Principal Amount at Issuance and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, the Securities are exchangeable for a like aggregate Principal Amount at Issuance of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any registration of transfer or exchange or redemption of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to and at the time of due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes (subject to provisions with respect to record dates for the payment of interest), whether or not this Security is overdue, and neither the Company, the Trustee nor any agent shall be affected by notice to the contrary.

If this Security is a Global Security, except as described below, it is not exchangeable for a Security or Securities in certificated form. The Securities will be delivered in certificated form if (i) the Depositary ceases to be registered as a clearing agency under the Exchange Act or is no longer willing or able to provide securities depository services with respect to the Securities, (ii) the Company so determines or (iii) there shall have occurred an Event of Default or an event which, with the giving of notice or lapse of time or both, would constitute an Event of Default with respect to the Securities represented by such Global Security and such Event of Default or

event continues for a period of 90 days. Upon any such issuance, the Trustee is required to register such certificated Security in the name of, and cause the same to be delivered to, such Person or Persons (or the nominee of any thereof).

At any time when the Company is not subject to Sections 13 or 15(d) of the Exchange Act, upon the written request of a Holder of a Security, the Company will promptly furnish or cause to be furnished Rule 144A Information to such Holder or to a prospective purchaser of such Security who such Holder informs the Company is reasonably believed to be a Qualified Institutional Buyer, as the case may be, in order to permit compliance by such Holder with Rule 144A under the Securities Act.

9. Amendment.

The Indenture permits, with certain exceptions (including certain amendments permitted without the consent of any Holders) as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a specified percentage of the Principal Amount at Issuance of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages of the Principal Amount at Issuance of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by or on behalf of the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent or waiver is made upon this Security.

10. No Impairment of Obligations.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company or any other obligor upon the Securities (in the event such other obligor is obligated to make payments in respect of the Securities), which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Security at the times, place, and rate, and in the coin or currency, herein prescribed.

11. Governing Law.

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF).

12. Defined Terms.

All terms used in this Security which are defined in the Indenture and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

OPTION OF HOLDER TO ELECT PURCHASE

If you wish to have this Security purchased by the Company pursuant to Article Fourteen (Fundamental Change Notice) or Article Fifteen (Optional Repurchase Notice), as applicable, of the Indenture, check the Box: Article Fourteen [] Article Fifteen [].

If you wish to have a portion of this Security purchased by the Company pursuant to Article Fourteen or Article Fifteen, as applicable, of the Indenture, state the amount (in Principal Amount at Issuance): \$_____.

If certificated, the certificate numbers of the Securities to be delivered for repurchase are _____.

Date: _____ Your Signature: _____

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

Signature Guarantee: _____

[Signature must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15]

CONVERSION NOTICE

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

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

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

(insert other person's name)

(insert other person's social security or tax identification number)

(insert other person's address and zip code)

Date: _____

Signature: _____

Section 204. Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication shall be included on the Securities and shall be substantially in the form as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

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

WELLS FARGO BANK,
NATIONAL ASSOCIATION,
As Trustee

By: _____
Authorized Signatory

ARTICLE THREE

THE SECURITIES

Section 301. Title and Terms.

The initial Principal Amount at Issuance of Securities which will be authenticated and delivered under this Indenture is \$98,000,000 in principal amount of Securities, except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 303, 304, 305, 306, 307, 308, 906, Article Eleven, Article Fourteen or Article Fifteen.

The Securities shall be known and designated as the "Convertible Senior Notes due 2023" of the Company. The Stated Maturity of the Securities shall be June 15, 2023. On June 15, 2023, the Company shall pay to the Holder of the Securities the Accreted Principal Amount of the Securities held by such Holder plus accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any. The Securities shall (i) bear from June 15, 2003, or from the most recent Interest Payment Date to which interest has been paid or provided for, to, but not including June 15, 2010, cash interest at an annual rate of 4.625% of the Principal Amount at Issuance and (ii) from and after June 15, 2010 no cash interest shall be paid. Cash interest on the Securities is payable semi-annually in arrears on June 15 and December 15 of each year, with the first Interest Payment Date being December 15, 2003, and will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each payment of cash interest on this Security will include interest accrued through the day before the applicable Interest Payment Date (or Optional Repurchase Date, Fundamental Change Repurchase Date, Redemption Date or, in certain circumstances, Conversion Date, as the case may be).

Accretion on the Principal Amount at Issuance of the Securities will begin on June 15, 2010. The calculation of the Principal Accretion will be on a semi-annual bond equivalent basis using a 360-day year comprised of twelve 30-day months and the Accreted Principal Amount of a Security will accrete in an amount so that when combined with the cash interest payable on the Securities, the yield to Maturity of the Securities will be 4.625%, as specified in the definition of "Principal Accretion" herein.

Any Contingent Interest payable hereunder, and any Additional Amounts payable pursuant to the Registration Rights Agreement, will be deemed to be interest for purposes of this Indenture.

The Accreted Principal Amount and interest on the Securities shall be payable at the office or agency of the Company maintained for such purpose; provided, however, that at the option of the Company interest may be paid (i) by check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Security Register or (ii) by wire transfer in immediately available funds to an account specified (not later than one Business Day prior to the applicable Interest Payment Date) by the Holder thereof. If any of the Securities are held by the Depository, payments of interest may be made by wire transfer to the Depository. The Trustee is hereby initially designated as the Paying Agent under this Indenture.

The Securities shall be convertible into Common Stock of the Company subject to the terms of and to the extent described in Article Four.

The Securities shall be redeemable as provided in Article Eleven.

The Securities shall be repurchased, at the option of the Holder, upon a Fundamental Change as provided in Article Fourteen of this Indenture or upon the Optional Repurchase Date as provided in Article Fifteen of this Indenture.

Section 302. Denominations.

The Securities shall be issuable only in registered form without coupons and only in denominations of \$1,000 of the Principal Amount at Issuance and any integral multiple thereof.

Section 303. Execution, Authentication, Delivery and Dating.

The Securities shall be executed on behalf of the Company by one of its Chairman of the Board, its President or one of its Vice Presidents attested by its Secretary or one of its Assistant Secretaries. The signature of any officer on the Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities; and the Trustee in accordance with such Company Order shall authenticate and deliver such Securities as provided in this Indenture and not otherwise.

Each Security shall be dated the date of its authentication.

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

In case the Company, pursuant to Article Eight, shall be consolidated, merged with or into any other Person or shall sell, assign, convey, transfer or lease substantially all of its properties and assets to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which the Company shall have been merged, or the Person which shall have received a sale, assignment, conveyance, transfer or lease as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article Nine, any of

the Securities authenticated or delivered prior to such consolidation, merger, sale, assignment, conveyance, transfer or lease may, from time to time, at the request of the successor Person, be exchanged for other Securities executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Company Request of the successor Person, shall authenticate and deliver Securities as specified in such request for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section in exchange or substitution for or upon registration of transfer of any Securities, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Securities at the time Outstanding for Securities authenticated and delivered in such new name.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities on behalf of the Trustee. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Security Registrar or Paying Agent to deal with the Company and its Affiliates.

Section 304. Temporary Securities.

Pending the preparation of definitive Securities, the Company may execute, and upon Company Order, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 1002, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 305. Global Securities.

(a) Each Global Security initially shall (i) be registered in the name of the Depositary for such Global Security or the nominee of such Depositary, (ii) be deposited with, or on behalf of, the Depositary or with the Trustee as custodian for such Depositary and (iii) bear a legend as set forth in Section 202(a); provided, however, the Securities are eligible to be in the form of a Global Security.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under the Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company from giving effect to any written certification, proxy or other authorization furnished by the Depositary or shall impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any Security.

(b) Transfers of the Global Security shall be limited to transfers of such Global Security in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depositary and the provisions of Section 307. Under the circumstances described in clause (a) above, and in this clause (b) below, beneficial owners shall obtain physical securities in the form set forth in Sections 202, 203 and 204 ("Physical Securities") in exchange for their beneficial interests in a Global Security in accordance with the Depositary's and the Securities Registrar's procedures. In connection with the execution, authentication and delivery of such Physical Securities, the Security Registrar shall reflect on its books and records a decrease in the principal amount of the Global Security equal to the principal amount of such Physical Securities and the Company shall execute and the Trustee shall authenticate and deliver one or more Physical Securities having an equal aggregate principal amount. The Securities will be delivered in certificated form if (i) the Depositary ceases to be registered as a clearing agency under the Exchange Act or is not willing or no longer willing or able to provide securities depository services with respect to the Securities and a successor depository is not appointed by the Company within 90 days, (ii) the Company, in its sole discretion, so determines or (iii) there shall have occurred an Event of Default or an event which, with the giving of notice or lapse of time or both, would constitute an Event of Default with respect to the Securities represented by such Global Security and such Event of Default or event continues for a period of 90 days.

(c) In connection with any transfer of a portion of the beneficial interest in a Global Security pursuant to subsection (b) of this Section to beneficial owners who are required to hold Physical Securities, the Security Registrar shall reflect on its books and records the date and a decrease in the principal amount of a Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Physical Securities of like tenor and amount.

(d) In connection with the transfer of the entire Global Security to beneficial owners pursuant to subsection (b) of this Section, a Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in a Global Security, an equal aggregate principal amount of Physical Securities of authorized denominations.

(e) Any Physical Security delivered in exchange for an interest in Global Securities pursuant to subsection (c) or subsection (d) of this Section shall, except as otherwise provided in Section 307, bear the Restricted Securities Legend.

(f) The registered holder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(g) The Depositary or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Depositary's customary procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members.

Section 306. Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee, or such other office as the Trustee may designate, a register (the register maintained in such office and in any other office or agency designated pursuant to Section 1002 being herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as the Security Registrar may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee or an agent thereof or of the Company shall initially be the "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security at the office or agency of the Company designated pursuant to Section 1002, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination or denominations, of a like aggregate principal amount.

Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interest in such Global Security may be effected only through a book-entry system maintained by the Holder of such Global Security (or its agent), and that ownership of a beneficial interest in the Securities shall be required to be reflected in a book entry.

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities of the same series which the Holder making the exchange is entitled to receive.

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

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

No service charge shall be made to a Holder for any registration of transfer or exchange or redemption of Securities, but the Company may require payment of a sum sufficient to pay all documentary, stamp or similar issue or transfer taxes or other governmental charges that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 303, 304, 305, 306, 307, 308, 906 or Article Eleven, Article Fourteen or Article Fifteen not involving any transfer.

The Company shall not be required (a) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business (i) 15 days before the date of selection of Securities for redemption under Section 1104 (which date of selection is the date on which the Company issued a notice of redemption) and ending at the close of business on the day of such selection or (ii) 15 days before an Interest Payment Date and ending on the close of business on the Interest Payment Date, (b) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of Securities being redeemed in part or (c) to exchange or register a transfer of any Securities surrendered for conversion or, if a portion of any Security is surrendered for conversion, the portion thereof surrendered for conversion.

Every Restricted Security shall be subject to the restrictions on transfer provided in the legend required to be set forth on the face of each Restricted Security pursuant to Section 202(a), and the restrictions set forth in this Section 306, and the Holder of each Restricted Security, by such Holder's acceptance thereof (or interest therein), agrees to be bound by such restrictions on transfer.

The restrictions imposed by this Section 306 upon the transferability of any particular Restricted Security shall cease and terminate on (a) the later of two years from their date of issuance or two years after the last date on which the Company or any Affiliate of the Company was the owner of such Restricted Security (or any predecessor of such Restricted Security) or (b) (if earlier) if and when such Restricted Security has been sold pursuant to an effective registration statement under the Securities Act or transferred pursuant to Rule 144 or under the Securities Act (or any successor provision), unless the Holder thereof is an affiliate of the Company within the meaning of Rule 144 (or such successor provisions). Any Restricted Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon surrender of such Restricted Security for exchange to the Security Registrar in accordance with the provision of this Section 306 (accompanied, in the event that such restrictions on transfer have terminated pursuant to Rule 144 (or any successor

provision), by an Opinion of Counsel satisfactory to the Company and the Trustee, to the effect that the transfer of such Restricted Security has been made in compliance with Rule 144 (or any such successor provision)), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend. The Company shall inform the Trustee of the effective date of any Registration Statement registering the Securities under the Securities Act no later than two Business Days after such effective date.

Except as provided in the preceding paragraph, any Security authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, any Global Security, whether pursuant to this Section, Section 304, 308, 906 or 1108 or otherwise, shall also be a Global Security and bear the legend specified in Section 202(a).

Section 307. Special Transfer Provisions.

Unless and until a Security is sold under an effective Registration Statement pursuant to the Registration Rights Agreement, the following provisions shall apply (except to the extent inconsistent with the Applicable Procedures):

(a) Restricted Securities Legend. Rule 144A Global Securities and their successor securities shall bear a Restricted Securities Legend, subject to the following:

(i) subject to the following clauses of this Section 307(a), a Security or any portion thereof which is exchanged, upon transfer or otherwise, for a Global Security or any portion thereof shall bear the Restricted Securities Legend borne by such Global Security while represented thereby;

(ii) subject to the following Clauses of this Section 307(a), a new Security which is not a Global Security and is issued in exchange for another Security (including a Global Security) or any portion thereof, upon transfer or otherwise, shall bear the Restricted Securities Legend borne by such other Security;

(iii) All Securities included on or sold or otherwise disposed of pursuant to an effective registration statement under the Securities Act, together with their respective successor securities, shall not bear a Restricted Securities Legend (and in such event the Company shall exchange a Global Security which bears the Restricted Securities Legend, in whole or in part, for one or more Global Securities which do not have such rights;

(iv) at any time after the Securities may be freely transferred without registration under the Securities Act or without being subject to transfer restrictions pursuant to the Securities Act, a new Security which does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security (other than a Global Security) or any portion thereof which bears such a legend if the Trustee has received an Unrestricted Securities Certificate substantially in the form of Exhibit B hereto, satisfactory to the Trustee and duly executed by the

Holder of such legended Security or his attorney duly authorized in writing, and after such date and receipt of such certificate, the Trustee shall authenticate and deliver such a new Security in exchange for or in lieu of such other Security as provided in this Article Three;

(v) a new Security which does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Security (other than a Global Security) or any portion thereof which bears such a legend if, in the Company's judgment, placing such a legend upon such new Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the direction of the Company, shall authenticate and deliver such a new Security as provided in this Article Three.

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

The Security Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 306 or this Section 307. 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 Security Registrar.

Section 308. Mutilated, Destroyed, Lost and Stolen Securities.

If (a) any mutilated Security is surrendered to the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee, such security or indemnity, in each case, as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser or protected purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a replacement Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a replacement Security, pay such Security.

Upon the issuance of any replacement Securities under this Section, the Company may require the payment of a sum sufficient to pay all documentary, stamp or similar issue or transfer taxes or other governmental charges that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every replacement Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of

the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

Section 309. Payment of Interest; Interest Rights Preserved.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date and interest on such defaulted interest at the then applicable interest rate borne by the Securities, to the extent lawful (such defaulted interest and interest thereon herein collectively called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the Regular Record Date; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in subsection (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities 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 Security and the date (not less than 30 days after such notice) of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this subsection provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company in writing of such Special Record Date. In the name and at the expense of the Company, the Trustee 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 Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities are registered on such Special Record Date and shall no longer be payable pursuant to the following subsection (b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after

written notice given by the Company to the Trustee of the proposed payment pursuant to this Subsection, such payment shall be deemed practicable by the Trustee.

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

Section 310. Persons Deemed Owners.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 309) interest on such Security, for the purpose of conversion and for all other purposes whatsoever, including payment of any Redemption Price, Optional Redemption Price or Fundamental Change Repurchase Price, whether or not such Security is overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. No holder of any beneficial interest in any Global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such Global Security, and such Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository (or its nominee) as Holder of any Security.

Section 311. Cancellation.

All Securities surrendered for payment, purchase, redemption, conversion, registration of transfer or exchange shall be delivered to the Trustee (even if initially surrendered to a Person other than the Trustee) and, if not already cancelled, shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section or for any Securities that any Holder has converted pursuant to this Indenture, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be destroyed and certification of their destruction delivered to the Company unless by a Company Order the Company shall direct that the cancelled Securities be returned to it. The Trustee shall provide the Company a list of all Securities that have been cancelled from time to time as requested by the Company.

Section 312. Computation of Interest.

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

Section 313. CUSIP Numbers.

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

ARTICLE FOUR

CONVERSION

Section 401. Conversion Privilege.

(a) Subject to and upon compliance with the provisions of this Article, at the option of the Holder, any Security or any portion thereof which is an integral multiple of \$1,000 of the Principal Amount at Issuance may be converted into duly authorized, fully paid and nonassessable shares of Common Stock if any of the conditions to conversion set forth in this Section 401 are satisfied. The number of shares of Common Stock issuable upon conversion of a Security (the "Conversion Rate") shall be determined at a Conversion Rate of fifty (50) shares of Common Stock per \$1,000 of the Principal Amount at Issuance of the Securities (and with no effect given to any accretion on the principal amount after June 15, 2010), other than pursuant to Section 401(a)(ii), subject to the adjustments in Section 406.

(i) Conversion Upon Satisfaction of Common Stock Price Conditions

Any Holder may surrender all or any portion of his or her Securities for conversion into Common Stock (at the then applicable Conversion Rate) during any Calendar Quarter if, as of the last day of the preceding Calendar Quarter, the Sale Price of the Common Stock for at least 20 Trading Days in the 30 Trading Day period ending on the last day of such preceding Calendar Quarter exceeds 120% of the Accreted Conversion Price per share of Common Stock on the last Trading Day of such preceding Calendar Quarter (the Sale Price of the Common Stock at or above which the Securities may be converted being referred to herein as the "Conversion Trigger Price").

The table below shows the Conversion Trigger Price per share of Common Stock in respect of each Calendar Quarter during the life of the Securities based on the initial Conversion Rate, assuming that no events have occurred that would require an adjustment to the Conversion Rate.

Quarter -----	(1) Accreted Conversion Price Per Share -----	(2) Percentage -----	(3) Conversion Trigger Price (1) x (2) -----
On or before June 30, 2010	\$20.00	120%	\$24.00
Quarter Ending September 30, 2010	\$20.23	120%	\$24.28
Quarter Ending December 31, 2010	\$20.46	120%	\$24.56
Quarter Ending March 31, 2011	\$20.70	120%	\$24.84
Quarter Ending June 30, 2011	\$20.94	120%	\$25.12
Quarter Ending September 30, 2011	\$21.18	120%	\$25.41
Quarter Ending December 31, 2011	\$21.42	120%	\$25.70
Quarter Ending March 31, 2012	\$21.67	120%	\$26.00
Quarter Ending June 30, 2012	\$21.92	120%	\$26.30
Quarter Ending September 30, 2012	\$22.17	120%	\$26.60
Quarter Ending December 31, 2012	\$22.42	120%	\$26.91
Quarter Ending March 31, 2013	\$22.68	120%	\$27.22
Quarter Ending June 30, 2013	\$22.94	120%	\$27.53
Quarter Ending September 30, 2013	\$23.20	120%	\$27.85
Quarter Ending December 31, 2013	\$23.47	120%	\$28.17
Quarter Ending March 31, 2014	\$23.74	120%	\$28.49
Quarter Ending June 30, 2014	\$24.01	120%	\$28.82
Quarter Ending September 30, 2014	\$24.29	120%	\$29.15
Quarter Ending December 31, 2014	\$24.57	120%	\$29.48
Quarter Ending March 31, 2015	\$24.85	120%	\$29.82
Quarter Ending June 30, 2015	\$25.14	120%	\$30.16
Quarter Ending September 30, 2015	\$25.43	120%	\$30.51
Quarter Ending December 31, 2015	\$25.72	120%	\$30.86
Quarter Ending March 31, 2016	\$26.01	120%	\$31.22
Quarter Ending June 30, 2016	\$26.31	120%	\$31.58
Quarter Ending September 30, 2016	\$26.62	120%	\$31.94
Quarter Ending December 31, 2016	\$26.92	120%	\$32.31
Quarter Ending March 31, 2017	\$27.23	120%	\$32.68
Quarter Ending June 30, 2017	\$27.54	120%	\$33.05
Quarter Ending September 30, 2017	\$27.86	120%	\$33.43
Quarter Ending December 31, 2017	\$28.18	120%	\$33.82
Quarter Ending March 31, 2018	\$28.51	120%	\$34.21
Quarter Ending June 30, 2018	\$28.83	120%	\$34.60
Quarter Ending September 30, 2018	\$29.16	120%	\$35.00
Quarter Ending December 31, 2018	\$29.50	120%	\$35.40
Quarter Ending March 31, 2019	\$29.84	120%	\$35.81
Quarter Ending June 30, 2019	\$30.18	120%	\$36.22
Quarter Ending September 30, 2019	\$30.53	120%	\$36.63
Quarter Ending December 31, 2019	\$30.88	120%	\$37.06

Quarter -----	(1) Accreted Conversion Price Per Share -----	(2) Percentage -----	(3) Conversion Trigger Price (1) x (2) -----
Quarter Ending March 31, 2020	\$31.23	120%	\$37.48
Quarter Ending June 30, 2020	\$31.59	120%	\$37.91
Quarter Ending September 30, 2020	\$31.96	120%	\$38.35
Quarter Ending December 31, 2020	\$32.32	120%	\$38.79
Quarter Ending March 31, 2021	\$32.70	120%	\$39.24
Quarter Ending June 30, 2021	\$33.07	120%	\$39.69
Quarter Ending September 30, 2021	\$33.45	120%	\$40.14
Quarter Ending December 31, 2021	\$33.84	120%	\$40.60
Quarter Ending March 31, 2022	\$34.23	120%	\$41.07
Quarter Ending June 30, 2022	\$34.62	120%	\$41.54
Quarter Ending September 30, 2022	\$35.02	120%	\$42.02
Quarter Ending December 31, 2022	\$35.42	120%	\$42.50
Quarter Ending March 31, 2023	\$35.83	120%	\$42.99
Period Ending June 15, 2023	\$36.24	120%	\$43.49

(ii) Conversion Upon Satisfaction of Security

Price Conditions

Any Holder may surrender all or any portion of his or her Securities for conversion into Common Stock during the five consecutive Trading Day period following any 10 consecutive Trading Day period in which (A) the Security Price of the Securities for each Trading Day during such 10 day period was less than 105% of the Conversion Value for the Securities and (B) the Conversion Value for each Trading Day during such 10 day period was less than 90% of the Accreted Principal Amount of the Securities; provided, however, that to the extent a Holder converts Securities pursuant to this provision, such Holder will receive a number of shares of Common Stock equal to the lesser of (A) the number of shares of Common Stock that the Holder would receive using a Conversion Rate equal to the Conversion Rate on the last Trading Day preceding the Conversion Date or (B) the number of shares of Common Stock equal to the Accreted Principal Amount of the Securities being converted divided by the Sale Price of the Common Stock on the last Trading Day preceding the Conversion Date.

(iii) Conversion Upon Notice of Redemption

Any Holder may surrender all or any portion of his or her Securities for conversion into Common Stock at the then-applicable Conversion Rate if the Company has called the Securities for redemption, at any time prior to the close of business on the day that is two Business Days prior to the Redemption Date, even if the Securities are not otherwise convertible at that time.

(iv) Conversion Upon a Credit Rating Event

Any Holder may surrender all or any portion of his or her Securities for conversion into Common Stock at any time at the then-applicable Conversion Rate, if the credit ratings assigned to the Securities by either Moody's or S&P are downgraded by two or more notches or the Securities cease to be rated; provided, however, that the Company has no obligation to have the Securities rated. For purposes of clarity, a credit rating will be deemed to have moved by two notches if, for example, it moves two notches within a category (e.g., BB+ to BB-).

(v) Conversion Upon Specified Corporate Transactions

Any Holder may surrender all or any portion of his or her Securities for conversion into Common Stock at any time at the then-applicable Conversion Rate if (A) the Company distributes to all holders of its shares of Common Stock rights or warrants entitling them (for a period expiring within 60 days of the record date for such distribution) to subscribe for or purchase shares of Common Stock, at a price per share less than the Sale Price of the Common Stock at the time of the announcement of such distribution, (B) the Company distributes to all holders of its shares of Common Stock, cash or other assets, debt securities or rights or warrants to purchase its securities, which distribution (together with all other distributions covered by this clause (B) not triggering a conversion right during the preceding 12 months) has a per share value exceeding 5% of the Sale Price of the Common Stock on the day preceding the declaration date for the distribution, or (C) a Fundamental Change occurs. In each case, the Security may be surrendered for conversion into shares of Common Stock at any time after the Company provides notice of such event (1) until the earlier of the close of business on the Business Day immediately prior to the Ex-Dividend Time or the date of the Company's announcement that the distribution will not take place, in the case of a distribution, or (2) until 40 days thereafter, in the case of a Fundamental Change. The Company will provide notice to the Holders at least 20 days prior to the Ex-Dividend Time for a distribution or within 20 business days of the occurrence of a Fundamental Change, as the case may be, of the occurrence of any such event. In the case of a distribution, Holders may not convert Securities if they will otherwise participate in the distribution without conversion as a result of holding the Securities, or

In addition, any Holder may surrender all or any portion of his or her Securities for conversion into Common Stock at any time at the then-applicable Conversion Rate if the Company consolidates with or merges into another corporation, or is a party to a binding share exchange pursuant to which the shares of Common Stock would be converted into cash, securities or other property as set forth in Section 411 hereof. In such event, the Security may be surrendered for conversion at any time from and after the date which is 15 days prior to the date announced by the Company as the anticipated effective time of such transaction until 15 days after the actual date of such transaction. In the event a Holder does not convert its Security during this time period, such Holder will be entitled to receive, upon conversion, the kind and amount of cash, securities or other property that it would have received if it had converted its Security immediately prior to such consolidation, merger or binding share exchange.

(b) The Company shall determine on a daily basis whether the Security shall be convertible as a result of the occurrence of an event specified in clause (a)(i) or clause (a)(ii) above and, if the Security shall be so convertible, the Company shall promptly deliver to the Trustee written notice thereof. Whenever the Security shall become convertible pursuant to Section 401, the Company or, at the Company's written request, the Trustee in the name and at the expense of the Company, shall notify the Holders of the event triggering such convertibility in the manner provided in Section 402, and the Company shall also publicly announce such information and publish it on the Company's web site (or otherwise broadly disseminate the information in any manner deemed reasonable by the Company). Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

Notwithstanding the foregoing, if such Security is called for redemption pursuant to Article Eleven or is submitted or presented for repurchase pursuant to Articles Fourteen or Fifteen, such conversion right shall terminate at the close of business on the second Business Day immediately preceding the Redemption Date, Optional Repurchase Date or Fundamental Change Repurchase Date, as the case may be, for such Security or such earlier date as the Holder presents such Security for redemption or for purchase (unless the Company shall default in making the Redemption Price, Optional Repurchase Price or Fundamental Change Repurchase Price payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed or purchased, as the case may be). If such Security is submitted or presented for purchase pursuant to Article Fourteen or Article Fifteen and is then subsequently withdrawn, such conversion right shall no longer be deemed terminated, and the Holder of such Security may convert such Security pursuant to this Section 401.

A Security in respect of which a Holder has delivered an Fundamental Change Repurchase Notice pursuant to Section 1401 or an Optional Repurchase Notice pursuant to Section 1501(c) exercising the option of such Holder to require the Company to repurchase such Security may be converted only if such Fundamental Change Repurchase Notice or Optional Repurchase Notice, as the case may be, is withdrawn by a written notice of withdrawal delivered to a Paying Agent prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date or Optional Repurchase Date, as the case may be, in accordance with Sections 1402 or 1502, respectively.

A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities to Common Stock, and only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article Four.

Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

Section 402. Conversion Procedures.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice on the back of the Security and deliver such notice to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) furnish appropriate endorsements and transfer

documents if required by a Conversion Agent, and (d) pay any transfer or similar tax, if required. The date on which the Holder satisfies all of those requirements is the "Conversion Date." The Conversion Agent may assume that any Holder that delivers such conversion notice is entitled to convert the Security without independent investigation. As soon as practicable after the Conversion Date, but in any event no later than the fifth Business Day following the Conversion Date, the Company shall deliver to the Holder through a Conversion Agent a certificate for the number of whole shares of Common Stock issuable upon the conversion and cash in lieu of any fractional shares pursuant to Section 403. The Company shall set forth the full number of shares and the amounts of the required cash in lieu of fractional shares in an Officers' Certificate delivered to the Conversion Agent. Anything herein to the contrary notwithstanding, in the case of Global Securities, conversion notices may be delivered and such Securities may be surrendered for conversion in accordance with the Applicable Procedures as in effect from time to time.

The person in whose name the Common Stock certificate is registered shall be deemed to be a stockholder of record on the Conversion Date; provided, however, that no surrender of a Security 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; provided, further, that such conversion shall be at the Conversion Rate in effect on the Conversion Date as if the stock transfer books of the Company had not been closed on such date. Upon conversion of a Security, such person shall no longer be deemed a Holder of such Security.

Securities surrendered for conversion (in whole or in part) during the period from the close of business on any Regular Record Date for an interest payment to the opening of business on the next succeeding Interest Payment Date (excluding Securities or portions thereof called for redemption on a Redemption Date during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day) shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the aggregate Principal Amount at Issuance of such Security then being converted, and such interest shall be payable to such registered Holder notwithstanding the conversion of such Security, subject to the provisions of this Indenture relating to the payment of Defaulted Interest by the Company. Accordingly, a Holder shall be entitled to receive accrued and unpaid interest, including any Contingent Interest, in respect of a Security if the Company calls such Security for redemption and such Holder converts its Security prior to the Redemption Date. Except as otherwise provided in this Section 402, no payment or adjustment will be made for accrued interest on a converted Security. If the Company defaults in the payment of interest payable on such Interest Payment Date, the Company shall promptly repay such funds to such Holder.

If Contingent Interest is payable to Holders of Securities during any particular Contingent Interest Period, and such Securities are converted after the applicable Regular Record

Date therefor and prior to the next succeeding Interest Payment Date, holders of such Securities at the close of business on the Regular Record Date will receive the Contingent Interest payable on such Securities on the corresponding Interest Payment Date notwithstanding the conversion. Such Securities, upon surrender for conversion, must be accompanied by funds equal to the amount of Contingent Interest payable on the Principal Amount at Issuance of Securities so converted, unless such Securities have been called for redemption, in which case no such payment shall be required.

Nothing in this Section shall affect the right of a Holder in whose name any Security is registered at the close of business on a record date to receive the interest payable on such Security on the related Interest Payment Date in accordance with the terms of this Indenture and the Securities. If a Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the aggregate Principal Amount at Issuance of Securities converted.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security equal in principal amount to the unconverted portion of the Security surrendered.

If a Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the total principal amount of the Securities converted.

If the last day on which Securities may be converted is not a Business Day in a place where a Conversion Agent is located, the Securities may be surrendered to that Conversion Agent on the next succeeding day that is a Business Day.

Except as otherwise stated in this Indenture, the Company will not make any payment in cash or Common Stock or any other adjustment for accrued and unpaid interest (including Contingent Interest and Additional Amounts) or accrued Principal Accretion or Tax Original Issue Discount on the Securities or dividends in connection with the issuance of any Common Stock issued upon conversion of the Securities. On conversion of a Security, except as otherwise stated herein, a Holder will not receive any cash payment or additional shares in respect thereof representing accrued Principal Accretion, accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) and Tax Original Issue Discount. Delivery by the Company to the Holder of the full number of shares of Common Stock into which the Security is convertible, together with any cash payment for such Holder's fractional shares, will be deemed to satisfy the Company's obligation to pay the Principal Amount at Issuance of the Security and to satisfy its obligation to pay accrued Principal Accretion or any accrued and unpaid interest (including Contingent Interest and Additional Amounts) and Tax Original Issue Discount attributable to the period from the Issue Date through the Conversion Date. As a result, accrued Principal Accretion, any accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) and Tax Original Issue Discount is deemed paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the foregoing, accrued cash interest (including Contingent Interest and Additional Amounts), if any, will be payable upon any

conversion of the Securities at the option of the Holder made concurrently with or after acceleration of the Securities following an Event of Default under the Securities.

Section 403. Fractional Shares.

The Company will not issue fractional shares of Common Stock upon conversion of Securities. In lieu thereof, the Company will pay an amount in cash based upon the Sale Price of the Common Stock on the Trading Day immediately prior to the Conversion Date.

Section 404. Taxes on Conversion.

If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent shall refuse to deliver the certificate representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent 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 regulation.

Section 405. Company to Provide Stock.

The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities into shares of Common Stock.

All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or on the Nasdaq National Market or other over-the-counter market or such other market on which the Common Stock is then listed or quoted; provided, however, that if rules of such automated quotation system or exchange permit the Company to defer the listing of such Common Stock until the first conversion of the Securities into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Securities in accordance with the requirements of such automated quotation system or exchange at such time.

Section 406. Adjustment of Conversion Rate.

The Conversion Rate as stated in the Securities shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall (i) pay a dividend on its Common Stock in shares of Common Stock, (ii) make a distribution on its Common Stock in shares of Common Stock, (iii) subdivide its outstanding Common Stock into a greater number of shares, or (iv) combine its outstanding Common Stock into a smaller number of shares, the Conversion Rate in effect immediately prior thereto shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive that number of shares of Common Stock which it would have owned had such Security been converted immediately prior to the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of subdivision or combination.

(b) In case the Company shall issue rights, warrants or options to all or substantially all holders of its Common Stock entitling them (for a period commencing no earlier than the record date described below and expiring not more than 60 days after such record date) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a conversion price per share) less than the current market price per share of Common Stock (as determined in accordance with subsection (g) of this Section 406) on the record date for the determination of stockholders entitled to receive such rights, warrants or options, the Conversion Rate in effect immediately prior thereto shall be adjusted by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date, plus the number of shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible), and the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on such record date plus the number of shares of Common Stock which the aggregate offering price of the total number of shares of Common Stock so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered, which shall be determined by multiplying the number of shares of Common Stock issuable upon conversion of such convertible securities by the conversion price per share of Common Stock pursuant to the terms of such convertible securities) would purchase at the current market price per share (as defined in Section 406(g) herein). Such adjustment shall be made successively whenever any such rights, warrants or options are issued, and shall become effective immediately after such record date. If at the end of the period during which such rights, warrants or options are exercisable not all rights, warrants or options shall have been exercised, the adjusted Conversion Rate shall be immediately readjusted to what it would have been based upon the number of additional shares of Common Stock actually issued (or the number of shares of Common Stock issuable upon conversion of convertible securities actually issued). No adjustment shall be made hereunder if as a result the Conversion Rate would decrease.

(c) In case the Company shall distribute to all or substantially all holders of its Common Stock any Equity Interests of the Company (other than Common Stock), evidences of indebtedness or other non-cash assets (including securities of any person other than the Company but excluding dividends or distributions referred to in subsection (a)(i) or (ii) of this Section 406), or shall distribute to all or substantially all holders of its Common Stock rights, warrants or options to subscribe for or purchase any of its securities (excluding those rights and warrants referred to in subsection (b) of this Section 406), then in each such case the Conversion

Rate shall be adjusted by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the determination of shareholders entitled to such distribution by a fraction of which the numerator shall be the current market price per share of Common Stock (determined as provided in subsection (g) of this Section 406) on such record date and the denominator shall be such current market price less the fair market value (as determined by the Board of Directors whose determination shall be conclusive and described in a Board Resolution) on such date of the portion of the evidences of indebtedness, shares of capital stock, and other assets to be distributed or of such subscription rights or warrants applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date). Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of shareholders entitled to receive such distribution.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 406(c) (and no adjustment to the Conversion Rate under this Section 406(c) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Rate under this Section 406(c), (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Rate shall be readjusted as if such rights and warrants had never been issued.

(d) In case the Company shall, by dividend or otherwise, at any time distribute (a "Triggering Distribution" and such amount, together with the sum of (A) and (B) below, the "Combined Amount")) to all or substantially all holders of its Common Stock, cash in an aggregate amount that, together with the aggregate amount of (A) any cash and the fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the

Trustee) of any other consideration payable in respect of any tender offer by the Company or a Subsidiary of the Company for Common Stock consummated within the 12 months preceding the date of payment of the Triggering Distribution and in respect of which no Conversion Rate adjustment pursuant to this Section 406 has been made and (B) all other cash distributions to all or substantially all holders of its Common Stock made within the 12 months preceding the date of payment of the Triggering Distribution and in respect of which no Conversion Rate adjustment pursuant to this Section 406 has been made exceeds an amount equal to 5% of the product of the current market price per share of Common Stock (as determined in accordance with subsection (g) of this Section 406) on the Business Day (the "Determination Date") immediately preceding the day on which such Triggering Distribution is declared by the Company multiplied by the number of shares of Common Stock outstanding on the Determination Date (excluding shares held in the treasury of the Company), the Conversion Rate shall be adjusted by multiplying the Conversion Rate in effect immediately prior to the effectiveness of the Conversion Rate adjustment contemplated by this subsection (d) by a fraction (y) the numerator of which shall be such current market price per share of Common Stock (as determined in accordance with subsection (g) of this Section 406) on the Determination Date and (z) the denominator of which shall be (I) such current market price per share of Common Stock on the Determination Date less (II) the number obtained by dividing the Combined Amount by such number of shares of Common Stock outstanding on the Determination Date. Such adjustment shall become effective immediately prior to the opening of business following the date on which the Triggering Distribution is paid; provided that, in the event the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the market price per share of Common Stock, an adequate adjustment provision shall be made so that each holder of Securities shall have the right to receive upon conversion the amount of cash such holder would have received had such holder converted each Security immediately prior to such distribution.

(e) In case any tender offer made by the Company or any of its Subsidiaries for Common Stock shall expire and such tender offer (as amended upon the expiration thereof) (other than a transaction in connection with the creation of a Wholly-Owned Subsidiary of the Company which would hold all or substantially all of the Company's broadcast operations and would assume all or substantially all of the Company's debt other than the Securities) shall involve the payment of aggregate consideration in an amount (determined as the sum of the aggregate amount of cash consideration and the aggregate fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the Trustee thereof) of any other consideration) that, together with the aggregate amount of (A) any cash and the fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the Trustee) of any other consideration payable in respect of any other tender offers by the Company or any Subsidiary of the Company for Common Stock consummated within the 12 months preceding the date of the Expiration Date (as defined below) and in respect of which no Conversion Rate adjustment pursuant to this Section 406 has been made and (B) all cash distributions to all or substantially all holders of its Common Stock made within the 12 months preceding the Expiration Date and in respect of which no Conversion Rate adjustment pursuant to this Section 406 has been made, exceeds an

amount equal to 5% of the product of the current market price per share of Common Stock (as determined in accordance with subsection (g) of this Section 406) as of the last date (the "Expiration Date") tenders could have been made pursuant to such tender offer (as it may be amended) (the last time at which such tenders could have been made on the Expiration Date is hereinafter sometimes called the "Expiration Time") multiplied by the number of shares of Common Stock outstanding (including tendered shares but excluding any shares held in the treasury of the Company) at the Expiration Time, then, immediately prior to the opening of business on the day after the Expiration Date, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to close of business on the Expiration Date by a fraction of which the numerator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Common Stock based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares and any shares held in the treasury of the Company) at the Expiration Time and the current market price per share of Common Stock (as determined in accordance with subsection (g) of this Section 406) as of the Expiration Time, and the denominator of which shall be the product of the number of shares of Common Stock outstanding (including any tendered shares but excluding any shares held in the treasury of the Company) at the Expiration Time multiplied by the current market price per share of the Common Stock (as determined in accordance with subsection (g) of this Section 406) as of the Expiration Time, such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Date. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any or all such purchases or any or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate which would have been in effect based upon the number of shares actually purchased. If the application of this Section 406(e) to any tender offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer under this Section 406(e).

(f) For purposes of Section 406(d) or 406(e), the term "tender offer" shall mean and include both tender offers and exchange offers, all references to "purchases" of shares in tender offers (and all similar references) shall mean and include both the purchase of shares in tender offers and the acquisition of shares pursuant to exchange offers, and all references to "tendered shares" (and all similar references) shall mean and include shares tendered in both tender offers and exchange offers.

(g) For the purpose of any computation under subsections (b), (c) and (g) of this Section 406, the current market price per share of Common Stock (the "current market price per share") on any date shall be deemed to be the average of the daily Sale Price for the 30 consecutive Trading Days commencing 45 Trading Days before (i) the Determination Date or the Expiration Date, as the case may be, with respect to distributions or tender offers under subsection (c) of this Section 406 or (ii) the record date with respect to distributions, issuances or other events requiring such computation under subsection (b) or (c) of this Section 406. For

purposes of this Section 406, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company.

(h) In any case in which this Section 406 shall require that an adjustment be made following a record date or a Determination Date or Expiration Date, as the case may be, established for purposes of this Section 406, the Company may elect to defer (but only until five Business Days following the filing by the Company with the Trustee of the certificate described in Section 409) issuing to the Holder of any Security converted after such record date or Determination Date or Expiration Date the shares of Common Stock and other Equity Interests of the Company issuable upon such conversion over and above the shares of Common Stock and other Equity Interests of the Company issuable upon such conversion only on the basis of the Conversion Rate prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence prepared by the Company of the right to receive such shares. If any distribution in respect of which an adjustment to the Conversion Rate is required to be made as of the record date or Determination Date or Expiration Date therefor is not thereafter made or paid by the Company for any reason, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect if such record date had not been fixed or such effective date or Determination Date or Expiration Date had not occurred.

(i) Whenever adjustments to the Conversion Rate are called for pursuant to Article Four, such adjustments shall be made to the Conversion Rate as may be necessary or appropriate to effectuate the intent of this Article Four and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

Section 407. No Adjustment.

No adjustment in the Conversion Rate shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Rate as last adjusted; provided, however, that any adjustments which by reason of this Section 407 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article Four shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. After an adjustment is made to the Conversion Rate, any subsequent event requiring adjustment shall cause an adjustment to the Conversion Rate as adjusted.

No adjustment need be made for issuances of Common Stock pursuant to a Company plan for reinvestment of dividends or interest or for a change in the par value or a change to no par value of the Common Stock.

To the extent that the Securities become convertible into the right to receive cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

Section 408. Adjustment for Tax Purposes.

Upon 15 days prior notice to the Trustee and the Holders, the Company shall be entitled to make increases in the Conversion Rate, in addition to those required by Section 406, as it in its discretion shall determine to be advisable in order that any stock dividends, subdivisions of shares, distributions of rights to purchase stock or securities or distributions of securities convertible into or exchangeable for stock hereafter made by the Company to its stockholders or other similar event shall not be taxable or shall be taxable to a lesser degree to such stockholders.

Section 409. Notice of Adjustment.

Whenever the Conversion Rate or conversion privilege is adjusted, the Company shall promptly mail to Holders a notice of the adjustment and file with the Trustee and the Conversion Agent an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. Unless and until the Trustee shall receive an Officers' Certificate setting forth an adjustment of the Conversion Rate, the Trustee may assume without inquiry that the Conversion Rate has not been adjusted and that the last Conversion Rate of which it has knowledge remains in effect.

Section 410. Notice of Certain Transactions.

In the event that:

- (1) the Company takes any action which would require an adjustment in the Conversion Rate;
- (2) the Company consolidates or merges with, or transfers all or substantially all of its property and assets to, another corporation and shareholders of the Company must approve the transaction; or
- (3) there is a dissolution or liquidation of the Company,

then in each such case the Company shall mail to Holders and file with the Trustee a notice stating the proposed record or effective date, as the case may be. The Company shall mail the notice at least ten days before such date. Failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clause (1), (2) or (3) of this Section 410.

Section 411. Effect of Reclassification, Consolidation, Merger or Sale on Conversion Privilege.

If any of the following shall occur, namely: (a) any reclassification or change of shares of Common Stock issuable upon conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, or any other change for which an adjustment is provided in Section 406); (b) any consolidation, merger, binding share exchange or combination to which the Company is a party as a result of which the holders of Common Stock shall be entitled to receive

stock, securities or other properties or assets with respect to or in exchange for such Common Stock, other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of Common Stock; or (c) any sale or conveyance as an entirety or substantially as an entirety of the property and assets of the Company, directly or indirectly, to any person, in each case in which holders of the Company's Common Stock would be entitled to receive stock, other securities, other property, assets or cash for their Common Stock, then the Company, or such successor, purchasing or transferee corporation, as the case may be, shall, as a condition precedent to such reclassification, change, combination, consolidation, merger, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then Outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, change, combination, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, change, combination, consolidation, merger, sale or conveyance. Such supplemental indenture shall provide for adjustments of the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this Article Four. If, in the case of any such consolidation, merger, combination, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock include shares of stock or other securities and property of a person other than the successor, purchasing or transferee corporation, as the case may be, in such consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing. The provisions of this Section 411 shall similarly apply to successive reclassifications, changes, combinations, consolidations, mergers, sales or conveyances.

In the event the Company shall execute a supplemental indenture pursuant to this Section 411, the Company shall promptly file with the Trustee (x) an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or other securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, combination, consolidation, merger, sale or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been complied with and (y) an Opinion of Counsel that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders.

The provisions of this Section 411 shall not apply to transactions in connection with the creation of a Wholly-Owned Subsidiary of the Company which would hold all or substantially all of the Company's broadcast operations and would become a primary obligor under all or substantially all of the Company's Indebtedness (other than the Securities).

Section 412. Trustee's Disclaimer.

The Trustee shall have no duty to determine when an adjustment under this Article Four should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment, and shall be protected in relying upon, an Officers' Certificate including the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 409. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article Four.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 411, but may accept as conclusive evidence of the correctness thereof, and shall be fully protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 411.

Section 413. Voluntary Increase.

The Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least 20 days and if the Board of Directors determines that such increase would be in the best interest of the Company and the Company provides 15 days prior notice to the Holders, the Trustee and the Conversion Agent of any increase in the Conversion Rate.

Section 414. Rights Issued in Respect of Common Stock Issued Upon Conversion.

Each share of Common Stock issued upon conversion of Securities pursuant to this Article Four shall be entitled to receive the appropriate number of common stock or preferred stock purchase rights, as the case may be (the "Rights"), if any, that all shares of Common Stock are entitled to receive and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any rights agreement adopted by the Company, as the same may be amended from time to time (in each case, a "Rights Agreement"). Provided that such Rights Agreement requires that each share of Common Stock issued by the Company (including those that might be issued upon conversion of Securities) at any time prior to the distribution of separate certificates representing the Rights be entitled to receive such Rights, then, notwithstanding anything else to the contrary in this Article Four, there shall not be any adjustment to the conversion privilege or Conversion Rate or any other term or provision of the Securities as a result of the issuance of Rights, the distribution of separate certificates representing the Rights, the exercise or redemption of such Rights in accordance with any Rights Agreements, or the termination or invalidation of Rights.

ARTICLE FIVE

REMEDIES

Section 501. Events of Default.

"Event of Default", wherever used herein, means any one of the following events which has occurred and is continuing (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article Twelve or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) there shall be a default in the payment of any interest on any Security (including any Contingent Interest or Additional Amounts) when it becomes due and payable, and such default shall continue for a period of 30 days;

(b) there shall be a default in the payment of the Accreted Principal Amount on any Security at its Maturity (upon acceleration, optional or mandatory redemption, required repurchase or otherwise);

(c) (i) there shall be a default in the performance, or breach, of any covenant or agreement of the Company under this Indenture (other than a default in the performance or breach of a covenant or agreement which is specifically dealt with in clause (a) or (b) or in clause (ii) or (iii) of this clause (c)) and such default or breach shall continue for a period of 30 days after written notice has been given, by certified mail, (1) to the Company by the Trustee or (2) to the Company and the Trustee by the Holders of at least 25% in aggregate Principal Amount at Issuance of the Outstanding Securities; (ii) there shall be a default in the performance or breach of the provisions of Article Eight; or (iii) the Company shall have failed to make or consummate an offer to repurchase Securities upon a Fundamental Change in accordance with the provisions of Article Fourteen;

(d) there shall have occurred a default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Company or any of its Subsidiaries whether such Indebtedness now exists, or is created after the date of this Indenture, which default (i) involves the failure to pay principal of or any premium or interest on such Indebtedness when such Indebtedness becomes due and payable at the stated maturity thereof, and such default shall continue after any applicable grace period or (ii) results in the acceleration of such Indebtedness unpaid prior to the stated maturity thereof and, in the case of (i) or (ii), the principal amount of such Indebtedness, together with the principal amount of any other Indebtedness so unpaid at its stated maturity or the stated maturity of which has been so accelerated, aggregates \$5,000,000 or more;

(e) there shall be a failure by the Company or any of its Subsidiaries to pay final judgments aggregating in excess of \$5,000,000, which judgments are not paid, discharged or stayed for a period of 60 days;

(f) there shall have been the entry by a court of competent jurisdiction of (i) a decree or order for relief in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or (ii) a decree or order adjudging the Company or any Subsidiary bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any Subsidiary or of any substantial part of their respective properties, or ordering the winding up or liquidation of their affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order shall be unstayed and in effect, for a period of 60 consecutive days; or

(g) (i) the Company or any Subsidiary commences a voluntary case or proceeding under any applicable Bankruptcy Law or any other case or proceeding to be adjudicated bankrupt or insolvent,

(ii) the Company or any Subsidiary consents to the entry of a decree or order for relief in respect of the Company or such Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against it,

(iii) the Company or any Subsidiary files a petition or answer or consent seeking reorganization or relief under any applicable federal or state law,

(iv) the Company or any Subsidiary (1) consents to the filing of such petition or the appointment of, or taking possession by, a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or such Subsidiary or of any substantial part of its respective properties, (2) makes an assignment for the benefit of creditors or (3) admits in writing its inability to pay its debts generally as they become due, or

(v) the Company or any Subsidiary takes any corporate action authorizing any such actions in this paragraph (g).

The Company shall deliver to the Trustee within five days after the occurrence thereof, written notice, in the form of an Officers' Certificate, of any Default, its status and what action the Company is taking or proposes to take with respect thereto. Unless the Corporate Trust Office of the Trustee has received written notice of an Event of Default of the nature described in this Section, the Trustee shall not be deemed to have knowledge of such Event of Default for the purposes of Article Five or for any other purpose.

Section 502. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default (other than an Event of Default specified in Sections 501(f) and (g)), shall occur and be continuing, the Trustee or the Holders of not less than 25% in aggregate Principal Amount at Issuance of the

Securities Outstanding may, and the Trustee at the request of the Holders of not less than 25% in aggregate Principal Amount at Issuance of the Securities Outstanding shall, declare an amount equal to the Accreted Principal Amount of the Securities plus accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) thereon through the date of such declaration to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Securities). Thereupon the Trustee may, at its discretion, proceed to protect and enforce the rights of the Holders of the Securities by appropriate judicial proceeding. If an Event of Default specified in clause (f) or (g) of Section 501 occurs and is continuing, then an amount equal to the Accreted Principal Amount of all the Securities through the occurrence of such event, together with any accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) through the occurrence of such event, shall ipso facto become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holder.

At any time after such declaration of acceleration has been made but before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in aggregate Principal Amount at Issuance of the Securities Outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

(a) the Company has paid or deposited with the Trustee a sum sufficient to pay

(i) all sums paid or advanced by the Trustee under this Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel,

(ii) all overdue interest (including Contingent Interest and Additional Amounts) on all Securities,

(iii) the Accreted Principal Amount on any Securities which have become due otherwise than by such declaration of acceleration and interest thereon at a rate borne by the Securities, and

(iv) to the extent that payment of such interest is lawful, interest upon overdue interest (including Contingent Interest and Additional Amounts) at the rate borne by the Securities; and

(b) all Events of Default, other than the non-payment of the Accreted Principal Amount and any accrued and unpaid cash interest (including any unpaid Contingent Interest and Additional Amounts) on the Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent Default or impair any right consequent thereon provided in Section 513.

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(a) default is made in the payment of any interest (including Contingent Interest and Additional Amounts) on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of the principal of or premium, if any, or Principal Accretion, if any, on any Security at the Stated Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, subject to Article Twelve, the whole amount then due and payable on such Securities for the Accreted Principal Amount through such date and premium, if any, and accrued and unpaid cash interest (including Contingent Interest and Additional Amounts), with interest upon the overdue principal and premium, if any, and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by the Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders under this Indenture by such appropriate private or judicial proceedings as the Trustee shall deem most effectual to protect and enforce such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy, subject however to Section 512.

Section 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor, upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the Accreted Principal Amount, cash interest, Contingent Interest, Additional Amounts, the Redemption Price, the Optional Repurchase Price, or the Fundamental Change Repurchase Price of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the Accreted Principal Amount, cash interest, Contingent Interest, Additional Amounts, the Redemption Price, the Optional Repurchase Price, or the Fundamental Change Repurchase Price of the Securities owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) subject to Article Twelve, to collect and receive any moneys, securities or other property payable or deliverable upon any conversion or exchange of Securities or upon any such claims and to distribute the same;

and any custodian, in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 606.

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

Section 505. Trustee May Enforce Claims without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and 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 Securities in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article or otherwise on behalf of the Holders or the Trustee pursuant to this Article or through any proceeding or any arrangement or restructuring in anticipation or in lieu of any proceeding contemplated by this Article shall be applied, subject to applicable law, in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, premium, if any, or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 606;

SECOND: Subject to Article Twelve, to the payment of the amounts then due and unpaid upon the Securities for Accreted Principal Amount, cash interest, Contingent Interest,

Additional Amounts, the Redemption Price, the Optional Repurchase Price, or the Fundamental Change Repurchase Price of the Securities, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium, if any, and interest; and

THIRD: Subject to Article Twelve, the balance, if any, to the Person or Persons entitled thereto, including the Company, provided that all sums due and owing to the Holders and the Trustee have been paid in full as required by this Indenture.

Section 507. Limitation on Suits.

No Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

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

(b) the Holders of not less than 25% in Principal Amount at Issuance of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as trustee hereunder;

(c) such Holder or Holders have offered to the Trustee an indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

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

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in Principal Amount at Issuance of the Outstanding Securities;

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

Section 508. Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, but subject to Article Twelve, the Holder of any Security shall have the right on the terms stated herein, which is absolute and unconditional, to receive payment of the Accreted Principal Amount, the Redemption Price, the Optional Repurchase Price, or the Fundamental Change Repurchase Price of the Securities and (subject to Section 309) cash interest (including Contingent Interest and

Additional Amounts on such Security) on the Stated Maturity expressed in such Security (or, in the case of redemption or repurchase, on the Redemption Date or repurchase date), and to convert the Securities in accordance with Article Four hereof, and to institute suit for the enforcement of any such payment or the right to convert, and such rights shall not be impaired without the consent of such Holder, subject to Article Twelve.

Section 509. Restoration of Rights and Remedies.

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

Section 510. Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. Delay or Omission Not Waiver.

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

Section 512. Control by Holders.

The Holders of not less than a majority in aggregate Principal Amount at Issuance of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, provided that

(a) such direction shall not be in conflict with any rule of law or with this Indenture or expose the Trustee to personal liability; and

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

This Section 512 shall be in lieu of Section 316(a)(1)(A) of the Trust Indenture Act and such Section 316(a)(1)(A) is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act.

Section 513. Waiver of Past Defaults.

The Holders of not less than a majority in aggregate Principal Amount at Issuance of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past Default hereunder and its consequences, except a Default

(a) in the payment of the Accreted Principal Amount, or accrued and unpaid interest (including Additional Amounts or Contingent Interest) on any Security, the Redemption Price, Optional Repurchase Price or Fundamental Change Repurchase Price; or

(b) in respect of a failure to convert any security into Common Stock as provided in Article Four or elsewhere in this Indenture; or

(c) in respect of a covenant or a provision hereof which under Article Nine cannot be modified or amended without the consent of a higher percentage of the Principal Amount at Issuance of the Outstanding Securities affected.

Upon any such waiver, 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 shall extend to any subsequent or other Default or impair any right consequent thereon.

This Section 513 shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act.

Section 514. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security 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, suffered 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; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in Principal Amount at Issuance of the Outstanding Securities, or to any suit instituted by any Holder pursuant to Section 508 hereof.

Section 515. Waiver of Stay, Extension or Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the Accreted Principal Amount, Redemption Price, Fundamental Change Repurchase Price, Optional Repurchase Price, plus accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) on the Securities contemplated herein or in the Securities or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE SIX

THE TRUSTEE

Section 601. Notice of Defaults.

Within 30 days after the occurrence of any Default, the Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, notice of such Default hereunder known to the Trustee, unless such Default shall have been cured or waived; provided, however, that, except in the case of a Default in the payment of the principal of, premium, if any, or interest on any Security, the Trustee shall be protected in withholding such notice if and so long as a trust committee of Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders.

Section 602. Certain Rights of Trustee.

Subject to the provisions of Trust Indenture Act Sections 315(a) through 315(d):

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of Indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

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

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

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

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture other than any liabilities arising out of the negligence of the Trustee;

(f) 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, approval, appraisal, bond, debenture, note, coupon, security or other paper or document; provided, that the Trustee in its discretion may make such further inquiry or investigation into such facts or matters as it may deem 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;

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

(h) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers;

(i) the Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company, except as otherwise provided herein;

(j) money held in trust by the Trustee need not be segregated from other funds except to the extent required by law, except as otherwise provided herein;

(k) if a Default or an Event of Default has occurred and is continuing, 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 its exercise thereof as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

Section 603. Trustee Not Responsible for Recitals, Dispositions of Securities or Application of Proceeds Thereof.

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and

perform its obligations hereunder and that the statements made by it in any Statement of Eligibility and Qualification on Form T-1 supplied to the Company are true and accurate subject to the qualifications set forth therein. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

The Company will be responsible for making all calculations called for under this Security. These calculations include, but are not limited to, determinations of accrued interest, including Contingent Interest and Additional Amounts, the Redemption Price, the Conversion Price, the Optional Repurchase Price, the Fundamental Change Repurchase Price, the Sale Price of the Company's Common Stock and other calculations related to a Holder's conversion rights. The Company will make these calculations in good faith and, absent manifest error, the calculations will be final and binding on any Holder of this Security. The Company will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent is entitled to rely upon the accuracy of such calculations with independent verification. The Trustee may forward the Company's calculations to any Holder of this Security upon request.

Section 604. Trustee and Agents May Hold Securities; Collections; etc.

The Trustee, any Paying Agent, Security Registrar, Conversion Agent, Bid Solicitation Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities, with the same rights it would have if it were not the Trustee, Paying Agent, Security Registrar, Conversion Agent, Bid Solicitation Agent or such other agent and, subject to Trust Indenture Act Sections 310 and 311, may otherwise deal with the Company and receive, collect, hold and retain collections from the Company with the same rights it would have if it were not the Trustee, Paying Agent, Security Registrar, Conversion Agent, Bid Solicitation Agent or such other agent.

Section 605. Money Held in Trust.

All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. The Trustee may invest all moneys received by the Trustee, until used or applied as herein provided, in Temporary Cash Investments in accordance with the written directions of the Company. The Trustee shall not be liable for any losses incurred in connection with any investments made in accordance with this Section 605, unless the Trustee acted with gross negligence or in bad faith. With respect to any losses on investments made under this Section 605, the Company is liable for the full extent of any such loss.

Section 606. Compensation and Indemnification of Trustee, Conversion Agent and Bid Solicitation Agent and the Trustee's Prior Claim.

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder (which shall not be limited by any provision of law in regard to the compensation of a trustee of

an express trust) set forth in a letter agreement executed by the Company and the Trustee, as such agreement may be amended or supplemented, and the Company covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also covenants to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any loss, liability, tax, assessment or other governmental charge (other than taxes applicable to the Trustee's compensation hereunder) or expense incurred without negligence or bad faith on such Trustee's part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and such Trustee's duties hereunder, including enforcement of this Indenture and also including any liability which the Trustee may incur as a result of failure to withhold, pay or report any tax, assessment or other governmental charge, and the costs and expenses of defending itself against or investigating any claim of liability (whether asserted by any Holder, the Company or any other Person) in connection with the exercise or performance of any of its powers or duties under this Indenture. The obligations of the Company under this Section to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute an additional obligation hereunder and shall survive the satisfaction and discharge of this Indenture.

The Company covenants and agrees to pay to the Conversion Agent from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) to the extent set forth in a letter agreement executed by the Company and the Conversion Agent, as such agreement may be amended or supplemented, and the Company covenants and agrees to pay or reimburse the Conversion Agent and each predecessor Conversion Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also covenants to indemnify the Conversion Agent and each predecessor Conversion Agent for, and to hold it harmless against, any loss, liability, tax, assessment or other governmental charge (other than taxes applicable to the Conversion Agent's compensation hereunder) or expense incurred without negligence or bad faith on such Conversion Agent's part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and such Conversion Agent's duties hereunder, including enforcement of this Indenture and also including any liability which the Conversion Agent may incur as a result of failure to withhold, pay or report any tax, assessment or other governmental charge, and the costs and expenses of defending itself against or investigating any claim of liability (whether asserted by any Holder, the Company or any other Person) in connection with the exercise or performance of any of its powers or duties under this Indenture. The obligations of the Company under this Section to compensate and indemnify the Conversion Agent and each predecessor Conversion Agent and to pay or reimburse the

Conversion Agent and each predecessor Conversion Agent for expenses, disbursements and advances shall constitute an additional obligation hereunder and shall survive the satisfaction and discharge of this Indenture.

All payments and reimbursements pursuant to this Section 606 shall be made with interest at the rate borne by the Securities.

As security for the performance of the obligations of the Company under this Section 606, the Trustee shall have a Lien prior to the Securities upon all property and funds held or collected by the Trustee, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Securities. The Trustee's right to receive payment of any amounts due under this Section 606 shall not be subordinate to any other liability or indebtedness of the Company (even though the Securities may be so subordinate), and the Securities shall be subordinate to the Trustee's right to receive such payment.

Section 607. Conflicting Interests.

The Trustee shall comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 608. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be eligible to act as trustee under Trust Indenture Act Section 310(a)(1) and which shall have a combined capital and surplus of at least \$250,000,000, to the extent there is an institution eligible and willing to serve. The Trustee shall be a participant in the Depository Trust Company and FAST distribution systems. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect hereinafter specified in this Article. The Corporate Trust Office shall initially be located at Wells Fargo Bank, National Association, 707 Wilshire Boulevard, 17th Floor, Los Angeles, CA 90017, Attention: Corporate Trust Department.

Section 609. Resignation and Removal; Appointment of Successor Trustee.

(a) No resignation or removal of the Trustee and no appointment of a successor trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor trustee under Section 610.

(b) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign by giving written notice thereof to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument executed by authority of the Board of Directors of the Company, a copy of which shall be delivered to the resigning Trustee and a copy to the successor trustee. If an instrument of

acceptance by a successor trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, or any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor trustee.

(c) The Trustee may be removed at any time by an Act of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and to the Company.

(d) If at any time:

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

(2) the Trustee shall cease to be eligible under Section 608 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

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

then, in any case, (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 514, the Holder of any Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee 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.

(e) If the Trustee shall be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor trustee. If, within one year after such removal or incapability, or the occurrence of such vacancy, a successor trustee shall be appointed by Act of the Holders of a majority in Principal Amount at Issuance of the Outstanding Securities delivered to the Company and the retiring Trustee, the successor trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor trustee and supersede the successor trustee appointed by the Company. If no successor trustee shall have been so appointed by the Company or the Holders of the Securities and accepted appointment in the manner hereinafter provided, the Holder of any Security who has been a bona fide Holder for at least six months may, subject to Section 514, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities as their names and addresses appear in the Security Register. Each notice shall include the name of the successor trustee and the address of its Corporate Trust Office or agent hereunder.

Section 610. Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee as if originally named as Trustee hereunder; but, nevertheless, on the written request of the Company or the successor trustee, upon payment of its charges then unpaid, such retiring Trustee shall, pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations. Upon request of any such successor trustee, the Company shall execute any and all instruments 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 prior claim upon all property or funds held or collected by such Trustee or such successor trustee to secure any amounts then due such Trustee pursuant to the provisions of Section 606.

No successor Trustee with respect to the Securities shall accept appointment as provided in this Section 610 unless at the time of such acceptance such successor trustee shall be eligible to act as trustee under the provisions of Trust Indenture Act Section 310(a) and this Article Sixth and shall have a combined capital and surplus of at least \$250,000,000.

Upon acceptance of appointment by any successor Trustee as provided in this Section 610, the Company shall give notice thereof to the Holders of the Securities, by mailing such notice to such Holders at their addresses as they shall appear on the Security Register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with the notice called for by Section 609. If the Company fails to give such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be given at the expense of the Company.

Section 611. Merger, Conversion, Consolidation or Succession to Business.

Any corporation 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 succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be eligible under Trust Indenture Act Section 310(a) and this Article Sixth and shall have a combined capital and surplus of at least

\$250,000,000, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

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

Section 612. Preferential Collection of Claims Against Company.

If and when the Trustee shall be or become a creditor of the Company (or other obligor under the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor). A Trustee who has resigned or been removed shall be subject to the Trust Indenture Act Section 311(a) to the extent indicated therein.

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 701. Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee

(a) semiannually, not more than 15 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

provided, however, that if and so long as the Trustee shall be the Security Registrar, no such list need be furnished.

Section 702. Disclosure of Names and Addresses of Holders.

Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities, and the Trustee shall comply with Trust Indenture Act Section 312(b). The Company, the Trustee, the Security

Registrar and any other Person shall have the protection of Trust Indenture Act 312(c). Every Holder of Securities, 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 the disclosure of any information as to the names and addresses of the Holders in accordance with Trust Indenture Act Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Trust Indenture Act Section 312.

Section 703. Reports by Trustee.

Within 60 days after May 15 of each year commencing with the first May 15 after the first issuance of Securities, the Trustee shall transmit by mail to all Holders, as their names and addresses appear in the Security Register, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such May 15 in accordance with and to the extent required by Trust Indenture Act Section 313(a).

Section 704. Reports by Company.

The Company shall:

(a) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company, with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(c) transmit or cause to be transmitted by mail to all Holders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Trust Indenture Act Section 313(c), such summaries of any information, documents and reports required to be filed by the Company, pursuant to Subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Notwithstanding the foregoing, but solely to the extent permitted by the Trust Indenture Act, if the Company merges or consolidates with or sells, assigns, transfers, conveys or otherwise disposes of all or substantially all of its assets to a direct or indirect Wholly-Owned Subsidiary of the Company in a transaction or series of transactions in which such Subsidiary assumes all or substantially all of the Indebtedness of the Company (other than the Securities) and the Company remains the obligor on the Securities, and as a result of such transactions the Company and this Wholly-Owned Subsidiary are permitted by the rules and regulations of the Commission to file and/or submit periodic reports collectively on behalf of the consolidated Company, then in such event the Company shall be deemed to comply with this Article Seven to the extent the filings by the Company together with such Wholly-Owned Subsidiary comply with the rules and regulations of the Commission.

ARTICLE EIGHT

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 801. Company May Consolidate, etc., Only on Certain Terms.

(a) The Company shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other Person or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets as an entirety to any Person or group of affiliated Persons, or permit any of its Subsidiaries to enter into any such transaction or transactions if such transaction or transactions, in the aggregate, would result in a sale, assignment, conveyance, transfer, lease or disposal of all or substantially all of the properties and assets of the Company and its Subsidiaries on a Consolidated basis to any other Person or group of affiliated Persons, unless at the time and after giving effect thereto:

(i) either (1) the Company shall be the continuing corporation, or (2) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Company and its Subsidiaries on a Consolidated basis (the "Surviving Entity") shall be a corporation, a limited liability company, limited partnership, partnership, trust or other entity duly organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and such Person assumes, by a supplemental indenture in a form reasonably satisfactory to the Trustee, all the obligations of the Company under the Securities and this Indenture and the Registration Rights Agreement, and this Indenture and the Registration Rights Agreement shall remain in full force and effect;

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

(iii) the Company or the Surviving Entity shall have delivered, or caused to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger, transfer, sale, assignment, conveyance, lease or other transaction and the supplemental indenture in respect thereto comply with this Indenture and that all conditions precedent herein provided for relating to such transaction have been complied with.

Notwithstanding the foregoing, the Company may merge or consolidate with or into to sell, assign, transfer, convey or otherwise dispose of all or substantially all of its assets to a direct or indirect Wholly Owned Subsidiary of the Company without complying with the above provisions in a transaction or series of transactions in which the Company remains the obligor on the Securities.

Section 802. Successor Substituted.

Upon any consolidation or merger, or any sale, assignment, conveyance, transfer, lease or disposition of all or substantially all of the properties and assets of the Company in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or the successor Person to which such sale, assignment, conveyance, transfer, lease or disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, the Registration Rights Agreement and the Securities with the same effect as if such successor had been named as the Company herein and in the Securities. When a successor assumes all the obligations of its predecessor under this Indenture and the Securities, the predecessor shall be released from those obligations; provided that in the case of a transfer by lease, the predecessor shall not be released from the payment of principal and interest (including Contingent Interest and Additional Amounts) on the Securities and the Registration Rights Agreement.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 901. Supplemental Indentures and Agreements without Consent of Holders.

Without the consent of any Holders, the Company when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, or agreements or other instruments, in form and substance satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company or any other obligor upon the Securities, and the assumption by any such successor of the covenants of the Company or such obligor herein and in the Securities, in each case in compliance with the provisions of this Indenture;

(b) to add to the covenants of the Company or any other obligor upon the Securities for the benefit of the Holders, or to add additional opportunities for optional redemption at the option of the Holder or to surrender any right or power herein conferred upon the Company or any other obligor upon the Securities, as applicable, herein or in the Securities;

(c) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture or the Securities; provided that, in each case, such provisions shall not adversely affect the interests of the Holders;

(d) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, as contemplated by Section 905 or otherwise;

(e) to add a guarantor;

(f) to evidence and provide the acceptance of the appointment of a successor trustee hereunder;

(g) to mortgage, pledge, hypothecate or grant a security interest in favor of the Trustee for the benefit of the Holders as additional security for the payment and performance of the Indenture Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to the Trustee pursuant to this Indenture or otherwise; or

(h) to provide for uncertificated Securities in place of or in addition to certificated Securities.

Section 902. Supplemental Indentures and Agreements with Consent of Holders.

With the consent of the Holders of not less than a majority in aggregate Principal Amount at Issuance of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto or agreements or other instruments in form and substance satisfactory to the Trustee for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture or the Securities; provided, however, that no such supplemental indenture, agreement or instrument shall, without the consent of the Holder of each Outstanding Security affected thereby:

(a) change the Stated Maturity of the principal of, or any installment of interest (including Contingent Interest and Additional Amounts) on, any Security, or reduce the Principal Amount at Issuance thereof or the rate of interest (including Contingent Interest and Additional Amounts) thereon or any premium payable upon the redemption thereof, or alter the manner of calculation or rate of accrual of Principal Accretion on any Security or change the coin or currency in which the principal of any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment after the

Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or with respect to conversion of the Securities;

(b) amend, change or modify the obligation of the Company to make and consummate an offer to repurchase Securities upon a Fundamental Change in the event of a Fundamental Change in accordance with Article Fourteen, including amending, changing or modifying any definitions with respect thereto;

(c) reduce the percentage in Principal Amount at Issuance of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver or compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture;

(d) modify any of the provisions of this Section or Sections 513 or 1010, except to increase the percentage in Principal Amount at Issuance of the Outstanding Securities, the consent of whose Holders is required for any such actions or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby;

(e) except as otherwise permitted under Article Eight, consent to the assignment or transfer by the Company of any of its rights and obligations under this Indenture; or

(f) amend or modify any of the provisions of this Indenture relating to the subordination of the Securities in any manner adverse to the Holders of the Securities;

(g) adversely affect the right of Holders to convert Securities other than as provided in this Indenture; or

(h) reduce the Principal Amount at Issuance, the Accreted Principal Amount, accrued Principal Accretion, the Redemption Price, the Optional Repurchase Price or the Fundamental Change Repurchase Price of any Security, or amend or modify in any manner adverse to the Holders of Securities the Company's obligations to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise.

Upon the written request of the Company, accompanied by a copy of a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid, the Trustee shall, subject to Section 903, join with the Company in the execution of such supplemental indenture.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture or agreement or instrument, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. Execution of Supplemental Indentures and Agreements.

In executing, or accepting the additional trusts created by, any supplemental indenture, agreement or instrument permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Trust Indenture Act Section 315(a) through 315(d) and Section 602 hereof) shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate stating that the execution of such supplemental indenture, agreement or instrument is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture, agreement or instrument which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. Effect of Supplemental Indentures.

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

Section 905. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 906. Reference in Securities to Supplemental Indentures.

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

ARTICLE TEN

COVENANTS

Section 1001. Payment of Principal, Premium and Interest.

Subject to the provisions of Article Twelve, the Company will duly and punctually pay the Accreted Principal Amount, interest (including Contingent Interest and Additional Amounts) on the Securities in accordance with the terms of the Securities and this Indenture.

Section 1002. Maintenance of Office or Agency.

The Company will maintain an office or agency where Securities may be presented or surrendered for purchase or payment. The Company also will maintain an office or agency where Securities may be surrendered for registration of transfer, redemption or exchange and where notices and demands to or upon the Company in respect of the Securities 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 any such offices or agencies. If at any time the Company shall fail to maintain any such required offices or agencies or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the office of the agent of the Trustee described above and the Company hereby appoints such agent as its agent to receive all such presentations, surrenders, notices and demands.

The Company will also maintain an office or agency where Securities may be presented for conversion (which may be the office of the Trustee described above if consented to by the Trustee). The Company will give written notice to the Trustee of the location and any change in the office. If at any time the Company shall fail to maintain such office, Securities may be presented for conversion at the office of the Company.

The Company may from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designation. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

Section 1003. Money for Security Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of, premium, if any, or interest on any of the Securities, segregate and hold in trust for the benefit of the Holders entitled thereto a sum sufficient to pay the principal, premium, if any, or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

If the Company is not acting as Paying Agent, the Company will, before each due date of the principal of, premium, if any, or interest on any Securities, deposit with a Paying Agent a sum in same day funds sufficient to pay the principal, premium, if any, or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of such action or any failure so to act.

If the Company is not acting as Paying Agent, the Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(a) hold all sums held by it for the payment of the principal of, premium, if any, or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any Default by the Company (or any other obligor upon the Securities) in the making of any payment of principal, premium, if any, or interest;

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

(d) acknowledge, accept and agree to comply in all aspects with the provisions of this Indenture relating to the duties, rights and disabilities of such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee shall serve as the Paying Agent.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on any Security and remaining unclaimed for two years after such principal and premium, if any, or interest has become due and payable shall promptly be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will promptly be repaid to the Company.

Section 1004. Corporate Existence.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect the corporate existence and related rights and franchises (charter and statutory) of the Company and each Subsidiary; provided, however,

that the Company shall not be required to preserve any such right or franchise or the corporate existence of any such Subsidiary if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries as a whole and that the loss thereof would not reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations hereunder; and provided, further, however, that the foregoing shall not prohibit a sale, transfer or conveyance of a Subsidiary or any of its assets in compliance with the terms of this Indenture.

Section 1005. Payment of Taxes and Other Claims.

The Company will pay or discharge or cause to be paid or discharged, on or before the date the same shall become due and payable, (a) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary shown to be due on any return of the Company or any Subsidiary or otherwise assessed or upon the income, profits or property of the Company or any Subsidiary if failure to pay or discharge the same could reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations hereunder and (b) all lawful claims for labor, materials and supplies, which, if unpaid, would by law become a Lien upon the property of the Company or any Subsidiary, except for any Lien if failure to pay or discharge the same could reasonably be expected to have a material adverse effect on the ability of the Company to perform its obligations hereunder; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted and in respect of which appropriate reserves (in the good faith judgment of management of the Company) are being maintained in accordance with generally accepted accounting principles consistently applied.

Section 1006. Maintenance of Properties.

The Company will cause all material properties owned by the Company or any Subsidiary or used or held for use in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order (ordinary wear and tear excepted) and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be consistent with sound business practice and necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Company from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Subsidiary and not reasonably expected to have a material adverse effect on the ability of the Company to perform its obligations hereunder.

Section 1007. Insurance.

The Company will at all times keep all of its and its Subsidiaries' properties which are of an insurable nature insured with insurers, believed by the Company to be

responsible, against loss or damage to the extent that property of similar character is usually so insured by corporations similarly situated and owning like properties.

Section 1008. Provision of Financial Statements.

(a) Whether or not the Company is subject to Section 13(a) or 15(d) of the Exchange Act, the Company shall, to the extent permitted under the Exchange Act, file with the Commission the annual reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to such Sections 13(a) or 15(d) if the Company were so subject, such documents to be filed with the Commission on or prior to the respective dates (the "Required Filing Dates") by which the Company would have been required so to file such documents if the Company were so subject. The Company will also in any event (x) within 15 days of each Required Filing Date (i) transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders and (ii) file with the Trustee copies of the annual reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act if the Company were subject to such Sections and (y) if filing such documents by the Company with the Commission is not permitted under the Exchange Act, promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder at the Company's cost.

Notwithstanding the foregoing, but solely to the extent permitted by the Trust Indenture Act, if the Company merges or consolidates with or sells, assigns, transfers, conveys or otherwise disposes of all or substantially all of its assets to a direct or indirect Wholly-Owned Subsidiary of the Company in a transaction or series of transactions in which such Subsidiary assumes all or substantially all of the Indebtedness of the Company (other than the Securities) and the Company remains the obligor on the Securities, and as a result of such transactions the Company and this Wholly-Owned Subsidiary are permitted by the rules and regulations of the Commission to file and/or submit periodic reports collectively on behalf of the consolidated Company, then in such event the Company shall be deemed to comply with this Section 1008(a) to the extent the filings by the Company together with such Wholly-Owned Subsidiary comply with the rules and regulations of the Commission.

(b) So long as any of the Securities remain outstanding, the Company will make available to any prospective purchaser of Securities or beneficial owner of Securities in connection with any sale of Securities the information required by Rule 144A(d)(4) under the Securities Act, until such time as the holders of Securities have disposed of such Securities pursuant to an effective registration statement under the Securities Act.

Section 1009. Statement by Officers as to Default.

(a) The Company will deliver to the Trustee, on or before a date not more than 60 days after the end of each fiscal quarter and not more than 120 days after the end of each fiscal year of the Company ending after the date hereof, a written statement signed by two executive officers of the Company, one of whom shall be the principal executive officer, principal financial officer or principal accounting officer of the Company, stating whether or not, after a review of

the activities of the Company during such year or such quarter and of the Company's performance under this Indenture, to the best knowledge, based on such review, of the signers thereof, the Company has fulfilled all its obligations and is in compliance with all conditions and covenants under this Indenture throughout such year or quarter, as the case may be, and, if there has been a Default specifying each Default and the nature and status thereof.

(b) When any Default or Event of Default has occurred and is continuing, or if the Trustee or any Holder or the trustee for or the holder of any other evidence of Indebtedness of the Company or any Subsidiary gives any notice or takes any other action with respect to a claimed default (other than with respect to Indebtedness in the principal amount of less than \$10,000,000), the Company shall deliver to the Trustee by registered or certified mail or by telegram, telex or facsimile transmission followed by hard copy an Officers' Certificate specifying such Default, Event of Default, notice or other action within five Business Days of its occurrence.

Section 1010. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1006 and 1007, if, before or after the time for such compliance, the Holders of not less than a majority in aggregate Principal Amount at Issuance of the Securities at the time Outstanding shall, by Act of such Holders, waive such compliance in such instance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

ARTICLE ELEVEN

REDEMPTION OF SECURITIES

Section 1101. Rights of Redemption.

The Securities may be redeemed, at the Company's option, in whole or from time to time in part, for cash, at any time on or after June 15, 2010, upon not less than 30 nor more than 60 days' prior notice by first class mail to each Holder of Securities to be redeemed at its address appearing in the Security Register and prior to the Stated Maturity of the Securities, at a redemption price equal to the Accreted Principal Amount of the Security so redeemed plus accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) to but not including the Redemption Date. The Redemption Prices on June 15, 2010 and on each subsequent December 15 and June 15 and thereafter prior to June 15, 2023 and on June 15, 2023 are set forth in the table below. In addition to the Redemption Prices set forth on such table, the Redemption Price between the dates listed would be the Accreted Principal Amount on the earlier date plus accrued and unpaid interest (including Contingent Interest and Additional Amounts) to but excluding the Redemption Date (subject to the right of Holders of record on the relevant Regular Record Date to receive interest due on an Interest Payment Date) that has accrued on a Security since the immediately preceding date on which interest was paid.

Redemption Date	(1) Principal Amount at Issuance	(2) Accrued Principal Accretion	(3) Accreted Principal Amount (1)+(2)
June 15, 2010	\$1,000.00	\$ 0.00	\$1,000.00
December 15, 2010	\$1,000.00	\$ 23.13	\$1,023.13
June 15, 2011	\$1,000.00	\$ 46.78	\$1,046.78
December 15, 2011	\$1,000.00	\$ 70.99	\$1,070.99
June 15, 2012	\$1,000.00	\$ 95.76	\$1,095.76
December 15, 2012	\$1,000.00	\$121.10	\$1,121.10
June 15, 2013	\$1,000.00	\$147.02	\$1,147.02
December 15, 2013	\$1,000.00	\$173.55	\$1,173.55
June 15, 2014	\$1,000.00	\$200.69	\$1,200.69
December 15, 2014	\$1,000.00	\$228.45	\$1,228.45
June 15, 2015	\$1,000.00	\$256.86	\$1,256.86
December 15, 2015	\$1,000.00	\$285.93	\$1,285.93
June 15, 2016	\$1,000.00	\$315.66	\$1,315.66
December 15, 2016	\$1,000.00	\$346.09	\$1,346.09
June 15, 2017	\$1,000.00	\$377.22	\$1,377.22
December 15, 2017	\$1,000.00	\$409.06	\$1,409.06
June 15, 2018	\$1,000.00	\$441.65	\$1,441.65
December 15, 2018	\$1,000.00	\$474.99	\$1,474.99
June 15, 2019	\$1,000.00	\$509.09	\$1,509.09
December 15, 2019	\$1,000.00	\$543.99	\$1,543.99
June 15, 2020	\$1,000.00	\$579.70	\$1,579.70
December 15, 2020	\$1,000.00	\$616.23	\$1,616.23
June 15, 2021	\$1,000.00	\$653.60	\$1,653.60
December 15, 2021	\$1,000.00	\$691.84	\$1,691.84
June 15, 2022	\$1,000.00	\$730.97	\$1,730.97
December 15, 2022	\$1,000.00	\$771.00	\$1,771.00
June 15, 2023	\$1,000.00	\$811.95	\$1,811.95

If any Security is to be redeemed in part only, a new Security in Principal Amount at Issuance equal to the unredeemed portion of Principal Amount at Issuance will be issued. If a portion of a Holder's Securities is selected for partial redemption and such Holder converts a portion of its Securities, the converted portion will be deemed to be of the portion selected for redemption.

No sinking fund is provided for the Securities.

Section 1102. Applicability of Article.

Redemption of Securities at the election of the Company or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

Section 1103. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities pursuant to Section 1101 shall be evidenced by a Company Order and an Officers' Certificate. In case of any redemption at the election of the Company, the Company shall, not less than 45 nor more than 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice period shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities to be redeemed.

Section 1104. Selection by Trustee of Securities to Be Redeemed.

If less than all the Securities are to be redeemed, the particular Securities or portions thereof to be redeemed shall be selected not more than 35 days prior to the Redemption Date by the Trustee, from the Outstanding Securities not previously called for redemption, pro rata, by lot or such other method as the Trustee shall deem fair and reasonable, and the amounts to be redeemed may be equal to \$1,000 of aggregate Principal Amount at Issuance or any integral multiple thereof.

The Trustee shall promptly notify the Company and the Security Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the Principal Amount at Issuance of such Security which has been or is to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 1105. Notice of Redemption.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (a) the Redemption Date;
- (b) the Redemption Price, or if then not ascertainable, the manner of calculation thereof;
- (c) the Conversion Rate;

(d) the name and address of the Paying Agent and Conversion Agent;

(e) that Securities called for redemption may be converted at any time before the close of business on the second Business Day immediately preceding the Redemption Date, even if not otherwise convertible at such time;

(f) that Holders who want to convert Securities must satisfy the requirements set forth in Article Four of the Indenture and in the Securities;

(g) if less than all Outstanding Securities are to be redeemed, the identification of the particular Securities to be redeemed;

(h) in the case of a Security to be redeemed in part, the Principal Amount at Issuance such Security to be redeemed and that after the Redemption Date upon surrender of such Security, new Security or Securities in the aggregate Principal Amount at Issuance equal to the unredeemed portion thereof will be issued;

(i) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(j) that on the Redemption Date the Redemption Price will become due and payable upon each such Security or portion thereof, and that (unless the Company shall default in payment of the Redemption Price) interest (including Contingent Interest) thereon shall cease to accrue on and after said date;

(k) the place or places where such Securities are to be surrendered for payment of the Redemption Price; and

(l) the CUSIP number, if any, relating to such Securities.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company.

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

Section 1106. Deposit of Redemption Price.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money in same day funds sufficient to pay the Redemption Price of and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof which are to be redeemed on that date

other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Trustee or the Paying Agent shall as promptly as possible return to the Company any money not required for that purpose because of the conversion of Securities pursuant to Article Four hereof. When the Redemption Date falls on an Interest Payment Date, payments of interest due on such date are to be paid as provided hereunder as if no such redemption were occurring.

Section 1107. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price together with accrued interest to but not including the Redemption Date except for Securities that are converted in accordance with the terms of this Indenture; provided, however, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Regular Record Dates according to the terms and the provisions of Section 309.

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

Section 1108. Securities Redeemed or Purchased in Part.

Any Security which is to be redeemed or purchased only in part shall be surrendered to the Paying Agent at the office or agency maintained for such purpose pursuant to Section 1002 (with, if the Company, the Security Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company, the Security Registrar or the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount at Issuance equal to, and in exchange for, the unredeemed portion of the principal of the Security so surrendered that is not redeemed or purchased.

Section 1109. Conversion Arrangement on Call for Redemption.

In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities called for redemption by an agreement with one or more investment banks or other purchasers to purchase such Securities by paying to the Trustee in trust for the Holders, on or prior to the Redemption Date, an amount that, together with any amounts deposited with the Trustee by the Company for the redemption of such Securities, is not less than the Redemption Price of, and any accrued and unpaid interest (including Contingent

Interest and Additional Amounts) with respect to, such Securities. Notwithstanding anything to the contrary contained in this Article Eleven, the obligation of the Company to pay the Redemption Prices of such Securities shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, any Securities not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and (notwithstanding anything to the contrary contained in Article Four) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the Business Day prior to the Redemption Date, subject to payment of the above amount as aforesaid. The Trustee shall hold and pay to the Holders whose Securities are selected for redemption any such amount paid to it for purchase and conversion in the same manner as it would moneys deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

ARTICLE TWELVE

RANKING

Section 1201. Ranking.

This Security constitutes a senior unsecured general obligation of the Company, ranking equally with other existing and future senior unsecured Indebtedness the Company has incurred or may incur, ranking senior in right of payment to any future Indebtedness that is expressly made subordinate to the Securities and ranking subordinate to secured Indebtedness the Company has incurred or guaranteed Indebtedness the Company has incurred.

ARTICLE THIRTEEN

SATISFACTION AND DISCHARGE

Section 1301. Satisfaction and Discharge of Indenture.

When (1) the Company shall deliver to the Trustee for cancellation all Securities theretofore authenticated (other than any Securities which have been destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) and not theretofore canceled, or (2) all the Securities not theretofore canceled or delivered to the Registrar for cancellation shall have (a) been deposited for conversion and the Company shall deliver to the Holders shares of Common Stock sufficient to pay all amounts

owing in respect of all Securities (other than any Securities which shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not theretofore canceled or delivered to the Registrar for cancellation or (b) become due and payable on their Stated Maturity, Optional Repurchase Date, Fundamental Change Repurchase Date or Redemption Date, as applicable, and the Company shall deposit with the Trustee cash sufficient to pay all amounts owing in respect of all Securities (other than any Securities which shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not theretofore canceled or delivered to the Registrar for cancellation, including the Accreted Principal Amount and interest (including Contingent Interest and Additional Amounts, if any) accrued and unpaid to such Stated Maturity, Optional Repurchase Date, Fundamental Change Repurchase Date or Redemption Date, as the case may be, and if in either case (1) or (2) the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then the Indenture with respect to the Securities shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Securities; (ii) rights hereunder of Holders to receive payments of the amounts then due, including interest (including Contingent Interest, if any) and Additional Amounts with respect to the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee; and (iii) the rights, obligations and immunities of the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar under the Indenture with respect to the Securities), and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 1303 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging the Indenture with respect to the Securities.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 606 and, if United States dollars shall have been deposited with the Trustee pursuant to this Section, the obligations of the Trustee under Section 1302 and the last paragraph of Section 1003 shall survive.

Subject to the provisions of the last paragraph of Section 1003, all United States dollars deposited with the Trustee pursuant to Section 1031 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture (Including, without limitation, Section 605), to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal of, premium, if any, and interest on the Securities for whose payment such United States dollars have been deposited with the Trustee.

Section 1302. Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money to the Holders entitled thereto by reason of any order or judgment of any court of governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under the Indenture with respect to the Securities and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 1301 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with the Indenture and the

Securities to the Holders entitled thereto; provided, however, that if the Company makes any payment of principal amount or interest (including Contingent Interest) of any Securities following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

Section 1303. Officers' Certificate; Opinion of Counsel.

Upon any application or demand by the Company to the Trustee to take any action under Section 1301, the Company shall furnish to the Trustee (A) an Officers' Certificate stating that all conditions precedent, if any, provided for in the Indenture relating to the proposed action have been complied with and that such satisfaction and discharge will not result in a breach or violation of or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which the Company is bound, and (B) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Opinions of counsel required to be delivered under this Section may have qualifications customary for opinions of the type required and counsel delivering such Opinions of counsel may rely on certificates of the Company or government or other officials customary for opinions of the type required, including certificates certifying as to matters of fact, including that various financial covenants have been complied with.

ARTICLE FOURTEEN

REPURCHASE OF SECURITIES AT THE OPTION OF HOLDERS
UPON A FUNDAMENTAL CHANGE

Section 1401. Fundamental Change Put.

(a) In the event that a Fundamental Change shall occur, each Holder shall have the right, at the Holder's option, but subject to the provisions of Section 1401 hereof, to require the Company to repurchase, and upon the exercise of such right, the Company shall repurchase, all of such Holder's Securities not theretofore called for redemption, or any portion of the Principal Amount at Issuance thereof that is equal to \$1,000 or an integral multiple thereof, as directed by such Holder pursuant to Section 1401, on the date (the "Fundamental Change Repurchase Date") that is a Business Day no later than 35 Business Days after the date of notice pursuant to Section 1401(b) of the occurrence of a Fundamental Change (subject to extension to comply with applicable law). The Company shall be required to purchase such Securities at a purchase price in cash equal to 100% of the Principal Amount at Issuance plus Principal Accretion and any accrued and unpaid cash interest (including Contingent Interest and Additional Amounts) to, but excluding, the Fundamental Change Repurchase Date (the "Fundamental Change Repurchase Price"); provided, however, that installments of interest (including Contingent Interest and Additional Amounts) on Securities whose Maturity is prior to or on the Fundamental Change Repurchase Date shall be payable to the Holders of such Securities, registered as such on the relevant Regular Record Date.

(b) On or before the 20th day after the occurrence of a Fundamental Change, the Company shall mail a written notice of the Fundamental Change to the Trustee (and the Paying Agent if the Trustee is not then acting as Paying Agent) and to all Holders at their addresses shown in the Security Register of the Registrar, and to beneficial owners as required by applicable law. The notice shall include the form of a Fundamental Change Repurchase Notice to be completed by the Holder and shall state:

(1) the date of such Fundamental Change and, briefly, the events causing such Fundamental Change;

(2) the date by which the Fundamental Change Repurchase Notice pursuant to this Section 1401 must be given;

(3) the Fundamental Change Repurchase Date;

(4) the Fundamental Change Repurchase Price;

(5) the name and address of each Paying Agent and Conversion Agent;

(6) the Conversion Rate and any adjustments thereto;

(7) that Securities as to which a Fundamental Change Repurchase Notice has been given may be converted into Common Stock pursuant to Article Four of this Indenture only to the extent that the Fundamental Change Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(8) the procedures that the Holder must follow to exercise rights under this Section 1401 and a brief description of such rights;

(9) that Securities must be surrendered to the Paying Agent to collect payments of the Fundamental Change Repurchase Price and interest, if any;

(10) briefly, the conversion rights of the Securities, and that the Holder must satisfy the requirements set forth in the Indenture in order to convert the Securities;

(11) the procedures for withdrawing a Fundamental Change Repurchase Notice, including a form of notice of withdrawal;

(12) that, unless the Company defaults in making payment of such Fundamental Change Repurchase Price, interest (including Contingent Interest and Additional Amounts), if any, and Principal Accretion on Securities surrendered for purchase will cease to accrue on and after the Fundamental Change Repurchase Date; and

(13) the CUSIP number of the Securities.

At the Company's request, the Trustee or the Paying Agent shall give such notice in the Company's name and at the Company's expense; provided, however, that in all cases, the text of such notice shall be prepared by the Company.

If any of the Securities is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to the repurchase of Global Securities.

Simultaneously with providing such notice, the Company will publish a notice containing this information in a newspaper of general circulation in the City of New York or publish the information on its website or through such other public medium as the Company may use at that time.

(c) A Holder may exercise its rights specified in subsection (a) of this Section 1401 upon delivery of a written notice (which shall be in substantially the form included on the reverse side of the Securities entitled "Option of Holder to Elect Purchase" hereto and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depositary's customary procedures) of the exercise of such rights (a "Fundamental Change Repurchase Notice") to any Paying Agent at any time on or before the 30th Business Day after the date of the Company's notice of the Fundamental Change (subject to extension to comply with applicable law).

The Fundamental Change Repurchase Notice delivered by a Holder shall state (i) if certificated Securities, the certificate number or numbers of the Security or Securities which the Holder will deliver to be purchased (if not certificated, the notice must comply with appropriate Depositary procedures), (ii) the portion of the Principal Amount at Issuance of the Security which the Holder will deliver to be purchased, which portion must be \$1,000 or an integral multiple thereof, and (iii) that such Security shall be purchased pursuant to the terms and conditions specified in the Securities and this Indenture.

Delivery of a Security to the Paying Agent by book-entry transfer or physical delivery prior to, on or after the Fundamental Change Repurchase Date (together with all necessary endorsements) at the offices of the Paying Agent is a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; provided, however, that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 1401 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice, as determined by the Company.

The Company shall purchase from the Holder thereof, pursuant to this Section 1401, a portion of a Security if the Principal Amount at Issuance of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of the Indenture that apply to the purchase of all of a Security pursuant to Sections 1401 through 1406 also apply to the purchase of such portion of such Security.

Notwithstanding anything herein to the contrary, any Holder delivering to a Paying Agent the Fundamental Change Repurchase Notice contemplated by this subsection (c) shall have the right to withdraw such Fundamental Change Repurchase Notice in whole or in a portion thereof that is a Principal Amount at Issuance of \$1,000 or in an integral multiple thereof at any time prior to the close of business on the Business Day next preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 1402.

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

Anything herein to the contrary notwithstanding, in the case of Global Securities, any Fundamental Change Repurchase Notice may be delivered or withdrawn and such Securities may be surrendered or delivered for purchase in accordance with the Applicable Procedures as in effect from time to time.

Section 1402. Effect of Fundamental Change Repurchase Notice.

Upon receipt by any Paying Agent of the Fundamental Change Repurchase Notice specified in Section 1401(c), the Holder of the Security in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn as specified below) thereafter be entitled to receive the Fundamental Change Repurchase Price with respect to such Security. Such Fundamental Change Repurchase Price shall be paid to such Holder promptly following the later of (a) the Fundamental Change Repurchase Date with respect to such Security (provided the conditions in Section 1401(c) have been satisfied) and (b) the time of book-entry transfer or delivery of such Security to a Paying Agent by the Holder thereof in the manner required by Section 1401(c). Securities in respect of which a Fundamental Change Repurchase Notice has been given by the Holder thereof may not be converted into shares of Common Stock on or after the date of the delivery of such Fundamental Change Repurchase Notice unless such Fundamental Change Repurchase Notice has first been validly withdrawn.

A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice (which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depository's customary procedures) of withdrawal delivered by the Holder to a Paying Agent at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying (i) the Principal Amount at Issuance of the Security or portion thereof (which must be a Principal Amount at Issuance of \$1,000 or an integral multiple of \$1,000 in excess thereof) with respect to which such notice of withdrawal is being submitted, (ii) if certificated Securities have been issued, the certificate numbers of the withdrawn Securities, or if not certificated, such notice must comply with appropriate Depository procedures, and (iii) the Principal Amount at Issuance, if any, which remains subject to the Fundamental Change Repurchase Notice.

Section 1403. Deposit of Fundamental Change Repurchase Price.

On or before 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date or the Business Day following the Fundamental Change Repurchase Date, the Company shall deposit with the Trustee or with a Paying Agent (other than the Company or an Affiliate of the Company) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Repurchase Price of all the Securities or portions thereof that are to be purchased as of such Fundamental Change Repurchase Date. The manner in which the deposit required by this Section 1403 is made by the Company shall be at the option of the Company, provided that such deposit shall be made in a manner such that the Trustee or a Paying Agent shall have immediately available funds on the Fundamental Change Repurchase Date.

If a Paying Agent holds, in accordance with the terms hereof, money sufficient to pay the Fundamental Change Repurchase Price of any Security for which a Fundamental Change Repurchase Notice has been tendered and not withdrawn in accordance with this Indenture on the Business Day following the Fundamental Change Repurchase Date then, on the Fundamental Change Repurchase Date, such Security will cease to be outstanding and interest, including any Contingent Interest and Additional Amounts, if any, and Principal Accretion on the Securities will cease to accrue (whether or not book-entry transfer of the Securities is made or whether or not the Securities are delivered to the Paying Agent) and the rights of the Holder in respect thereof shall terminate (other than the right to receive the Fundamental Change Repurchase Price and any previously accrued and unpaid interest (including any Contingent Interest) and Additional Amounts upon delivery or transfer of the Securities)). The Company shall publicly announce the Principal Amount at Issuance of Securities purchased as a result of such Fundamental Change on or as soon as practicable after the Fundamental Change Repurchase Date.

Section 1404. Securities Purchased in Part.

Any Security that is to be purchased only in part shall be surrendered at the office of a Paying Agent and promptly after the Fundamental Change Repurchase Date the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of such authorized denomination or denominations as may be requested by such Holder, in aggregate Principal Amount at Issuance equal to, and in exchange for, the portion of the Principal Amount at Issuance of the Security so surrendered that is not purchased.

Section 1405. Compliance with Securities Laws Upon Purchase of Securities.

In connection with any offer to purchase or purchase of Securities under Section 1401, the Company shall (a) comply with Rule 13e-4 and Rule 14e-1 (or any successor to either such Rule), if applicable, under the Exchange Act, (b) file the related Schedule TO (or any successor or similar schedule, form or report) if required under the Exchange Act, and (c) otherwise comply with all federal and state securities laws in connection with such offer to purchase or purchase of Securities, all so as to permit the rights of the Holders and obligations of

the Company under Sections 1401 through 1406 to be exercised in the time and in the manner specified therein.

Section 1406. Repayment to the Company.

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 1403 exceeds the aggregate Fundamental Change Repurchase Price together with interest (including Contingent Interest and Additional Amounts), if any, thereon of the Securities or portions thereof that the Company is obligated to purchase, then promptly after the Fundamental Change Repurchase Date the Trustee or a Paying Agent, as the case may be, shall return any such excess cash to the Company.

ARTICLE FIFTEEN

REPURCHASE OF SECURITIES AT THE OPTION OF HOLDERS

Section 1501. Optional Put.

(a) All or a portion of the Securities shall be repurchased by the Company on June 15, 2010, June 15, 2013 and June 15, 2018 (each, an "Optional Repurchase Date") at a price of 100% of the Accreted Principal Amount plus any accrued and unpaid interest (including Contingent Interest and Additional Amounts) to but not including the Optional Repurchase Date (the "Optional Repurchase Price"), at the option of the Holder thereof. Any Securities purchased on June 15, 2010 by the Company will be paid for in cash only. Securities purchased on June 15, 2013 and June 15, 2018 by the Company may be purchased in cash, shares of Common Stock or a combination of cash and shares of Common Stock at the Company's option, provided, however that any accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any, will be paid in cash.

The Company's right to exercise its election to purchase the Securities pursuant to this Article Fifteen through the issuance of shares of Common Stock shall be conditioned upon (1) the Company's not having given its Company notice of an election to pay entirely in cash and its giving of timely notice of election to purchase all or a specified percentage of the Securities with shares of Common Stock as provided herein; (2) the registration of the shares of Common Stock to be issued in respect of the payment of the Optional Repurchase Price under the Securities Act or the Exchange Act, in each case, if required for the initial issuance thereof; (3) any necessary qualification or registration under applicable state securities laws or the availability of an exemption from such qualification and registration; and (4) the receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel each stating that (A) the terms of the issuance of the shares of Common Stock are in conformity with this Indenture and (B) the shares of Common Stock to be issued by the Company in payment of the Optional Repurchase Price in respect of Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Optional Repurchase Price in respect of the Securities, will be validly issued, fully paid and non-assessable and, to the best of such counsel's knowledge, free from preemptive rights, and, in the case of such Officer's Certificate, stating that

conditions (1), (2) and (3) above have been satisfied and, in the case of such Opinion of Counsel, stating that conditions (2) and (3) above have been satisfied.

Such Officers' Certificate shall also set forth the number of shares of Common Stock to be issued for each \$1,000 principal amount of Securities and the Sale Price of a share of Common Stock on each Trading Day during the period commencing on the first Trading Day of the period during which the Market Price is calculated and ending three Business Days prior to the applicable Optional Repurchase Date. The Company may pay the Optional Repurchase Price (or any portion thereof) in shares of Common Stock only if the information necessary to calculate the Market Price is published in The Wall Street Journal or another daily newspaper of national circulation. If the foregoing conditions are not satisfied with respect to a Holder or Holders prior to the close of business on the Optional Repurchase Date and the Company has elected to repurchase the Securities pursuant to this Article Fifteen through the issuance of shares of Common Stock, the Company shall pay, without further notice, the entire Optional Repurchase Price of the Securities of such Holder or Holders in cash.

(b) On a date not less than 20 Business Days prior to the Optional Repurchase Date, the Company shall mail a written notice to the Trustee (and the Paying Agent if the Trustee is not then acting as Paying Agent) and to all Holders at their addresses shown in the Security Register of the Registrar, and to beneficial owners as required by applicable law. The notice shall include the form of an Optional Repurchase Notice to be completed by the Holder and shall state:

- (1) the date by which the Optional Repurchase Notice pursuant to this Section 1501 must be given;
- (2) the Optional Repurchase Date;
- (3) the Optional Repurchase Price;
- (4) whether the Optional Repurchase Price will be paid in cash in shares of Common Stock or in any combination thereof, specifying the percentages of each, provided that the Company will pay cash for fractional interests in shares of Common Stock;
- (5) if the Optional Repurchase Price will be paid in whole, or in part, in shares of Common Stock, the percentage of the Optional Repurchase Price to be paid in shares of Common Stock, that each Holder will receive shares of Common Stock with a Market Price equal to such specified percentage of the Optional Repurchase Price of the Securities held by such Holder (except any cash amount to be paid in lieu of fractional shares), the method of calculating the Market Price of the shares of Common Stock, and that because the Market Price of shares of Common Stock will be determined prior to the Optional Repurchase Date, Holders will bear the market risk with respect to the value of the shares of Common Stock to be received from the date such Market Price is determined to the Optional Repurchase Date;

(6) the name and address of each Paying Agent and the Conversion Agent;

(7) the Conversion Rate and any adjustments thereto;

(8) that Securities as to which an Optional Repurchase Notice has been given may be converted into Common Stock pursuant to Article Four hereof only if the applicable Optional Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(9) the procedures that the Holder must follow to exercise rights under this Section and a brief description of such rights;

(10) that Securities must be surrendered to the Paying Agent to collect payment of the Optional Purchase Price and interest, if any;

(11) briefly, the conversion rights of the Securities, and that the Holder must satisfy the requirements set forth in the Indenture in order to convert the Securities;

(12) the procedures for withdrawing an Optional Repurchase Notice, including a form of notice of withdrawal;

(13) that, unless the Company defaults in making payment of such Optional Repurchase Price, then cash interest (including Contingent Interest), if any, and Principal Accretion on Securities surrendered for purchase will cease to accrue on and after the Optional Repurchase Date; and

(14) the CUSIP number of the Securities.

At the Company's request, the Trustee or the Paying Agent shall give such notice in the Company's name and at the Company's expense; provided, however, that in all cases, the text of such notice shall be prepared by the Company.

If any of the Securities is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to the repurchase of Global Securities.

For purposes of determining the existence of potential fractional interests, all Securities subject to purchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each Holder whose Securities are purchased pursuant to this Article Fifteen shall receive the same percentage of cash or shares of Common Stock in payment of the Optional Repurchase Price for such Securities, except (i) with regard to the payment of cash in lieu of fractional shares of Common Stock and (ii) in the event that the Company is unable to purchase the Securities of a Holder or Holders for shares of Common Stock because any necessary qualifications or registrations of the shares of Common Stock under applicable state securities laws cannot be obtained, the Company may purchase the Securities of such Holder or Holders for cash. The Company may not change its election with

respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Company Notice to Holders except pursuant to this Section 1501 in the event of a failure to satisfy, prior to the close of business on the Optional Repurchase Date, any condition to the payment of the Optional Repurchase Price, in whole or in part, in shares of Common Stock.

Simultaneously with providing such notice, the Company will publish a notice containing this information in a newspaper of general circulation in the City of New York or publish the information on its website or through such other public medium as the Company may use at that time.

(c) A Holder may exercise its rights specified in subsection (a) of this Section 1501 upon delivery of a written notice (which shall be in substantially the form included on the reverse side of the Securities entitled "Option of Holder to Elect Purchase" hereto and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depository's customary procedures) of the exercise of such rights (an "Optional Repurchase Notice") to any Paying Agent at any time from the opening of business on the date that is 20 Business Days prior to the Optional Repurchase Date until the close of business on the Optional Repurchase Date.

The Optional Repurchase Notice delivered by a Holder shall state (i) if certificated Securities have been issued, the certificate number or numbers of the Security or Securities which the Holder will deliver to be purchased (if not certificated, the notice must comply with appropriate Depository procedures), (ii) the portion of the Principal Amount at Issuance of the Security which the Holder will deliver to be purchased, which portion must be \$1,000 or an integral multiple thereof, (iii) that such Security shall be purchased pursuant to the terms and conditions specified in this Indenture, and (iv) in the event the Company elects, pursuant to the notice the Company is required to give, to pay the Optional Repurchase Price in shares of Common Stock, in whole or in part, but the Optional Repurchase Price is ultimately to be paid to the Holder entirely in cash because of any of the conditions to payment of the Optional Repurchase Price or portion of the Optional Repurchase Price in shares of Common Stock is not satisfied prior to the close of business on the Optional Repurchase Date, whether the Holder elects to withdraw the notice as to some or all of the Securities to which it relates or to receive cash in respect of the entire Optional Repurchase Price for all Securities or portions of Securities subject to such notice. If a Holder fails to indicate the Holder's choice with respect to paragraph (iv), the Holder will be deemed to have elected to receive cash in respect of the entire Optional Repurchase Price for all Securities subject to the notice in these circumstances.

Delivery of a Security to the Paying Agent by book-entry transfer or physical delivery prior to, on or after the Optional Repurchase Date (together with all necessary endorsements) at the offices of the Paying Agent is a condition to receipt by the Holder of the Optional Repurchase Price therefor; provided, however, that such Optional Repurchase Price shall be so paid pursuant to this Section 1501 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Optional Repurchase Notice, as determined by the Company.

The Company shall purchase from the Holder thereof, pursuant to this Section 1501, a portion of a Security if the Principal Amount at Issuance of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of the Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 1501 shall be consummated by the delivery of the consideration to be received by the Holder (together with accrued and unpaid cash interest, if any) promptly following the later of the Optional Repurchase Date and the time of delivery of the Security. The Optional Repurchase Price may only be paid in cash.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Optional Repurchase Notice contemplated by this Section 1501 shall have the right to withdraw such Optional Repurchase Notice at any time prior to the close of business on the Optional Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 1502.

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

Anything herein to the contrary notwithstanding, in the case of Global Securities, any Optional Repurchase Notice may be delivered or withdrawn and such Securities may be surrendered or delivered for purchase in accordance with the Applicable Procedures as in effect from time to time.

(d) The Company may at its option add additional dates on which Holders would have the right to require the Company to repurchase Securities. The Company would be required to provide 60 days advance notice to Holders of its nonbonding intention to add additional dates.

(e) There shall be no purchase of any Securities pursuant to this Section 1501 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Optional Repurchase Notice) and is continuing an Event of Default (other than a default in the payment of the Optional Repurchase Price and any accrued and unpaid cash interest with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which an Optional Repurchase Notice has been withdrawn in compliance with this Indenture or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Optional Repurchase Price and any accrued and unpaid cash interest with respect to such Securities) in which case, upon such return, the Optional Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 1502. Effect of Optional Repurchase Notice.

Upon receipt by any Paying Agent of the Optional Repurchase Notice specified in Section 1501, the Holder of the Security in respect of which such Repurchase Notice was given

shall (unless such Optional Repurchase Notice is withdrawn as specified below) thereafter be entitled to receive the Optional Repurchase Price with respect to such Security. Such Optional Repurchase Price shall be paid to such Holder promptly following the later of (a) the Optional Repurchase Date with respect to such Security (provided the conditions in Section 1501 have been satisfied) and (b) the time of delivery of such Security to a Paying Agent by the Holder thereof in the manner required by Section 1501. Securities in respect of which an Optional Repurchase Notice has been given by the Holder thereof may not be converted into shares of Common Stock on or after the date of the delivery of such Optional Repurchase Notice unless such Optional Repurchase Notice has first been validly withdrawn.

An Optional Repurchase Notice may be withdrawn by means of a written notice (which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depository's customary procedures) of withdrawal delivered by the Holder to a Paying Agent at any time prior to the close of business on the Optional Repurchase Date, specifying (i) the Principal Amount at Issuance of the Security or portion thereof (which must be a Principal Amount at Issuance of \$1,000 or an integral multiple of \$1,000 in excess thereof) with respect to which such notice of withdrawal is being submitted, (ii) if certificated Securities have been issued, the certificate numbers of the withdrawn Securities, or if not certificated, such notice must comply with appropriate Depository procedures, and (iii) the Principal Amount at Issuance, if any, which remains subject to the Optional Repurchase Notice.

Section 1503. Deposit of Optional Repurchase Price.

On or before 11:00 a.m., New York City time, on the Optional Repurchase Date or the Business Day following the Optional Repurchase Date, the Company shall deposit with the Trustee or with a Paying Agent (other than the Company or an Affiliate of the Company) an amount of money (in immediately available funds if deposited on such Business Day) and/or shares of Common Stock, or a combination thereof, sufficient to pay the aggregate Optional Repurchase Price of all the Securities or portions thereof that are to be purchased as of such Optional Repurchase Date. The manner in which the deposit required by this Section 1503 is made by the Company shall be at the option of the Company, provided that such deposit shall be made in a manner such that the Trustee or a Paying Agent shall have immediately available funds on the Optional Repurchase Date.

If a Paying Agent holds, in accordance with the terms hereof, money and/or shares of Common Stock sufficient to pay the Optional Repurchase Price of any Security for which an Optional Repurchase Notice has been tendered and not withdrawn in accordance with this Indenture on the Business Day following the Optional Repurchase Date then, on the Optional Repurchase Date, such Security will cease to be outstanding and interest, including any Contingent Interest and Additional Amounts, if any, and Principal Accretion on the Securities will cease to accrue (whether or not book-entry transfer of the Securities is made or whether or not the Securities are delivered to the Paying Agent) and the rights of the Holder in respect thereof shall terminate (other than the right to receive the Optional Repurchase Price and any previously accrued and unpaid interest (including any Contingent Interest) and Additional Amounts upon delivery or transfer of the Securities)). The Company shall publicly announce the

Principal Amount at Issuance of Securities purchased pursuant to this Article Fifteen on or as soon as practicable after the Optional Repurchase Date.

Section 1504. Securities Purchased in Part.

Any Security that is to be purchased only in part shall be surrendered at the office of a Paying Agent and promptly after the Optional Repurchase Date the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of such authorized denomination or denominations as may be requested by such Holder, in aggregate Principal Amount at Issuance equal to, and in exchange for, the portion of the Principal Amount at Issuance of the Security so surrendered that is not purchased.

Section 1505. Compliance with Securities Laws Upon Purchase of Securities.

In connection with any offer to purchase or purchase of Securities under Section 1501, the Company shall (a) comply with Rule 13e-4 and Rule 14e-1 (or any successor to either such Rule), if applicable, under the Exchange Act, (b) file the related Schedule TO (or any successor or similar schedule, form or report) if required under the Exchange Act, and (c) otherwise comply with all federal and state securities laws in connection with such offer to purchase or purchase of Securities, all so as to permit the rights of the Holders and obligations of the Company under Sections 1501 through 1506 to be exercised in the time and in the manner specified therein.

Section 1506. Repayment to the Company.

To the extent that the aggregate amount of cash or shares of Common Stock deposited by the Company pursuant to Section 1503 exceeds the aggregate Optional Repurchase Price together with interest (including Contingent Interest and Additional Amounts), if any, thereon of the Securities or portions thereof that the Company is obligated to purchase, then promptly after the Optional Repurchase Date the Trustee or a Paying Agent, as the case may be, shall return any such excess to the Company.

Section 1507. Covenants of the Company

All shares of Common Stock delivered upon purchase of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim. The Company shall use its reasonable efforts to list or cause to have quoted any shares of Common Stock to be issued to purchase Securities on the principal national securities exchange or over-the-counter or other domestic market on which the shares of Common Stock are then listed or quoted.

Section 1508. Procedure upon Repurchase

The Company shall deposit cash (in respect of a cash purchase or for fractional shares of Common Stock, as applicable) or shares of Common Stock, or a combination thereof,

as applicable, at the time and in the manner as provided in Section 1503 sufficient to pay the aggregate Optional Repurchase Price of all Securities to be purchased on the applicable Optional Repurchase Date pursuant to this Article Fifteen.

As soon as practicable after the Optional Repurchase Date, the Company shall deliver to each Holder entitled to receive shares of Common Stock through the Paying Agent, a certificate for the number of full shares of Common Stock issuable in payment of the Optional Repurchase Price and cash in lieu of any fractional shares of Common Stock. The Person in whose name the certificate for shares of Common Stock is registered shall be treated as a holder of record of shares of Common Stock on the Business Day next following the Optional Repurchase Date. Subject to Section 1501, no payment or adjustment will be made for dividends on the shares of Common Stock the record date for which occurred on or prior to the Optional Repurchase Date.

Section 1509. Taxes

If a Holder of a Security is paid in shares of Common Stock, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of shares of Common Stock. However, the Holder shall pay any such tax which is due because the Holder requests the shares of Common Stock to be issued in a name other than the Holder's name. The Paying 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 Paying Agent receives a sum sufficient to pay any tax which will be due because the shares of Common Stock are to be issued in a name other than the Holder's name. Nothing herein shall preclude any income tax withholding required by law or regulations.

ARTICLE SIXTEEN

CONTINGENT INTEREST

Section 1601. Contingent Interest.

The Company shall make Contingent Interest payments to the Holders of Securities, as set forth in Section 1602 below, during any six month period from June 15 to December 15 and from December 15 to June 14, beginning with the six-month period commencing on June 15, 2010 (each a "Contingent Interest Period") if the average Security Price for the applicable Five-Trading-Day Measurement Period to, but excluding, the day immediately preceding the first day of the relevant Contingent Interest Period equals 120% or more of the Accreted Principal Amount of such Security. During any Contingent Interest Period when Contingent Interest is payable pursuant to this section, each Contingent Interest payment due and payable on each \$1,000 principal amount shall equal 0.375% per annum of the average Security Price for the five Trading Days in the relevant Five-Trading-Day Measurement Period.

Section 1602. Payment of Contingent Interest; Contingent Interest Rights Preserved.

If payable, Contingent Interest shall be paid on the last day of the applicable Contingent Interest Period (in each case, a "Contingent Interest Payment Date"). Contingent Interest payments on any Security that are payable, and are punctually paid or duly provided for, on any Contingent Interest Payment Date shall be paid to the Person who is the Holder of that Security on the 30th day preceding the last day of such Contingent Interest Period. Each payment of Contingent Interest on any Security shall be paid (A) if such Security is held in the form of a Global Note, in the same-day funds by transfer to an account maintained by the payee located inside the United States, or (B) if such Security is held in the form of a Certificated Note, by check, mailed to the address of such Holder as set forth in the Security Register. In the case of a Global Note, interest payable on any Contingent Interest Payment Date will be paid to the Depository for the purpose of permitting Depository to credit the interest received by it in respect of such Global Note to the accounts of the beneficial owners thereof.

Upon determination that Holders of Securities will be entitled to receive Contingent Interest during a Contingent Interest Period, prior to the start of such Contingent Interest Period, the Company will issue a press release and publish such information on its website (or otherwise widely disseminate such information) as soon as practicable.

Section 1603. Bid Solicitation Agent.

The Company will appoint a Bid Solicitation Agent prior to June 15, 2010. The Bid Solicitation Agent shall solicit bids from securities dealers which the Company indicates that it believes are willing to bid for the Securities. The Company may change the Bid Solicitation Agent at its discretion, but the Bid Solicitation Agent may not be the Company or an Affiliate of the Company.

ARTICLE SEVENTEEN

TAX TREATMENT

Section 1701. Tax Treatment.

The Company agrees, and by acceptance of beneficial ownership interest in the Securities each beneficial holder of the Securities will be deemed to have agreed, for United States federal income tax purposes (1) to treat the Securities as indebtedness that is subject to Treas. Reg. Sec. 1.1275-4 (the "Contingent Payment Regulations") and, for purposes of the Contingent Payment Regulations, to treat the fair market value of any stock beneficially received by a beneficial holder upon any conversion or repurchase of the Securities as a contingent payment and (2) to be bound by the Company's determination of the "comparable yield" and "projected payment schedule," within the meaning of the Contingent Payment Regulations, with respect to the Securities. A Holder of Securities may obtain the issue price, amount of original issue discount, issue date, yield to maturity, comparable yield and projected payment schedule for the Securities by submitting a written request for such information to the Company at the

following address: JAKKS Pacific Inc., 22619 Pacific Coast Highway, Malibu, CA 90265-5080, Attention: Chief Financial Officer.

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

JAKKS PACIFIC, INC., as Issuer

By: _____
Name: Jack Friedman
Title: Chief Executive Officer

Attest: _____
Name: Joel M. Bennett
Title: Assistant Secretary

WELLS FARGO BANK, N.A., as Trustee

By: _____
Name: Frank McDonald
Title: Vice President

STATE OF _____)
)ss.:
COUNTY OF _____)

On the ____ day of June, 2003, before me personally came Jack Friedman, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the Chairman and Chief Executive Officer of JAKKS Pacific, Inc., which executed the foregoing instrument; and that he signed his name thereto pursuant to authority of the Board of Directors of JAKKS Pacific, Inc.

(NOTARIAL
SEAL)

STATE OF _____)
)ss.:
COUNTY OF _____)

On the ____ day of June, 2003, before me personally came Joel Bennett, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the Assistant Secretary of JAKKS Pacific, Inc., which executed the foregoing instrument; and that he signed his name thereto pursuant to authority of the Board of Directors of JAKKS Pacific, Inc.

(NOTARIAL
SEAL)

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of June, 2003, before me personally came Frank McDonald, to me known, who, being by me duly sworn, did depose and say that he resides at _____; that he is an authorized officer of Wells Fargo Bank, National Association, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of such corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed pursuant to authority of the Board of Directors of such corporation; and that he signed his name thereto pursuant to like authority.

(NOTARIAL
SEAL)

- (1) Rule 144A Transfers. If the transfer is being effected in accordance with Rule 144A:
- (A) the Specified Securities are being transferred to a person that the Owner and any person acting on its behalf reasonably believe is a "qualified institutional buyer" within the meaning of Rule 144A, acquiring for its own account or for the account of a qualified institutional buyer; and
 - (B) the Owner and any person acting on its behalf have taken reasonable steps to ensure that the Transferee is aware that the Owner may be relying on Rule 144A in connection with the transfer; and
- (2) Rule 144 Transfers. If the transfer is being effected pursuant to Rule 144:
- (A) the transfer is occurring after a holding period of at least one year (computed in accordance with paragraph (d) of Rule 144) has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and is being effected in accordance with the applicable amount, manner of sale and notice requirements of paragraphs (e), (f) and (h) of Rule 144;
 - (B) the transfer is occurring after a holding period by the Owner of at least two years has elapsed since the date the Specified Securities were acquired from the Company or from an affiliate (as such term is defined in Rule 144) of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company; or

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

Dated: _____ (Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

By: _____
Name:
Title:

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

EXHIBIT B

UNRESTRICTED SECURITIES CERTIFICATE

(For removal of Securities Act Legends pursuant to Section 307(b))

Re: Convertible Senior Notes due 2023 of JAKKS Pacific, Inc.
(the "Securities")

Reference is made to the Indenture, dated as of June 9, 2003, between JAKKS Pacific, Inc., a Delaware corporation (the "Company") and Wells Fargo Bank, National Association, as Trustee. Terms used herein and defined in the Indenture or in Rule 144 under the U.S. Securities Act of 1933 (the "Securities Act") are used herein as so defined.

This certificate relates to US\$_____ principal amount of Securities, which are evidenced by the following certificate(s) (the "Specified Securities"):

CUSIP No(s). _____

CERTIFICATE No(s). _____

The person in whose name this certificate is executed below (the "Undersigned") hereby certifies that either (i) it is the sole beneficial owner of the Specified Securities or (ii) it is acting on behalf of all the beneficial owners of the Specified Securities and is duly authorized by them to do so. Such beneficial owner or owners are referred to herein collectively as the "Owner". If the Specified Securities are represented by a Global Security, they are held through the Depositary or an Agent Member in the name of the Undersigned, as or on behalf of the Owner. If the Specified Securities are not represented by a Global Security, they are registered in the name of the Undersigned, as or on behalf of the Owner.

The Owner has requested that the Specified Securities be exchanged for Securities bearing no Private Placement Legend pursuant to Section 307(b) of the Indenture. In connection with such exchange, the Owner hereby certifies that the exchange is occurring after a holding period of at least two years (computed in accordance with paragraph (d) of Rule 144) has elapsed since the Specified Securities were last acquired from the Company or from an affiliate of the Company, whichever is later, and the Owner is not, and during the preceding three months has not been, an affiliate of the Company. The Owner also acknowledges that any future transfers of the Specified Securities must comply with all applicable securities laws of the states of the United States and other jurisdictions.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Initial Purchaser.

Dated: (Print the name of the Undersigned, as such term is defined in the second paragraph of this certificate.)

By: _____
Name:
Title:

(If the Undersigned is a corporation, partnership or fiduciary, the title of the person signing on behalf of the Undersigned

JAKKS PACIFIC, INC.

CONVERTIBLE SENIOR NOTE DUE 2023

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

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

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN 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 AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATED PERSON OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) UNLESS SUCH OFFER, SALE OR OTHER TRANSFER IS (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON THE HOLDER 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 WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE

REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHT 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, SUBJECT TO A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THIS SECURITY BEING COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER OF THIS SECURITY AFTER THE RESALE RESTRICTION TERMINATION DATE.

THE COMPANY AGREES, AND BY ACCEPTANCE OF BENEFICIAL OWNERSHIP INTEREST IN THE SECURITIES EACH BENEFICIAL HOLDER OF SUCH SECURITIES WILL BE DEEMED TO HAVE AGREED, FOR UNITED STATES FEDERAL INCOME TAX PURPOSES (1) TO TREAT THE SECURITIES OF THIS SERIES AS INDEBTEDNESS THAT IS SUBJECT TO TREAS. REG. SEC. 1.1275-4 (THE "CONTINGENT PAYMENT REGULATIONS") AND, FOR PURPOSES OF THE CONTINGENT PAYMENT REGULATIONS, TO TREAT THE FAIR MARKET VALUE OF ANY STOCK BENEFICIALLY RECEIVED BY A BENEFICIAL HOLDER UPON ANY CONVERSION OR REPURCHASE OF SUCH SECURITIES AS A CONTINGENT PAYMENT AND (2) TO BE BOUND BY THE COMPANY'S DETERMINATION OF THE "COMPARABLE YIELD" AND "PROJECTED PAYMENT SCHEDULE," WITHIN THE MEANING OF THE CONTINGENT PAYMENT REGULATIONS, WITH RESPECT TO THE SECURITIES OF THIS SERIES. A HOLDER OF SECURITIES OF THIS SERIES MAY OBTAIN THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, YIELD TO MATURITY, COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE FOR SUCH SECURITIES BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE COMPANY AT THE FOLLOWING ADDRESS: JAKKS PACIFIC, INC., 22619 PACIFIC COAST HIGHWAY, MALIBU, CALIFORNIA, 90265-5080, ATTENTION: CHIEF FINANCIAL OFFICER.

JAKKS PACIFIC, INC.

CONVERTIBLE SENIOR NOTE DUE 2023

Cusip No.:47012EAA4

No: 1

\$98,000,000

JAKKS PACIFIC, INC., a corporation duly existing and qualified under the laws of the State of Delaware (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, on June 15, 2023, the Accreted Principal Amount of this Security on such date, plus accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any. For the sake of clarity, the Accreted Principal Amount of this Security on June 15, 2023 will be \$1,811.95 for every \$1,000 of Principal Amount at Issuance of this Security, which, assuming that the aggregate Principal Amount at Issuance of this Security is \$98,000,000, is \$177,571,100. The Principal Amount at Issuance of this Security is \$98,000,000.

In addition, for value received, the Company hereby promises to pay to Cede & Co., or registered assigns, (i) from June 9, 2003, or from the most recent Interest Payment Date to which interest has been paid or provided for, to, but not including June 15, 2010, cash interest at an annual rate of 4.625% of the Principal Amount at Issuance and (ii) from and after June 15, 2010, no cash interest shall be paid. Cash interest on this Security is payable semi-annually in arrears on June 15 and December 15 in each year, with the first Interest Payment Date being December 15, 2003, and will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each payment of cash interest on this Security will include interest accrued through the day before the applicable Interest Payment Date (or Optional Repurchase Date, Fundamental Change Repurchase Date, Redemption Date or, in certain circumstances, Conversion Date, as the case may be).

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest payment, which shall be the May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid, or duly provided for, and interest on such Defaulted Interest at the interest rate borne by the Securities, to the extent lawful, shall forthwith cease to be payable to the Holder on such Regular Record Date, and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Subject to the conditions of the Indenture and the accrual and record date provisions specified below, the Company shall pay contingent interest ("Contingent Interest") to the Holders during any six-month period from June 15 to December 14 and from December 15 to June 14, commencing with the six-month period beginning June 15, 2010, if the average Security Price for the Five-Trading-Day Measurement Period with respect to such six month period equals 120% or more of the Accreted Principal Amount of such Securities to, but excluding, the day immediately preceding the first day of the relevant six month period. Contingent Interest will be paid only in cash.

Contingent Interest, if any, will accrue from June 15 or December 15, as applicable, and will be payable on the next succeeding Interest Payment Date. Contingent Interest will be paid to the Person in whose name a Security is registered on the next preceding Regular Record Date on which Contingent Interest is payable.

The amount of Contingent Interest payable per Security in respect of any six-month period will equal 0.375% per annum of the average Security Price for the Five-Trading-Day Measurement Period.

The Holder of this Security is entitled to the benefits of the Registration Rights Agreement, dated as of June 9, 2003, between the Company and the Initial Purchaser, including

the provisions contained therein regarding the payment of Additional Amounts (as defined therein). Any Additional Amounts due pursuant to the Registration Rights Agreement will be payable in cash on the Interest Payment Dates related to the Securities. The Additional Amounts will be determined by multiplying the applicable Additional Amounts rate by the Accreted Principal Amount of the Securities, multiplied by a fraction the numerator of which is the number of days such Additional Amounts rate was applicable during the period, and the denominator of which is 360.

Payment of the Accreted Principal Amount and interest (including Contingent Interest and Additional Amounts) on this Security will be made at the office or agency of the Company maintained for that purpose, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the address of the Person entitled thereto as such address shall appear on the Security Register. If any of the Securities are held by the Depositary, payments of interest (including Contingent Interest and Additional Amounts) to the Depositary may be made by wire transfer to the Depositary.

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

All references in this Security or in the Indenture to "interest" or "accrued and unpaid interest" shall be deemed to include, to the extent applicable, a reference to Additional Amounts and Contingent Interest.

Unless the certificate of authentication hereon has been duly executed by the Trustee referred to on the reverse hereof or by the authenticating agent appointed as provided in the Indenture by manual signature, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed by the manual or facsimile signature of its authorized officers.

Dated: June 9, 2003

JAKKS PACIFIC, INC.

By: _____
Chairman and Chief Executive Officer

Attest:

By: _____
Assistant Secretary

[TRUSTEE'S CERTIFICATE OF AUTHORIZATION FOLLOWS]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

WELLS FARGO BANK,
NATIONAL ASSOCIATION, As Trustee

By: _____
Frank McDonald

Dated: June 9, 2003

JAKKS PACIFIC, INC.

CONVERTIBLE SENIOR NOTE DUE 2023

1. Indenture.

This Security is one of a duly authorized issue of Securities of the Company designated as its Convertible Senior Notes due 2023 (herein called the "Securities"), limited in Principal Amount at Issuance to \$98,000,000 which may be issued under an indenture (herein called the "Indenture"), dated as of June 9, 2003, between the Company and Wells Fargo Bank, National Association, as trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties, obligations and immunities thereunder of the Company, the Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. The Indenture does not limit other Indebtedness of the Company or its Subsidiaries, secured or unsecured.

2. Ranking.

This Security constitutes a senior unsecured general obligation of the Company, ranking equally with other existing and future senior unsecured Indebtedness the Company has incurred or may incur, ranking senior in right of payment to any future Indebtedness that is expressly made subordinate to the Securities and ranking subordinate to secured Indebtedness the Company has incurred.

3. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are subject to redemption for cash in whole or from time to time in part on or after June 15, 2010, at the option of the Company, on not less than 30 nor more than 60 days' prior notice by first-class mail at a redemption price equal to the Accreted Principal Amount of the Security so redeemed plus accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any, to but excluding the Redemption Date.

The Redemption Prices on June 15, 2010 and on each subsequent December 15 and June 15 thereafter prior to June 15, 2023 and on June 15, 2023 are set forth in the table below. In addition to the Redemption Prices set forth on such table, the Redemption Price on any Redemption Date that falls between the dates listed would be the Accreted Principal Amount as of such Redemption Date plus accrued and unpaid interest (including Contingent Interest and Additional Amounts) to but excluding the Redemption Date (subject to the right of Holders of record on relevant Interest Payment Dates to receive interest due on an Interest Payment Date) that has accrued on a Security since the immediately preceding date on which interest was paid.

Redemption Date	(1) Principal Amount at Issuance	(2) Accrued Principal Accretion	(3) Accreted Principal Amount (1)+(2)
June 15, 2010	\$1,000.00	\$ 0.00	\$1,000.00
December 15, 2010	\$1,000.00	\$ 23.13	\$1,023.13
June 15, 2011	\$1,000.00	\$ 46.78	\$1,046.78
December 15, 2011	\$1,000.00	\$ 70.99	\$1,070.99
June 15, 2012	\$1,000.00	\$ 95.76	\$1,095.76
December 15, 2012	\$1,000.00	\$121.10	\$1,121.10
June 15, 2013	\$1,000.00	\$147.02	\$1,147.02
December 15, 2013	\$1,000.00	\$173.55	\$1,173.55
June 15, 2014	\$1,000.00	\$200.69	\$1,200.69
December 15, 2014	\$1,000.00	\$228.45	\$1,228.45
June 15, 2015	\$1,000.00	\$256.86	\$1,256.86
December 15, 2015	\$1,000.00	\$285.93	\$1,285.93
June 15, 2016	\$1,000.00	\$315.66	\$1,315.66
December 15, 2016	\$1,000.00	\$346.09	\$1,346.09
June 15, 2017	\$1,000.00	\$377.22	\$1,377.22
December 15, 2017	\$1,000.00	\$409.06	\$1,409.06
June 15, 2018	\$1,000.00	\$441.65	\$1,441.65
December 15, 2018	\$1,000.00	\$474.99	\$1,474.99
June 15, 2019	\$1,000.00	\$509.09	\$1,509.09
December 15, 2019	\$1,000.00	\$543.99	\$1,543.99
June 15, 2020	\$1,000.00	\$579.70	\$1,579.70
December 15, 2020	\$1,000.00	\$616.23	\$1,616.23
June 15, 2021	\$1,000.00	\$653.60	\$1,653.60
December 15, 2021	\$1,000.00	\$691.84	\$1,691.84
June 15, 2022	\$1,000.00	\$730.97	\$1,730.97
December 15, 2022	\$1,000.00	\$771.00	\$1,771.00
June 15, 2023	\$1,000.00	\$811.95	\$1,811.95

If less than all of the Securities are to be redeemed, the Trustee shall select the Securities or portions thereof to be redeemed by lot, or in its discretion, on a pro rata basis or by any other method the Trustee shall deem fair and reasonable. If any Security is to be redeemed in part only, a new Security in Principal Amount at Issuance equal to the unredeemed portion of Principal Amount at Issuance will be issued. If a portion of a Holder's Securities is selected for partial redemption and such Holder converts a portion of its Securities, the converted portion will be deemed to be of the portion selected for redemption.

In the case of any redemption of Securities, interest installments whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities of record as of the close of business on the relevant record date referred to on the face hereof. Securities (or portions thereof) whose redemption and payment is made in accordance with the Indenture shall cease to bear interest from and after the date of redemption.

4. Repurchase by the Company at the Option of the Holder.

Each Holder may require the Company to repurchase on June 15, 2010, June 15, 2013 and June 15, 2018, all or a portion of such Holder's Securities, at a repurchase price equal to 100% of the principal amount plus any accrued and unpaid interest (including Contingent Interest and Additional Amounts) to but excluding the Optional Repurchase Date. Any Securities purchased on June 15, 2010 will be paid for in cash. Securities purchased on June 15, 2013 and June 15, 2018 may be purchased in cash, shares of Common Stock or a combination of cash and shares of Common Stock at the Company's option, provided, however that any accrued and unpaid interest (including Contingent Interest and Additional Amounts) will be paid in cash.

In addition, upon the occurrence of a Fundamental Change, each Holder may require the Company to repurchase for cash all or a portion of such Holder's Securities, at a purchase price in cash equal to the Accreted Principal Amount on the date of repurchase plus any accrued and unpaid interest (including Contingent Interest and Additional Amounts), if any, to, but excluding, the date of repurchase. Securities submitted for repurchase must have a Principal Amount at Issuance equal to \$1,000 or multiples of \$1,000.

Holder's have the right to withdraw any Optional Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

5. Conversion.

Under the circumstances provided for in, and subject to compliance with the provisions of, the Indenture, a Holder of a Security may, at such Holder's option, convert such Security (or any portion thereof equal to \$1,000 Principal Amount at Issuance or multiples of \$1,000 in excess thereof) into shares of Common Stock at the Conversion Rate in effect at the time of conversion; provided, however, that if the Security is called for redemption pursuant to Article Eleven of the Indenture or is submitted or presented for repurchase pursuant to Articles Fourteen or Fifteen of the Indenture, the conversion right will terminate at the close of business on the second Business Day immediately preceding the Redemption Date, Optional Repurchase Date or the Fundamental Change Repurchase Date, as the case may be, for such Security or such earlier date as the Holder presents such Security for redemption or repurchase (unless the Company shall default in paying the redemption payment, Optional Repurchase Price or Fundamental Change Repurchase Price, as the case may be, when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed or purchased, as the case may be).

The Company will notify Holders of any event triggering the right to convert the Security as specified above in accordance with the Indenture.

A Security in respect of which a Holder has delivered an Optional Repurchase Notice or a Fundamental Change Repurchase Notice exercising the option of such Holder to require the

Company to repurchase such Security may be converted only if such notice is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is fifty (50) shares of Common Stock per \$1,000 Principal Amount at Issuance (with no effect given to any accretion on such amount from and after June 15, 2010), subject to adjustment under certain circumstances. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Sale Price of the Common Stock on the Trading Day immediately prior to the Conversion Date.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice set forth below and deliver such notice to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any transfer or similar tax, if required. The Conversion Agent may assume that any Holder that delivers a conversion notice is entitled to convert this Security without independent verification.

A Holder may convert a portion of the Securities of this series only if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment shall be made for dividends on the Common Stock except as provided in the Indenture. On conversion of Securities of this series, that portion of accrued and unpaid interest, including Contingent Interest and Additional Amounts on such Securities attributable to the period from the most recent Interest Payment Date (or, if no Interest Payment Date has occurred, from the Original Issue Date) through the Conversion Date and Tax Original Issue Discount accrued through the Conversion Date with respect to such converted Securities shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the Common Stock (together with any cash payment in lieu of fractional shares) in exchange for such Securities being converted pursuant to the provisions hereof, and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for accrued and unpaid interest (including Contingent Interest and Additional Amounts) and Tax Original Issue Discount accrued through the Conversion Date and the balance, if any, of such fair market value of such Common Stock (and any such cash payment), shall be treated as issued in exchange for the Principal Amount at Issuance of such Securities being converted pursuant to the provisions hereof.

6. Calculations.

The Company will be responsible for making all calculations called for under this Security. These calculations include, but are not limited to, determinations of accrued interest, including Contingent Interest and Additional Amounts, the Redemption Price, the Conversion Price, the Optional Repurchase Price, the Fundamental Change Repurchase Price, the Sale Price of the Company's Common Stock and other calculations related to a Holder's conversion rights. The Company will make these calculations in good faith and, absent manifest error, the calculations will be final and binding on any Holder of this Security. The Company will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent is entitled to rely upon the accuracy of such calculations with

independent verification. The Trustee may forward the Company's calculations to any Holder of this Security upon request.

7. Events of Default.

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

8. Transfer; Exchange; Registration.

If this Security is in certificated form, then as provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable on the Security Register of the Company, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in denominations of \$1,000 of the Principal Amount at Issuance and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, the Securities are exchangeable for a like aggregate Principal Amount at Issuance of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any registration of transfer or exchange or redemption of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to and at the time of due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes (subject to provisions with respect to record dates for the payment of interest), whether or not this Security is overdue, and neither the Company, the Trustee nor any agent shall be affected by notice to the contrary.

If this Security is a Global Security, except as described below, it is not exchangeable for a Security or Securities in certificated form. The Securities will be delivered in certificated form if (i) the Depositary ceases to be registered as a clearing agency under the Exchange Act or is no longer willing or able to provide securities depository services with respect to the Securities, (ii) the Company so determines or (iii) there shall have occurred an Event of Default or an event which, with the giving of notice or lapse of time or both, would constitute an Event of Default with respect to the Securities represented by such Global Security and such Event of Default or event continues for a period of 90 days. Upon any such issuance, the Trustee is required to register such certificated Security in the name of, and cause the same to be delivered to, such Person or Persons (or the nominee of any thereof).

At any time when the Company is not subject to Sections 13 or 15(d) of the Exchange Act, upon the written request of a Holder of a Security, the Company will promptly furnish or cause to be furnished Rule 144A Information to such Holder or to a prospective purchaser of such Security who such Holder informs the Company is reasonably believed to be a QIB, as the case may be, in order to permit compliance by such Holder with Rule 144A under the Securities Act.

9. Amendment.

The Indenture permits, with certain exceptions (including certain amendments permitted without the consent of any Holders) as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a specified percentage of the Principal Amount at Issuance of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages of the Principal Amount at Issuance of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by or on behalf of the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Security.

10. No Impairment of Obligations.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company or any other obligor upon the Securities (in the event such other obligor is obligated to make payments in respect of the Securities), which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Security at the times, place, and rate, and in the coin or currency, herein prescribed.

11. Governing Law.

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF).

12. Defined Terms.

All terms used in this Security which are defined in the Indenture and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

OPTION OF HOLDER TO ELECT PURCHASE

If you wish to have this Security purchased by the Company pursuant to Article Fourteen (Fundamental Change Notice) or Article Fifteen (Optional Repurchase Notice), as applicable, of the Indenture, check the Box: Article Fourteen [] Article Fifteen [].

If you wish to have a portion of this Security purchased by the Company pursuant to Article Fourteen or Article Fifteen, as applicable, of the Indenture, state the amount (in Principal Amount at Issuance): \$_____.

If certificated, the certificate numbers of the Securities to be delivered for repurchase are _____.

Date: _____ Your Signature: _____

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

Signature Guarantee: _____

Signature must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15.

CONVERSION NOTICE

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

To convert only part of this Security, state the Principal Amount at Issuance to be converted (which must be \$1,000 or an integral multiple of \$1,000): _____

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

(insert other person's name)

(insert other person's social security or tax identification number)

(insert other person's address and zip code)

Date: _____

Signature: _____

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REGISTRATION RIGHTS AGREEMENT

BETWEEN

JAKKS PACIFIC, INC.

AND

BEAR, STEARNS & CO. INC.,

DATED AS OF JUNE 9, 2003

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This REGISTRATION RIGHTS AGREEMENT, dated as of June 9, 2003, is between JAKKS PACIFIC, INC., a Delaware corporation (together with any successor entity, herein referred to as the "Issuer"), and BEAR, STEARNS & CO. INC. (the "Initial Purchaser").

Pursuant to the Purchase Agreement, dated June 4, 2003, between the Issuer and the Initial Purchaser (the "Purchase Agreement"), the Initial Purchaser has agreed to purchase from the Issuer \$98,000,000 aggregate principal amount at maturity of Convertible Senior Notes due 2023 (the "Notes"). The Notes will be convertible into fully paid, nonassessable common stock, par value \$0.001 per share, of the Issuer (the "Common Stock") on the terms, and subject to the conditions, set forth in the Indenture (as defined herein). To induce the Initial Purchaser to purchase the Notes, and in satisfaction of a condition to the Initial Purchaser's obligations under the Purchase Agreement, the Issuer has agreed to provide the registration rights set forth in this Agreement.

The Company agrees with the Initial Purchaser (i) for its benefit as Initial Purchaser and (ii) for the benefit of the beneficial owners (including the Initial Purchaser) from time to time of the Notes and the beneficial owners from time to time of the Common Stock issued upon conversion of the Notes (each of the foregoing a "Holder"), as follows:

1. Definitions.

As used in this Agreement, the following capitalized terms shall have the following meanings:

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

"Additional Amounts Payment Date": Each interest payment date with respect to the Notes and each June 15 and December 15 in the case of the Common Stock.

"Advice": As defined in Section 4(c)(ii) hereof.

"Affiliate": With respect to any specified Person, means an "Affiliate," as defined in Rule 144 under the Securities Act, of such Person.

"Agreement": This Registration Rights Agreement, as it may be amended from time to time in accordance with the terms hereof.

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

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

"Business Day": Each day of the year other than a Saturday or Sunday or other day on which banking institutions in the City of New York are required or authorized by law or regulation to close.

"Closing Date": The date of this Agreement.

"Commission": The United States Securities and Exchange Commission.

"Common Stock": The shares of common stock, par value \$0.001 per share, of the Issuer and any other shares of capital stock that may constitute "Common Stock" for purposes of the Indenture.

"Control": With respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

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

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

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

"Holder": A Person who owns, beneficially or otherwise, Registrable Securities.

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

"Indenture": The Indenture, dated as of June 9, 2003, between the Issuer and Wells Fargo Bank, N.A., as trustee (the "Trustee"), pursuant to which the Notes are to be issued, as such Indenture is amended, modified or supplemented from time to time in accordance with the terms thereof.

"Initial Purchaser": As defined in the preamble hereto.

"Issuer": As defined in the preamble hereto.

"Majority of Holders": Holders holding over 50% of the aggregate principal amount of Notes outstanding; provided that, for purposes of this definition, a Holder of shares of Common Stock that constitute Registrable Securities and that were issued upon conversion of the Notes shall be deemed to hold an aggregate principal amount of Notes (in addition to the principal amount of Notes held by such Holder) equal to the product of (x) the number of such shares of Common Stock held by such Holder and (y) the prevailing conversion price at the time of such conversion, such prevailing conversion price as determined in accordance with the Indenture.

"Nasd": National Association of Securities Dealers, Inc.

"Notes": As defined in the preamble hereto, up to \$98,000,000 aggregate principal amount at maturity.

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

"Prospectus": The prospectus included in a Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 415 promulgated under the Securities Act), as amended or supplemented by any prospectus supplement and by all other

amendments thereto, including post-effective amendments, and all materials incorporated by reference or deemed to be incorporated by reference into such Prospectus.

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

"Record Holder": With respect to any Additional Amounts Payment Date, each Person who is a Holder on the record date with respect to the interest payment date on which such Additional Amounts Payment Date shall occur. In the case of a Holder of shares of Common Stock issued upon conversion of the Notes, "Record Holder" shall mean each Person who is a Holder of shares of Common Stock that constitute Registrable Securities on the May 15 or November 15 immediately preceding the Additional Amounts Payment Date.

"Registrable Securities": Each Note and each share of Common Stock issued upon conversion of Notes, and any securities into or for which such Common Stock has been converted, 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 the Registration Statement covering it, (ii) expiration of the holding period that would be applicable thereto under Rule 144(k) under the Securities Act were it not held by an Affiliate of the Issuer, (iii) its sale to the public pursuant to Rule 144 under the Securities Act and (iv) the date that is two years after the later of the original issuance of the Notes and the last date that the Issuer or any of its Affiliates was the owner of any such Notes (or any predecessor thereto), and (B) as a result of the event or circumstance described in any of the foregoing clauses (i) through (iv), the legends with respect to transfer restrictions required under the Indenture are removed or removable in accordance with the terms of the Indenture or such legend, as the case may be.

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

"Registration Statement": Means any registration statement of the Issuer that covers any of the Registrable Securities pursuant to the provisions of this Agreement including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such registration statement.

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

"Securities Act": The Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder.

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

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

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

"TIA": The Trust Indenture Act of 1939, as in effect on the date the Indenture is qualified under that Act.

"Underwriting Majority": On any date, Holders holding at least 66 2/3% of the aggregate principal amount of the Registrable Securities outstanding on such date; provided, that for the purpose of this definition, a holder of shares of Common Stock that constitute Registrable Securities and issued upon conversion of Notes shall be deemed to hold an aggregate principal amount of Registrable Securities (in addition to the principal amount of Notes held by such holder) equal to (x) the number of such shares of Common Stock that are Registrable Securities held by such holder multiplied by (y) the then applicable Conversion Price (as defined in the Indenture).

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

2. Shelf Registration.

(a) The Issuer shall:

(i) as soon as practicable but not later than 90 days after the date hereof (the "Shelf Filing Deadline"), cause to be filed with the Commission a registration statement pursuant to Rule 415 under the Securities Act (the "Shelf Registration Statement"), which Shelf Registration Statement shall provide for resales from time to time of all Registrable Securities held by the Holders thereof as of the Closing Date or for any other Holder who acquired the Notes subsequent to the Closing Date and who has notified the Issuer of its desire to be included as a Selling Stockholder in such Registration Statement;

(ii) use its best efforts to cause the Shelf Registration Statement to be declared effective by the Commission as promptly as is practicable but in any event no later than 210 days after the date hereof (the "Effectiveness Target Date"); and

(iii) subject to Section 4(b)(i) hereof, use its best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 4(b) hereof to the extent necessary to ensure that (A) it is available for resales by the Holders of Registrable Securities entitled to the benefit of this Agreement and (B) conforms with the requirements of this Agreement and the Securities Act and the rules and regulations of the Commission promulgated thereunder as announced from time to time for a period (the "Effectiveness Period") ending on the earliest of:

(1) two years after the later of the last date of original issuance of any of the Notes and the date on which we or any of our Affiliates owned any of the Notes;

(2) the date on which Holders of Registrable Securities are able to sell all of the Registrable Securities immediately without restriction pursuant to Rule 144(k) under the Securities Act;

(3) the date when all of the Registrable Securities of those Holders that have provided the information required pursuant to the terms of Section 2(b)

hereof are registered under the Shelf Registration Statement and disposed of in accordance with the terms of the Shelf Registration Statement; and

(4) the date when all of the Registrable Securities of those Holders that have provided the information required pursuant to the terms of Section 2(b) hereof have ceased to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise).

(b) No Holder of Registrable Securities may include any of its Registrable Securities in the Shelf Registration Statement pursuant to this Agreement unless such Holder furnishes to the Issuer in writing, prior to or on the 30th Business Day after receipt of a request therefor (the "Questionnaire Deadline"), such information as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or Prospectus or preliminary Prospectus included therein and in any application to be filed with or under state securities laws. In connection with all such requests for information from Holders of Registrable Securities, the Issuer shall notify such Holders of the requirements set forth in the preceding sentence. Each Holder as to which the Shelf Registration Statement is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make information previously furnished to the Issuer by such Holder not materially misleading.

3. Additional Amounts.

(a) If:

(i) the Shelf Registration Statement has not been filed with the Commission prior to or on the Shelf Filing Deadline,

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

(iii) subject to the provisions of Section 4(b)(i) hereof, the Shelf Registration Statement is filed and declared effective but, during the Effectiveness Period and after the Effectiveness Target Date, shall thereafter cease to be effective or fail to be usable for its intended purpose for a period of time (including any Suspension Period) that shall exceed 30 days in the aggregate in any 3-month period or 60 days in the aggregate in any 365-day period (each such event referred to in foregoing clauses (i) through (iii), a "Registration Default"),

then the Issuer hereby agrees to pay additional amounts ("Additional Amounts") to each Holder from and including the day following the Registration Default to but excluding the day on which the Registration Default has been cured in an amount equal to:

(A) with respect to such Holder's Notes, for the first 90-day period during which a Registration Default shall have occurred and be continuing but excluding the day on which all Registration Defaults have been cured, an amount equal to 0.25% per annum on the applicable principal amount of such Holder's then outstanding and not converted Notes, increasing to an amount per

annum on the applicable principal amount of such Holder's then outstanding and not converted Notes equal to 0.50% on the 91st day, provided that in no event shall the aggregate Additional Amounts pursuant to this clause accrue at a rate per annum exceeding 0.50% of the sum of the applicable principal amount of the then outstanding Notes;

(B) with respect to such Holder's Common Stock issued upon conversion of Notes for the first 90-day period during which a Registration Default shall have occurred and be continuing but excluding the day on which all Registration Defaults have been cured, an amount equal to 0.25% per annum on the applicable principal amount of such Holder's converted Notes, increasing to an amount per annum on the applicable principal amount of such Holder's converted Notes equal to 0.50% on the 91st day, provided that in no event shall the aggregate Additional Amounts pursuant to this clause accrue at a rate per annum exceeding 0.50% of the sum of the applicable principal amount of the then converted Notes;

provided that for purposes of this section the term "applicable principal amount" means, as of any date of determination, with respect to each \$1,000 principal amount at maturity of Notes, the sum of the initial issue price of such Notes plus accrued original issue discount with respect to such Notes through the date of determination.

(b) All accrued Additional Amounts shall be paid in arrears to Record Holders by the Issuer on each Additional Amounts Payment Date by wire transfer of immediately available funds or by federal funds check; provided that any Additional Amounts accrued with respect to any Registrable Securities or portion thereof called for redemption on a redemption date or converted into Common Stock on a conversion date prior to the Additional Amounts Payment Date shall, in any such event, be paid instead to the Holder who submitted such Note or portion thereof for redemption or conversion on the applicable redemption date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversions). Following the cure of all Registration Defaults relating to any particular Note or share of Common Stock, the accrual of Additional Amounts with respect to such Note or share of Common Stock will cease.

The Trustee shall be entitled, on behalf of Holders of Notes, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Additional Amounts. All obligations of the Issuer set forth in this Section 3 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 Registrable Security shall have been satisfied in full. The parties hereto agree that the Additional Amounts provided for in this section constitutes a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

4. Registration Procedures.

(a) In connection with the Shelf Registration Statement, the Issuer shall prepare and file with the Commission a Shelf Registration Statement on Form S-1 or Form S-3 or on any other appropriate form under the Securities Act permitting registration of the Registrable Securities for resale by the Holders thereof in accordance with the reasonable methods of distribution elected by them, and use its best efforts to cause such Shelf Registration Statement to become effective and remain effective as provided herein. At the time the Shelf Registration Statement is declared effective, each Holder that has satisfied the requirements of Section 2(b) hereof shall be named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law.

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

(i) Subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), use its reasonable best efforts to keep the Shelf Registration Statement continuously effective during the Effectiveness Period; upon the occurrence of any event that would cause the Shelf Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not be effective and usable for resale of Registrable Securities during the Effectiveness Period, the Issuer shall file promptly an appropriate amendment to the Shelf Registration Statement, a prospectus supplement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use its reasonable best efforts to cause such amendment to be declared effective and the Shelf Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter. Notwithstanding the foregoing, the Issuer may, by written notice to the Holders, suspend the Holders' use of the Prospectus for a period not to exceed an aggregate of 30 days in any three-month period (each such period, a "Suspension Period") if:

(x) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in the Issuer's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and

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

provided, that the Suspension Periods shall not exceed an aggregate of 60 days in any 365-day period. The Effectiveness Period shall be extended by the number of days beginning on the date the Issuer gives the Holders notice of the Suspension Period to and

including the date on which the Holders receive copies of the supplemented or amended Prospectus or the date on which the Holders are advised in writing by the Issuer that the Prospectus may be used. Each Holder, by its acceptance of a Registrable Security, agrees to hold in confidence any communication by the Issuer relating to an event described in Section 4(b)(i)(x) and (y) or Section 4(b)(iii)(D).

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

(iii) As promptly as practicable give notice to the Initial Purchaser, the Holders, counsel for the Holders and for the Initial Purchaser (or, if applicable, separate counsel for the Holders), and any underwriters and, if requested by such Persons, confirm such advice in writing:

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

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

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

(D) of the existence of any fact or the happening of any event, during the Effectiveness Period, that makes any statement of a material fact made in the Shelf Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Shelf Registration

Statement or the Prospectus in order to make the statements therein not misleading.

If at any time the Commission shall issue any stop order suspending the effectiveness of the Shelf Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Registrable Securities under state securities or Blue Sky laws, or the Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period, the Issuer shall use its reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time, and in any event shall within thirty (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 covering all of the securities that as of the date of such filing are Registrable Securities. If a subsequent Shelf Registration Statement is filed, the Issuer shall use its best efforts to cause such Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Shelf Registration Statement continuously effective until the end of the Effectiveness Period.

(iv) Furnish to the Initial Purchaser, counsel for the Initial Purchaser, one counsel for the selling Holders and each of the underwriter(s), if any, before filing with the Commission, a copy of the Shelf Registration Statement and copies of any Prospectus included therein or any amendments or supplements to either of the Shelf Registration Statement or Prospectus (other than documents incorporated by reference after the initial filing of the Shelf Registration Statement), which documents will be subject to the review of such persons, counsel and underwriter(s), if any, for a period of two Business Days, and the Issuer will not file the Shelf Registration Statement or Prospectus or any amendment or supplement to the Shelf Registration Statement or Prospectus (other than documents incorporated by reference) to which such counsel or the underwriter(s), if any, shall reasonably object within two Business Days after the receipt thereof. Such counsel or underwriter, if any, shall be deemed to have reasonably objected to such filing if the Shelf Registration Statement, amendment, Prospectus or supplement, as applicable, as proposed to be filed, contains a material misstatement or omission.

(v) Subject to the execution of a confidentiality agreement reasonably acceptable to the Issuer, make available at reasonable times for inspection by one or more representatives of the selling Holders, designated in writing by a Majority of Holders whose Registrable Securities are included in the Shelf Registration Statement, any underwriter, if any, participating in any distribution pursuant to the Shelf Registration Statement, and any attorney or accountant retained by the Majority of Holders or any of the underwriter(s), all financial and other records, pertinent corporate documents and properties of the Issuer as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the Issuer's officers, directors, managers and employees to supply all information reasonably requested by any such representative or representatives of the selling Holders, underwriter, attorney or accountant in connection with the Shelf Registration Statement; provided, however, that

any information designated by the Issuer as confidential at the time of delivery of such information shall be kept confidential by the recipient thereof.

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

(vii) As promptly as practicable furnish to each selling Holder by electronic or paper copy, the Initial Purchaser and its counsel, and each of the underwriter(s), if any, without charge, at least one copy of the Shelf Registration Statement, as first filed with the Commission, and of each amendment thereto (and any documents incorporated by reference therein or exhibits thereto (or exhibits incorporated in such exhibits by reference) as such Person may request in writing).

(viii) Deliver to each selling Holder, the Initial Purchaser and its counsel, and each of the underwriter(s), if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons reasonably may request; subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), the Issuer hereby consents to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Registrable Securities covered by the Prospectus or any amendment or supplement thereto.

(ix) If an underwriting agreement is entered into and the registration is an Underwritten Registration, the Issuer shall:

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

(1) a customary certificate, dated the date of such closing, signed by (y) the Chairman of the Board, the Chief Executive Officer, the President or a Vice President and (z) the Chief Financial Officer of the Issuer confirming, as of the date thereof, such matters as such parties may reasonably request;

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

(3) customary comfort letters, dated the date of such closing, from the Issuer's independent accountants (and from any other accountants whose report is contained or incorporated by reference in the Shelf Registration Statement), in the customary form and covering matters of the type customarily covered in comfort letters to underwriters in connection with primary underwritten offerings of securities;

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

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

(x) Before any public offering of Registrable Securities, cooperate with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Registrable Securities under the securities or Blue Sky laws of such jurisdictions as the selling Holders or underwriter(s), if any, may reasonably request and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the Shelf Registration Statement; provided, however, that the Issuer shall not be required (A) to register or qualify as a foreign corporation or a dealer of securities where it is not now so qualified or to take any action that would subject it to the service of process in any jurisdiction where it is not now so subject or (B) to subject itself to taxation in any such jurisdiction if it is not now so subject.

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

(xii) Use its reasonable best efforts to cause the Registrable Securities covered by the Shelf Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the seller

or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Registrable Securities, subject to the proviso in clause (x) above.

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

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

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

(xvi) Otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Commission and all reporting requirements under the rules and regulations of the Exchange Act and make generally available to its security holders earning statements (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder no later than 45 days after the end of any 12 month period (or 90 days after the end of any 12-month period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Issuer commencing after the effective date of a Shelf Registration Statement, which statements shall cover said 12-month periods.

(xvii) Cause the Indenture to be qualified under the TIA not later than the effective date of the Shelf Registration Statement required by this Agreement, and, in connection therewith, cooperate with the Trustee and the holders of Notes to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; and execute and use its reasonable best efforts to cause the Trustee thereunder to execute all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner.

(xviii) Cause all Registrable Securities covered by the Shelf Registration Statement to be listed or quoted, as the case may be, on each securities exchange or automated quotation system on which securities issued by the Issuer of the same series are then listed or quoted.

(xix) Provide promptly to each Holder upon written request each document filed with the Commission pursuant to the requirements of Section 13 and

Section 15 of the Exchange Act after the effective date of the Shelf Registration Statement, unless such documents are available from EDGAR.

(xx) If requested by the underwriters in an underwritten offering, make appropriate officers of the Issuer reasonably available to the underwriters for meetings with prospective purchasers of the Registrable Securities and prepare and present to potential investors customary "road show" material in a manner consistent with other new issuances of other securities similar to the Registrable Securities.

(xxi) Enter into such customary agreements and take all such other necessary actions in connection therewith (including those requested by the holders of a majority of the Registrable Securities being sold) in order to expedite or facilitate disposition of such Registrable Securities.

(xxii) Upon the filing of the Shelf Registration Statement and the effectiveness of the Shelf Registration Statement, announce the same by issuing a news release to Reuters Economic Services and Bloomberg Business News.

(c) Each Holder agrees by acquisition of a Registrable Security that, upon receipt of any notice from the Issuer of the existence of any fact of the kind described in Section 4(b)(iii)(D) hereof, such Holder will, and will use its reasonable best efforts to cause any underwriter(s) in an Underwritten Offering to, forthwith discontinue disposition of Registrable Securities pursuant to the Shelf Registration Statement until:

(i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 4(b)(xiii) hereof; or

(ii) such Holder is advised in writing (the "Advice") by the Issuer that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus.

If so directed by the Issuer, each Holder will deliver to the Issuer (at the Issuer's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities that was current at the time of receipt of such notice of suspension.

(d) The Issuer is required to send a questionnaire in the form attached hereto as Annex A to each Holder of Registrable Securities at least 30 Business Days before the Shelf Registration Statement is declared effective. Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall furnish to the Issuer in writing, within 30 Business Days after receipt of a request therefor as set forth in a questionnaire in the form attached hereto as Annex A, such information regarding such Holder and the proposed distribution by such Holder of its Registrable Securities as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. Holders that do not complete the questionnaire and deliver it to the Issuer shall not be named as selling securityholders in the Prospectus or preliminary Prospectus included in the Shelf Registration Statement and therefore shall not be permitted to sell any Registrable Securities pursuant to the

Shelf Registration Statement, so long as the Issuer has diligently requested such information from such Holder. Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall promptly furnish to the Issuer in writing all information required to be disclosed in order to make information previously furnished to the Issuer by such Holder not materially misleading and such other information as the Issuer may from time to time reasonably request in writing.

(e) Upon the effectiveness of the Shelf Registration Statement, each Holder shall notify the Issuer at least three Business Days prior to any intended distribution of Registrable Securities pursuant to the Shelf Registration Statement (a "Sale Notice"), which notice shall be effective for five Business Days. Each Holder of this Security, by accepting the same, agrees to hold any communication by the Issuer in response to a Sale Notice in confidence.

(f) Notwithstanding anything in this Agreement to the contrary, each party to this Agreement (and any employee, representative or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transactions contemplated by this offering memorandum and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the U.S. federal income tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

5. Registration Expenses.

(a) All expenses incident to the Issuer's performance of or compliance with this Agreement shall be borne by the Issuer regardless of whether a Shelf Registration Statement becomes effective, including, without limitation:

(i) all registration and filing fees and expenses (including without limitation fees and expenses with respect to filings required to be made with the NASD);

(ii) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws (including without limitation reasonable fees and disbursements of counsel for the Holders in connection with blue sky qualifications of the Registrable Securities);

(iii) all expenses of printing (including printing of Prospectuses and certificates for the Common Stock to be issued upon conversion of the Notes), messenger and delivery services, and telephone;

(iv) all reasonable fees and disbursements of counsel to the Issuer and, subject to Section 5(b) below, the Holders of Registrable Securities;

(v) fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock;

(vi) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(vii) all fees and disbursements of independent certified public accountants of the Issuer (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuer shall bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Issuer.

(b) In connection with the Shelf Registration Statement required by this Agreement, the Issuer shall reimburse the Initial Purchaser and the Holders of Registrable Securities being registered pursuant to the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements of not more than one counsel, which shall be Manatt, Phelps & Phillips, LLP or such other counsel chosen by a Majority of Holders for whose benefit the Shelf Registration Statement is being prepared and is reasonably acceptable to the Issuer. The Issuer shall not be required to pay any underwriter discount, commission or similar fees related to the sale of the Securities.

6. Indemnification and Contribution.

(a) The Issuer shall indemnify and hold harmless each Holder, their directors, officers, employees, representatives, agents and each person, if any, who controls such Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "Indemnified Party"), from and against any loss, claim, damage, expense or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, expense, liability or action relating to resales of the Registrable Securities), to which such Indemnified Party may become subject, under the Securities Act or otherwise, insofar as any such loss, claim, damage, expense, liability or action arises out of, or is based upon:

(i) any untrue statement or alleged untrue statement of a material fact contained in (A) the Shelf Registration Statement or Prospectus or any amendment or supplement thereto or any preliminary prospectus or (B) any blue sky application or other document or any amendment or supplement thereto prepared or executed by the Issuer (or based upon written information furnished by or on behalf of the Issuer expressly for use in such blue sky application or other document or amendment or supplement) filed in any jurisdiction specifically for the purpose of qualifying any or all of the Registrable Securities under the securities law of any state or other jurisdiction (such application or document being hereinafter called a "Blue Sky Application"); or

(ii) the omission or alleged omission to state in the Shelf Registration Statement or amendment thereto any material fact required to be stated therein or necessary to make the statements therein not misleading, or the omission or alleged

omission to state in the Prospectus or any amendment or supplement thereto or any preliminary prospectus any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading,

and shall reimburse each Indemnified Party promptly upon demand for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Issuer shall not be liable to an Indemnified Party in any such case to the extent that any such loss, claim, damage, expense, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or Prospectus or amendment or supplement thereto or Blue Sky Application in reliance upon and in conformity with written information furnished to the Issuer by or on behalf of such Indemnified Party specifically for use therein; provided, further, that as to any preliminary Prospectus, this indemnity agreement shall not inure to the benefit of any Indemnified Party or any officer, employee, representative, agent, director or controlling person of that Indemnified Party on account of any loss, claim, damage, expense, liability or action arising from the sale of the Registrable Securities sold pursuant to the Shelf Registration Statement to any person by such Indemnified Party if (i) that Indemnified Party failed to send or give a copy of the Prospectus, as the same may be amended or supplemented, to that person within the time required by the Securities Act and (ii) the untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact in such preliminary Prospectus was corrected in the Prospectus or a supplement or amendment thereto, as the case may be, unless in each case, such failure resulted from noncompliance by the Issuer with Section 4. The foregoing indemnity agreement is in addition to any liability that the Issuer may otherwise have to any Indemnified Party.

(b) Each Holder, severally and not jointly, shall indemnify and hold harmless the Issuer, its directors, officers, employees, representatives, agents and each person, if any, who controls the Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any loss, claim, damage, expense or liability, joint or several, or any action in respect thereof, to which the Issuer or any such officer, employee, representative, agent or controlling person may become subject, insofar as any such loss, claim, damage, expense, liability or action arises out of, or is based upon:

(i) any untrue statement or alleged untrue statement of any material fact contained in the Shelf Registration Statement or Prospectus or any amendment or supplement thereto or any Blue Sky Application; or

(ii) the omission or the alleged omission to state in the Shelf Registration Statement any material fact required to be stated therein or necessary to make the statements therein not misleading, or the omission or alleged omission to state in the Prospectus any material fact required to be stated therein or necessary to make the

statements therein, in light of the circumstances under which they were made, not misleading,

but in each case only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Issuer by or on behalf of such Holder (or its related Indemnified Party) specifically for use therein, and shall reimburse the Issuer and any such director, officer, employee, representative, agent or controlling person promptly upon demand for any legal or other expenses reasonably incurred by the Issuer or any such officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred. The foregoing indemnity agreement is in addition to any liability that any Holder may otherwise have to the Issuer and any such director, officer, employee or controlling person. In no event shall the liability of any selling Holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of the Registrable Securities pursuant to the Shelf Registration Statement giving rise to such indemnification obligation.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 6, notify the indemnifying party in writing of the claim or the commencement of that action; provided, however, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under this Section 6 except to the extent it has been materially prejudiced by such failure and, provided, further, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under this Section 6. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 6 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that the indemnified party shall have the right to employ counsel to represent jointly the indemnified party and its respective directors, employees, officers and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the indemnified party against the indemnifying party under this Section 6 if (1) employment of such counsel has been authorized in writing by the indemnifying party, or (2) such indemnifying party shall not have employed counsel to have charge of the defense of such proceeding within 30 days of the receipt of notice thereof, or (3) such indemnified party shall have reasonably concluded that the representation of such indemnified party and those directors, employees, officers and controlling persons by the same counsel representing the indemnifying party would be inappropriate under applicable standards of professional conduct due to actual or potential differing interests between them or where there may be one or more defenses

available to them that are different from, additional to or in conflict with those available to the indemnifying party, and in any such event ((1), (2) or (3)) the fees and expenses of such separate counsel shall be paid by the indemnifying party as incurred. It is understood that the indemnifying party shall not be liable for the fees and expenses of more than one separate firm (in addition to local counsel in each jurisdiction) for all indemnified parties in connection with any proceeding or related proceedings. No indemnifying party shall:

(i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld) effect any settlement of any pending or threatened action in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party, or

(ii) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss of liability by reason of such settlement or judgment in accordance with this Section 6.

(d) If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages, expenses or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above (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 on the other from the registration of the Registrable Securities pursuant to the Shelf Registration, or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties 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 Issuer on the one hand or such Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the

subject of this subsection (d). The Issuer and the Holders 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 which does not take account of the equitable considerations referred to herein. Notwithstanding any other provision of this Section 6(d), the Holders of the Registrable Securities shall not be required to contribute any amount in excess of the amount by which the gross proceeds received by such Holders from the sale of the Registrable Securities pursuant to the Shelf Registration Statement exceeds the amount of damages which such Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Issuer within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Issuer. The Holders' respective obligations to contribute pursuant to this Section 6 are several in proportion to the respective amount of Registrable Securities they have sold pursuant to a Registration Statement and not joint. 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 any indemnified party at law or in equity.

(e) If at any time an indemnified party shall have requested an indemnifying party to reimburse such indemnified party for fees and expenses of counsel as contemplated herein, then such indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement, and (iii) such indemnified party shall have given such indemnifying party at least 30 days' prior notice of its intention to settle.

(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 the Initial Purchaser, any Holder or any person controlling the Initial Purchaser or any Holder, or by or on behalf of the Issuer, its officers or directors or any person controlling the Issuer, and (iii) any sale of Registrable Securities pursuant to the Shelf Registration Statement.

7. Information Requirements.

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

limitations of the exemptions provided by Rule 144, Rule 144A, Regulation S and Regulation D under the Securities Act and customarily taken in connection with sales pursuant to such exemptions.

In addition, in the event the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer hereby agrees with each Holder, for so long as any Registrable Securities remain outstanding, to make available to any Holder or beneficial owner of Registrable Securities in connection with any sale thereof and any prospective purchaser of such Registrable Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Registrable Securities pursuant to Rule 144A.

The Issuer shall file the reports required to be filed by it under the Exchange Act and shall comply with all other requirements set forth in the instructions to Form S-1 or Form S-3, as the case may be, in order to allow the Issuer to be eligible to file registration statements on Form S-1 or Form S-3.

8. Underwritten Registrations.

(a) The Underwriting Majority may sell its Registrable Securities in an Underwritten Offering pursuant to the Shelf Registration Statement only with the Issuer's consent, which consent may not be unreasonably withheld, delayed or conditioned.

(b) Participation of Holders. No Holder may participate in any Underwritten Registration hereunder unless such Holder:

(i) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements; and

(ii) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents reasonably required under the terms of such underwriting arrangements.

(c) Selection of Underwriters. In any such Underwritten Offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by a Majority of Holders whose Registrable Securities are included in such Underwriting Offering; provided, that such investment bankers and managers must be reasonably satisfactory to the Issuer.

9. Miscellaneous.

(a) Remedies. The Issuer acknowledges and agrees that any failure by the Issuer to comply with its obligations under Section 2 hereof may result in material irreparable injury to the Initial Purchaser or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchaser or any Holder may obtain such relief as may be required to specifically enforce the Issuer's obligations under Section 2 hereof. The Issuer further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) No Inconsistent Agreements. The Issuer is not a party to, as of the date hereof, and will not enter into, on or after the date of this Agreement, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. In addition, the Issuer shall not grant to any of its security holders (other than the holders of Registrable Securities in such capacity) the right to include any of its securities in the Shelf Registration Statement provided for in this Agreement other than the Registrable Securities. The Issuer has not previously entered into any agreement (which has not expired or been terminated) granting any registration rights with respect to its securities to any Person, which rights conflict with the provisions hereof.

(c) Adjustments Affecting Registrable Securities. The Issuer shall not, directly or indirectly, take any action with respect to the Registrable Securities as a class that would adversely affect the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement.

(d) Amendments and Waivers. This Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, unless the Issuer has obtained the written consent of a Majority of Holders; provided, however, that no amendment, modification, supplement, waiver or consent to or departure from the provisions of Section 6 that materially and adversely affects a Holder hereof shall be effective as against any such Holder of Registrable Securities unless consented to in writing by such Holder; provided, further, that with respect to any matter that directly or indirectly adversely affects the rights of the Initial Purchaser hereunder, the Issuer shall obtain the written consent of the Initial Purchaser against which such amendment, modification, supplement, waiver or consent is to be effective.

(e) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the registrar under the Indenture or the transfer agent of the Common Stock, as the case may be; and

(ii) if to the Issuer:

Jakks Pacific, Inc.
22619 Pacific Coast Highway
Malibu, California 90265
Fax No.: (310) 317-8527
Attention: Joel Bennett

With a copy to:

Feder, Kaszovitz, Isaacson, Weber, Skala, Bass &
Rhine, LLP
750 Lexington Avenue
New York, New York 10022
Fax No.: (212) 888-7776
Attention: Saul Kaszovitz

(iii) if to the Initial Purchaser:

Bear, Stearns & Co. Inc.
383 Madison Avenue
New York, New York 10179
Fax No.: (212) 272-3092
Attention: Convertible Capital Markets

With a copy to:

Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064
Fax No.: (310) 914-5772
Attention: Gordon Bava

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address specified in the Indenture.

A document or notice shall be deemed to have been furnished to the Holders of the Registrable Securities if it is provided to the registered holders of the Registrable Securities at the address set forth in clause (i) above.

(f) Successors and Assigns. Any person who purchases any Registrable Securities from the Initial Purchaser or any Holder shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchaser or such Holder, as the case may be. This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including without limitation and without the need for an express assignment, subsequent Holders of Registrable Securities; provided, however, that (i) nothing contained herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture and (ii) this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Registrable Securities from such Holder. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof. The Initial Purchaser (in its capacity as Initial Purchaser) shall have no liability or obligation to the Issuer with respect to any failure by a Holder to comply with, or breach by any Holder of, any of the obligations of such Holder under this Agreement.

(g) Purchases and Sales of Notes. The Issuer shall not, and shall use its reasonable best efforts to cause its affiliates (as defined in Rule 405 under the Securities Act) within its Control not to, resell or otherwise transfer any Notes acquired by the Company or such affiliates, except pursuant to an effective registration statement under the Securities Act or an exemption therefrom.

(h) Third Party Beneficiary. The Holders shall be third party beneficiaries to the agreements made hereunder between the Issuer and the Initial Purchaser, and the Initial Purchaser shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of Holders hereunder.

(i) 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 an original and all of which taken together shall constitute one and the same agreement.

(j) Securities Held by the Issuer or Their Affiliates. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Issuer or its affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

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

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

(m) Consent to Jurisdiction. Each party irrevocably agrees that any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby ("Related Proceedings") may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "Specified Courts"), and irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a "Related Judgment"), as to which such Jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. The parties further agree that service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any lawsuit, action or other proceeding brought in any such court. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any lawsuit, action or other proceeding in the Specified Courts, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

(n) Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby, and the parties hereto shall use its 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.

(o) Entire Agreement. This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final expression of their agreement and 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. 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 Issuer with respect to the Registrable Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Very truly yours,

JAKKS PACIFIC, INC.

By: _____
Name: Joel M. Bennett
Title: Chief Financial Officer

The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written.

BEAR, STEARNS & CO. INC.,

By _____
Name:
Title:

ANNEX A

JAKKS PACIFIC, INC.
NOTICE OF REGISTRATION STATEMENT AND
SELLING SECURITYHOLDER ELECTION AND QUESTIONNAIRE

NOTICE

Jakks Pacific, Inc. (the "Company") has filed, or intends shortly to file, with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 or such other Form as may be available (the "Shelf Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Company's Convertible Senior Notes due 2023 (CUSIP No. 47012EAA4) (the "Notes"), and common stock, par value \$0.001 per share, issuable upon conversion thereof (the "Shares" and together with the Notes, the "Transfer Restricted Securities") in accordance with the terms of the Registration Rights Agreement, dated as of June 9, 2003 (the "Registration Rights Agreement") between the Company and Bear, Stearns & Co. Inc. A copy of the Registration Rights Agreement is available from the Company. All capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Registration Rights Agreement.

To sell or otherwise dispose of any Transfer Restricted Securities pursuant to the Shelf Registration Statement, a beneficial owner of Transfer Restricted Securities generally will be required to be named as a Selling Securityholder in the related Prospectus, deliver a Prospectus to purchasers of Transfer Restricted Securities, be subject to certain civil liability provisions of the Securities Act and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification rights and obligations, as described below). To be included in the Shelf Registration Statement, this Election and Questionnaire must be completed, executed and delivered to the Company at the address set forth herein for receipt prior to or on the 30th business day from the receipt hereof (the "Election and Questionnaire Deadline"). BENEFICIAL OWNERS THAT DO NOT COMPLETE AND RETURN THIS ELECTION AND QUESTIONNAIRE PRIOR TO THE ELECTION AND QUESTIONNAIRE DEADLINE AND DELIVER IT TO THE COMPANY AS PROVIDED BELOW WILL NOT BE NAMED AS SELLING SECURITYHOLDERS IN THE SHELF REGISTRATION STATEMENT, AND THEREFORE, WILL NOT BE PERMITTED TO SELL ANY TRANSFER RESTRICTED SECURITIES PURSUANT TO THE SHELF REGISTRATION STATEMENT.

Certain legal consequences arise from being named as a Selling Securityholder in the Shelf Registration Statement and the related Prospectus. Accordingly, holders and beneficial owners of Transfer Restricted Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a Selling Securityholder in the Shelf Registration Statement and the related Prospectus.

ELECTION

The undersigned holder (the "Selling Securityholder") of Transfer Restricted Securities hereby elects to include in the Shelf Registration Statement the Transfer Restricted Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3). The undersigned, by signing and returning this Election and Questionnaire, understands that it will be bound with respect to such Transfer Restricted Securities by the terms and conditions of this Election and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the Selling Securityholder has agreed to indemnify and hold harmless the Company, the Company's directors, the Company's officers, employees, representatives and agents 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, from and against certain losses arising in connection with statements concerning the Selling Securityholder made in the Shelf Registration Statement or the related Prospectus in reliance upon the information provided in this Election and Questionnaire.

The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Securityholder:

(b) Full legal name of registered holder (if not the same as (a) above) through which Transfer Restricted Securities listed in (3) below are held:

(c) Full legal name of DTC participant (if applicable and if not the same as (b) above) through which Transfer Restricted Securities listed in (3) are held:

2. Address for notices to Selling Securityholders:

Telephone: _____ Fax: _____

Contact Person: _____

3. Beneficial ownership of Transfer Restricted Securities:

(a) Type of Transfer Restricted Securities beneficially owned, and principal amount of Notes or Number of shares of Common Stock, as the case may be, beneficially owned:

(b) CUSIP No(s). of such Transfer Restricted Securities beneficially owned:

4. Beneficial ownership of the Company's securities owned by the Selling Securityholder:

EXCEPT AS SET FORTH BELOW IN THIS ITEM (4), THE UNDERSIGNED IS NOT THE BENEFICIAL OR REGISTERED OWNER OF ANY SECURITIES OF THE COMPANY OTHER THAN THE TRANSFER RESTRICTED SECURITIES LISTED ABOVE IN ITEM (3) ("Other Securities").

(a) Type and amount of Other Securities beneficially owned by the Selling Securityholder:

(b) CUSIP No(s). of such Other Securities beneficially owned:

5. Relationship with the Company

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or their predecessors or affiliates) during the past three years.

State any exceptions here:

6. Plan of Distribution:

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Transfer Restricted Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all). Such Transfer Restricted Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Transfer Restricted Securities are sold through underwriters or broker-dealers, the Selling Securityholder will be responsible for underwriting discounts or commissions or agent's commissions. Such Transfer Restricted Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions):

(i) on any national securities exchange or quotation service on which the Transfer Restricted Securities may be listed or quoted at the time of sale;

(ii) in the over-the-counter market;

(iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market; or

(iv) through the writing of options.

In connection with sales of the Transfer Restricted Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Transfer Restricted Securities and deliver Transfer Restricted Securities to close out such short positions, or loan or pledge Transfer Restricted Securities to broker-dealers that in turn may sell such securities. State any exceptions here:

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Transfer Restricted Securities without the prior agreement of the Company.

By signing below, the Selling Securityholder acknowledges that it understands its obligation to comply, and agrees it will comply, with the provisions of the prospectus delivery and other provisions of the Securities Act and Exchange Act and the respective rules and regulations promulgated thereunder, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Transfer Restricted Securities pursuant to the Shelf Registration Statement.

If the Selling Securityholder transfers all or any portion of the Transfer Restricted Securities listed in Item 3 above after the date on which such information is provided to the Company, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Election and Questionnaire and the Registration Rights Agreement.

By signing below, the Selling Securityholder consents to the disclosure of the information contained herein in its answers to Items (1) through (6) above and the inclusion of such information in the Shelf Registration Statement and the related Prospectus. The Selling Securityholder understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related Prospectus.

In accordance with the Selling Securityholder's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the Selling Securityholder agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices

hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

Once this Election and Questionnaire is executed by the Selling Securityholders and received by the Company, the terms of this Election and Questionnaire and the representations and warranties contained herein shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the Selling Securityholder with respect to the Transfer Restricted Securities beneficially owned by such Selling Securityholder and listed in Item 3 above. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Election and Questionnaire to be executed and delivered either in person or by its authorized agent.

Dated:

Beneficial Owner

By: _____
Name:
Title:

Please return the completed and executed Election and Questionnaire for receipt PRIOR TO OR ON THE 30TH BUSINESS DAY FROM RECEIPT HEREOF to Jakks Pacific, Inc. at:

Jakks Pacific, Inc.
22619 Pacific Coast Highway
Malibu, California 90265
Attention: Joel Bennett

EXHIBIT 1 TO ANNEX A

NOTICE TO TRANSFER PURSUANT
TO REGISTRATION STATEMENT

Jakks Pacific, Inc.
22619 Pacific Coast Highway
Malibu, California 90265
Attention: Joel Bennett

Re: Jakks Pacific, Inc.'s Convertible Senior Notes due 2023 (the
"Notes")

Dear Sirs:

Please be advised that _____ has transferred \$_____ aggregate
principal amount of the above-referenced Notes or _____
shares of the Company's Common Stock issued on conversion or repurchase of
Notes, pursuant to the Registration Statement on Form S-3 (File No. 333-
_____) filed by the Company.

We hereby certify that the prospectus delivery requirements, if any, of
the Securities Act of 1933, as amended, have been satisfied with respect to the
transfer described above and that the above named beneficial owner of the Notes
or Common Stock is named as a selling securityholder in the Prospectus dated
_____, or in amendments or supplements thereto, and that the
aggregate principal amount of the Notes or number of shares of Common Stock
transferred are all or a portion of the Notes or Common Stock listed in such
Prospectus, as amended or supplemented, opposite such owner's name.

Very truly yours,

[name]

By: _____
(Authorized signature)

Dated: _____

CERTIFICATIONS

I, Jack Friedman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of JAKKS Pacific, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2003

By: /s/ JACK FRIEDMAN

JACK FRIEDMAN
Chairman and Chief Executive Officer

I, Joel M. Bennett, certify that:

1. I have reviewed this quarterly report on Form 10-Q of JAKKS Pacific, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2003

By: /s/ JOEL M. BENNETT

JOEL M. BENNETT
Chief Financial Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to 18 U.S.C. Section 1350, the undersigned officer of JAKKS Pacific, Inc. ("JAKKS"), hereby certifies that JAKKS' Quarterly Report on Form 10-Q for the quarter ended June 30, 2003 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of JAKKS.

/s/ Jack Friedman

Dated: August 14, 2003

Jack Friedman
Chairman and Chief Executive Officer
Principal Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to 18 U.S.C. Section 1350, the undersigned officer of JAKKS Pacific, Inc. ("JAKKS"), hereby certifies that JAKKS' Quarterly Report on Form 10-Q for the quarter ended June 30, 2003 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of JAKKS.

/s/ Joel M. Bennett

Dated: August 14, 2003

Joel M. Bennett
Chief Financial Officer
Principal Financial Officer