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

# FORM 8-K

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

**February 6, 2013**
Date of Report (date of earliest event reported)

# MICRON TECHNOLOGY, INC.
(Exact name of registrant as specified in its charter)

| **Delaware** | **1-10658** | **75-1618004** |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

**8000 South Federal Way**
**Boise, Idaho 83716-9632**
(Address of principal executive offices)

**(208) 368-4000**
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4c))

**Item 1.01. Entry into a Material Definitive Agreement.**

***Convertible Senior Notes due 2033***

On February 6, 2013, Micron Technology, Inc., a Delaware corporation ("Micron"), entered into a purchase agreement (the "Purchase Agreement") with Morgan Stanley & Co. LLC, Goldman, Sachs & Co. and J.P. Morgan Securities LLC, as representatives of the several initial purchasers named therein (collectively, the "Initial Purchasers"), to issue and sell $270.0 million aggregate principal amount of 1.625% Convertible Senior Notes due 2033 (the "2033E Notes") and $270.0 million aggregate principal amount of 2.125% Convertible Senior Notes due 2033 (the "2033F Notes" and together with the 2033E Notes, the "2033 Notes") in the United States and Canada to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). In addition, Micron granted the Initial Purchasers an option to purchase up to an additional $30.0 million aggregate principal amount of 2033E Notes and up to an additional $30.0 million aggregate principal amount of 2033F Notes on the same terms and conditions to cover over-allotments, if any. On February 11, 2013, the Initial Purchasers exercised this option in full. Micron estimates that the net proceeds from the offering, including the exercise of the Initial Purchasers' option to purchase the additional 2033 Notes, will be approximately $584 million, after deducting the Initial Purchasers' discounts and estimated offering expenses. The Purchase Agreement is filed as Exhibit 1.1 to this Current Report on Form 8-K.

On February 12, 2013, Micron entered into an indenture with U.S. Bank National Association, as trustee (the "Trustee"), relating to the 2033E Notes (the "2033E Indenture") and an indenture with the Trustee, relating to the 2033F Notes (the "2033F Indenture" and together with the 2033E Indenture, the "Indentures"). The 2033E Indenture and the form of global note for the 2033E Notes are filed as Exhibits 4.1 and 4.2, respectively, and the 2033F Indenture and the form of global note for the 2033F Notes are filed as Exhibits 4.3 and 4.4, respectively, to this Current Report on Form 8-K. The 2033E Notes bear interest at a rate of 1.625% per year on the principal amount and the 2033F Notes bear interest at a rate of 2.125% per year on the principal amount, in each case accruing from February 12, 2013. Interest is payable semiannually in arrears in cash on February 15 and August 15 of each year, beginning on August 15, 2013. The 2033 Notes will mature on February 15, 2033, subject to earlier conversion, redemption or repurchase.

The initial conversion rate for the 2033E Notes is 91.4808 shares of Micron's common stock, par value $0.10 per share ("Common Stock"), per $1,000 principal amount of 2033E Notes. This is equivalent to an initial conversion price of approximately $10.93 per share of Common Stock. The initial conversion rate for the 2033F Notes is 91.4808 shares of Common Stock per $1,000 principal amount of 2033F Notes. This is equivalent to an initial conversion price of approximately $10.93 per share of Common Stock. Holders may surrender their 2033 Notes for conversion prior to the close of business on the business day immediately preceding the maturity date for the 2033 Notes only under the following circumstances: (1) if the 2033 Notes are called for redemption; (2) during any calendar quarter commencing at any time after March 7, 2013, and only during such calendar quarter, if the closing price of

Common Stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is more than 130% of the then applicable conversion price for the 2033 Notes, which is $1,000 divided by the then applicable conversion rate of the 2033 Notes; (3) during the five business days immediately after any five consecutive trading day period in which the trading price per $1,000 principal amount of 2033 Notes for each day of that period was less than 98% of the product of the closing price of Common Stock and the then applicable conversion rate of the 2033 Notes; (4) if specified distributions to holders of Common Stock are made or specified corporate events occur; or (5) at any time on or after November 15, 2032.

Upon conversion, Micron will pay cash up to the aggregate principal amount of the 2033 Notes being converted and cash, shares of Common Stock or a combination of cash and shares of Common Stock, at Micron's option, for the remainder, if any, of Micron's conversion obligations.

If a holder elects to convert its 2033 Notes in connection with a make-whole change in control, as defined in the Indentures, Micron will, in certain circumstances, pay a make-whole premium by increasing the conversion rate for the 2033 Notes converted in connection with such make-whole change in control. Micron may not redeem the 2033E Notes prior to February 20, 2018 and may not redeem the 2033F Notes prior to February 20, 2020. On or after February 20, 2018, in the case of the 2033E Notes, and on or after February 20, 2020, in the case of the 2033F Notes, Micron may redeem for cash all or part of the 2033 Notes at a redemption price equal to the sum of 100% of the principal amount of



the 2033 Notes to be redeemed, plus accrued and unpaid interest, including additional interest, if any, to, but excluding, the redemption date.

On February 15, 2018 and February 15, 2023, with respect to the 2033E Notes, and on February 15, 2020 and February 15, 2023, with respect to the 2033F Notes, the holders may require Micron to repurchase all or a portion of their 2033 Notes at a cash repurchase price equal to 100% of the principal amount of the 2033 Notes being repurchased, plus accrued and unpaid interest, including any additional interest, to, but excluding, the repurchase date. Upon a change in control or a termination of trading, as defined in the Indenture, the holders may require Micron to repurchase for cash all or a portion of their 2033 Notes at a repurchase price equal to 100% of the principal amount of the 2033 Notes being repurchased, plus accrued and unpaid interest, including any additional interest, to, but excluding, the repurchase date.

The 2033 Notes are Micron's general, unsecured obligations and are effectively subordinated to all of Micron's existing and future secured debt, to the extent of the assets securing such debt, and are structurally subordinated to all liabilities of Micron's subsidiaries, including trade payables. The Indentures do not limit the amount of indebtedness that Micron or any of its subsidiaries may incur.

The following events are considered "Events of Default," which may result in the acceleration of the maturity of each series of 2033 Notes under the applicable Indenture:

- Micron's failure to pay when due the principal amount or repurchase price with respect to any of the 2033 Notes at maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- Micron's failure to pay interest on any of the 2033 Notes for 30 days after the date when due;
- Micron's failure to give timely notice of a termination of trading, a change in control or a make-whole change in control (each as defined in the Indentures) that does not constitute a change in control, which continues for a period of three business days;
- Micron's failure to comply with its obligation to convert the 2033 Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock upon exercise of a holder's conversion right;
- Micron's failure to perform or observe any other covenants or agreement under the 2033 Notes or the applicable Indenture governing the 2033 Notes and Micron fails to cure or obtain a waiver of such default for a period of 60 days after receiving notice of such failure by the Trustee or by holders of not less than 25% in aggregate principal amount of 2033 Notes of the applicable series then outstanding;
- Micron's failure to pay at maturity any debt (as defined in the Indentures) in a principal amount in excess of $100 million, or a default by Micron under any debt that results in acceleration of such debt in a principal amount in excess of $100 million, and such acceleration has not been rescinded or annulled within 30 days; and
- Certain events of bankruptcy, insolvency or reorganization with respect to Micron.

The summary of the foregoing transactions is qualified in its entirety by reference to the text of the Purchase Agreement and Indentures, each of which are included as exhibits hereto and are incorporated herein by reference.

***Capped Call Transactions***

In connection with the offering of the 2033 Notes, on February 6, 2013, Micron also entered into capped call transactions with JPMorgan Chase Bank, National Association, London Branch and Royal Bank of Canada (the "Initial Capped Calls"). The Initial Capped Calls each have an initial strike price of approximately $10.93 per share, subject to certain adjustments. The Initial Capped Calls have a cap price of approximately $14.51 per share. The Initial Capped Calls cover, subject to anti-dilution adjustments, approximately 49.4 million shares of Common Stock. In connection with the Initial Purchasers' exercise of their option to purchase additional 2033 Notes, on February 12, 2013 Micron entered into additional capped call transactions with Royal Bank of Canada, Credit Suisse International and Morgan Stanley & Co. International plc (the "Additional Capped Calls" and together with the Initial Capped Calls, the "Capped Calls"). The Additional Capped Calls have an initial strike price of approximately $10.93 per share, in each case subject to certain adjustments. The Additional Capped Calls have a cap price of approximately $14.51 per share. The Additional Capped Calls cover, subject to anti-dilution adjustments,



approximately 5.5 million shares of Common Stock. The Capped Calls are intended to reduce the potential dilution upon conversion of the 2033 Notes. If, however, the market value per share of the Common Stock, as measured under the terms of the Capped Calls, exceeds the applicable cap price of the Capped Calls, there would be dilution to the extent that the then market value per share of the Common Stock exceeds the cap price. Additionally, to the extent that the market value per share of Common Stock exceeds the conversion price of the 2033 Notes but does not exceed the strike price of the Capped Calls, Micron will not be entitled to receive any shares of Common Stock under the Capped Calls. Micron paid approximately $48 million to purchase the Capped Calls. The Capped Calls have expiration dates of five or seven years. The Capped Calls are subject to either adjustment or termination upon the occurrence of specified extraordinary events affecting Micron, including a merger event; tender offer; and a nationalization, insolvency or delisting involving Micron. In

addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including changes in law; insolvency filings and hedging disruptions.

The summary of the foregoing transactions is qualified in its entirety by reference to the text of the Capped Calls, a form of which is included as Exhibit 10.1 hereto and incorporated herein by reference.

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

The foregoing terms and conditions of the 2033 Notes and Indentures described in Items 1.01 and 3.02 of this Current Report on Form 8-K are incorporated herein by reference.

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

As described in Item 1.01 of this Current Report on Form 8-K, which is incorporated herein by reference, Micron issued $600,000,000 aggregate principal amount of 2033 Notes to the Initial Purchasers on February 12, 2013 in a private placement pursuant to exemptions from the registration requirements of the Securities Act.

Micron offered and sold the 2033 Notes to the Initial Purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers are initially offering the 2033 Notes to "qualified institutional buyers" pursuant to the exemption from registration provided by Rule 144A under the Securities Act. Micron relied on these exemptions from registration based in part on representations made by the Initial Purchasers.

The 2033 Notes and Common Stock issuable upon conversion of the 2033 Notes have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

The 2033 Notes are convertible into cash and shares of Common Stock, if any, as described above.



**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibits are filed herewith:

| Exhibit No. | Description |
|---|---|
| 1.1 | Purchase Agreement, dated as of February 6, 2013, by and among Micron Technology, Inc. and Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and Goldman, Sachs & Co., as representatives of the initial purchasers. |
| 4.1 | Indenture, dated as of February 12, 2013, by and between Micron Technology, Inc. and U.S. Bank National Association, as trustee. |
| 4.2 | Form of 2033E Note (included in Exhibit 4.1) |
| 4.3 | Indenture, dated as of February 12, 2013, by and between Micron Technology, Inc. and U.S. Bank National Association, as trustee. |
| 4.4 | Form of 2033F Note (included in Exhibit 4.3) |
| 10.1 | Form of Capped Call Confirmation. |



**SIGNATURE**

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

**MICRON TECHNOLOGY, INC.**

Date: February 12, 2013

By: */s/ Ronald C. Foster*
Name: Ronald C. Foster
Title: Chief Financial Officer and Vice President of Finance



**INDEX TO EXHIBITS FILED WITH THE CURRENT REPORT ON FORM 8-K DATED FEBRUARY 12, 2013**

| Exhibit No. | Description |
|---|---|
| 1.1 | Purchase Agreement, dated as of February 6, 2013, by and among Micron Technology, Inc. and Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and Goldman, Sachs & Co., as representatives of the initial purchasers. |
| 4.1 | Indenture, dated as of February 12, 2013, by and between Micron Technology, Inc. and U.S. Bank National Association, as trustee. |
| 4.2 | Form of 2033E Note (included in Exhibit 4.1) |
| 4.3 | Indenture, dated as of February 12, 2013, by and between Micron Technology, Inc. and U.S. Bank National Association, as trustee. |

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|---|---|
| 4.4 | Form of 2033F Note (included in Exhibit 4.3) |
| 10.1 | Form of Capped Call Confirmation. |

MICRON TECHNOLOGY, INC.

$270,000,000

1.625% CONVERTIBLE SENIOR NOTES DUE 2033

$270,000,000

2.125% CONVERTIBLE SENIOR NOTES DUE 2033

PURCHASE AGREEMENT

February 6, 2013

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February 6, 2013

Morgan Stanley & Co. LLC
Goldman, Sachs & Co.
J.P. Morgan Securities LLC

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

Micron Technology, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to the several purchasers named in Schedule I hereto (the "**Initial Purchasers**") $270,000,000 principal amount of its 1.625% Convertible Senior Notes due 2033 (the "**2033E Notes**"), to be issued pursuant to the provisions of an Indenture dated as of February 12, 2013 (the "**2033E Indenture**"), and $270,000,000 principal amount of its 2.125% Convertible Senior Notes due 2033 (the "**2033F Notes**", together with the 2033E Notes, the "**Firm Securities**"), to be issued pursuant to the provisions of an Indenture dated as of February 12, 2013 (together with the 2033E Indenture, the "**Indentures**") between the Company and U.S. Bank National Association, as Trustee (the "**Trustee**"). The Company also proposes to issue and sell to the Initial Purchasers not more than an additional $30,000,000 principal amount of its 1.625% Convertible Senior Notes due 2033 and not more than an additional $30,000,000 principal amount of its 2.125% Convertible Senior Notes due 2033 (collectively, the "**Additional Securities**") if and to the extent that you, as Managers of the offering, shall have determined to exercise, on behalf of the Initial Purchasers, the right to purchase such Additional Securities granted to the Initial Purchasers in Section 2 hereof. The Firm Securities and the Additional Securities are hereinafter collectively referred to as the "**Securities**". The Securities will be convertible into shares of common stock of the Company, par value $0.10 per share (the "Common Stock"). The Common Stock into which the Securities are convertible are hereinafter collectively referred to as the "**Underlying Securities**".

The Securities and the Underlying Securities will be offered without being registered under the Securities Act of 1933, as amended (the "**Securities Act**"), to qualified institutional buyers in compliance with the exemption from registration provided by Rule 144A under the Securities Act.

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum dated February 5, 2013 (the "**Preliminary Memorandum**") and will prepare a final offering memorandum (the "**Final Memorandum**") including or incorporating by reference a description of the

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terms of the Securities and the Underlying Securities, the terms of the offering and a description of the Company. For purposes of this Agreement, "**Additional Written Offering Communication**" means any written communication (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or a solicitation of an offer to buy the Securities other than the Preliminary Memorandum or the Final Memorandum, and "**Time of Sale Memorandum**" means the Preliminary Memorandum together with the Additional Written Offering Communications, if any, each identified in Schedule II hereto. As used herein, the terms Preliminary Memorandum, Time of Sale Memorandum and Final Memorandum shall include the documents, if any, incorporated by reference therein on the date hereof. The terms "**supplement**", "**amendment**" and "**amend**" as used herein with respect to the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum or any Additional Written Offering Communication shall include all documents subsequently filed by the Company with the Securities and Exchange Commission (the "**Commission**") pursuant to the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), that are deemed to be incorporated by reference therein.

1. *Representations and Warranties*. The Company represents and warrants to, and agrees with, you that:

(a) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Preliminary Memorandum, the Time of Sale Memorandum or the Final Memorandum complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) the Time of Sale Memorandum does not, and at the time of each sale of the Securities in connection with the offering when the Final Memorandum is not yet available to prospective purchasers and at the Closing Date (as defined in Section 4), the Time of Sale Memorandum, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (iii) the Preliminary Memorandum does not contain and the Final Memorandum, in the form used by the Initial Purchasers to confirm sales and on the Closing Date (as defined in Section 4), will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Preliminary

Memorandum, the Time of Sale Memorandum or the Final Memorandum based upon information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through you expressly for use therein.



(b) Except for the Additional Written Offering Communications, if any, identified in Schedule II hereto, and electronic road shows, if any, furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any Additional Written Offering Communication.

(c) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Memorandum and is duly qualified to transact business and is in good standing in each jurisdiction identified on Schedule III hereto in which the conduct of its business or its ownership or leasing of property requires such qualification or is subject to material liability or disability by reason of failure to be so qualified in any such jurisdiction.

(d) This Agreement has been duly authorized, executed and delivered by the Company.

(e) The Company has an authorized capitalization as set forth in the Time of Sale Memorandum, and all of the shares of Common Stock outstanding prior to the issuance of the Securities have been duly authorized and are validly issued, fully paid and non-assessable and conform in all material respects to the description thereof contained in the Time of Sale Memorandum.

(f) The Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indentures and delivered to and paid for by the Initial Purchasers in accordance with the terms of this Agreement (assuming due authentication by the Trustee in the manner described in the Indentures), will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and equitable principles of general applicability, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) (collectively, the "**Enforceability Exceptions**"), and will be entitled to the benefits of the Indentures pursuant to which such Securities are to be issued.

(g) The Underlying Securities issuable upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities and the Indentures, will be validly issued, fully paid and non assessable, the issuance of the Underlying Securities will not be subject to any preemptive or similar rights and will conform in all material respects to the description thereof contained in each of the Time of Sale Memorandum and the Final Memorandum.



(h) Each of the Indentures has been duly authorized and, when executed and delivered by the Company, assuming the due authorization, execution and delivery thereof by the other parties thereto, is a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions; and the Securities and the Indentures will conform in all material respects to the descriptions thereof in the Time of Sale Memorandum and the Final Memorandum.

(i) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indentures and the Securities will not conflict with or result in a breach of or violation of any of the terms or provisions of or constitute a default under any agreement or other instrument binding upon the Company or any of its subsidiaries, except where such breach, violation or default would not have a Material Adverse Effect on the Company's ability to perform its obligations under this Agreement, nor will such action result in any violation of (i) the provisions of the Certificate of Incorporation or By-laws of the Company or (ii) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary or, to the Company's knowledge, any applicable statute, except in the case of (ii) above, where such violation would not have a Material Adverse Effect on the Company's ability to perform its obligations under this Agreement; and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, the Indentures and the Securities, except for those that have been, or will have been prior to the Closing Date, obtained, such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Securities, and with respect to the approval of the listing of the Underlying Securities on the NASDAQ Global Select Market, except, where the failure to obtain such consents, individually or in the aggregate, would not have a Material Adverse Effect on the offering of the Securities.

(j) There has not occurred any material adverse change, or any development that could reasonably be expected to cause a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Memorandum.

(k) Other than as set forth in the Time of Sale Memorandum, (i) there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or to which any of the



properties of the Company or any of its subsidiaries is subject which would individually or in the aggregate reasonably be expected to have a material adverse effect on the business, properties, financial condition or results of operation of the Company and its subsidiaries taken as a whole ("**Material Adverse Effect**"); and (ii) to the Company's knowledge, no such proceedings are threatened by governmental authorities or by others.

(l) The Company and its subsidiaries have obtained any permits, consents and authorizations required to be obtained by them under laws or regulations relating to the protection of the environment or concerning the handling, storage, disposal or discharge of toxic materials (collectively "**Environmental Laws**"), and any such permits, consents and authorizations remain in full force and effect. The Company and its subsidiaries are in compliance with the Environmental Laws in all material respects, and there is no pending or, to the Company's knowledge, threatened, action or proceeding against the Company and its subsidiaries alleging violations of the Environmental Laws.

(m) The Company and its subsidiaries own or possess or can acquire on commercially reasonable terms adequate licenses or other rights to use all patents, trademarks, service marks, trade names, copyrights, mask work rights, technology and knowhow necessary to conduct the business now or proposed to be conducted by the Company and its subsidiaries as described in the Time of Sale Memorandum, except where the failure to own, possess or acquire such rights would not reasonably be expected to have a Material Adverse Effect, and except as disclosed in the Time of Sale Memorandum, the Company has not received any notice of infringement of or conflict with (and knows of no such infringement of or conflict with) asserted rights of others with respect to any patents, trademarks, service marks, trade names, copyrights, mask work rights or know how that would be reasonably likely to result in a Material Adverse Effect upon the Company and its subsidiaries.

(n) Neither the Company nor, to the Knowledge of the Company, any affiliate (as defined in Rule 501(b) of Regulation D under the Securities Act, an "**Affiliate**") of the Company has directly, or through any agent, (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) that is or will be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the Securities or (ii) offered, solicited offers to buy or sold the Securities by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act.



(o) The statements set forth in each of the Time of Sale Memorandum and the Final Memorandum under the caption "Description of Notes," insofar as they purport to constitute a summary of the terms of the Indentures and the Securities and under the caption "Description of Capital Stock," insofar as they purport to constitute a summary of the terms of the Underlying Securities, fairly summarize such terms in all material respects.

(p) Assuming the accuracy of the representations and warranties of the Initial Purchasers herein, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchasers in the manner contemplated by this Agreement to register the Securities under the Securities Act.

(q) The Securities satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act.

(r) PricewaterhouseCoopers LLP, who have audited certain financial statements of the Company and its subsidiaries, and have audited the Company's internal control over financial reporting, are the independent registered public accounting firm for the Company as required by the Act and the rules and regulations of the Commission thereunder.

(s) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. The Company maintains internal accounting controls sufficient to provide reasonable assurance that interactive data in eXtensible Business Reporting Language included or incorporated by reference in each of the Preliminary Offering Memorandum, the Time of Sale Information and the Final Offering Memorandum is prepared in accordance with the Commission's rules and guidelines applicable thereto. Except as disclosed in the Time of Sale Memorandum, the Company's internal control over financial reporting and the Company's internal control over financial reporting was effective as of August 30, 2012, and the Company is not aware of any material weaknesses in its internal control over financial reporting.

(t) Except as disclosed in the Time of Sale Memorandum, since the date of the latest audited financial statements included or incorporated by reference in the Time of Sale Memorandum, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.



(u) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company's principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures were effective as of the quarter ended November 29, 2012.

(v) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that the interactive data in eXtensible Business Reporting Language included or incorporated by reference in each of the Preliminary Offering Memorandum, the Time of Sale Information and the Final Offering Memorandum is accurate.

(w) The assumptions used in preparing the pro forma financial statements included in each of the Preliminary Memorandum, the Time of Sale Information and the Final Memorandum are reasonable . The related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts.

(x) Neither the Company nor any of its subsidiaries, nor any director or officer, nor, to the Company's knowledge, any affiliate, employee, agent or representative of the Company or of any of its subsidiaries or affiliates, has taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate

for political office) to influence official action or secure an improper advantage; and the Company and its subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(y) The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including



those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(z) (i) Neither the Company nor any of its subsidiaries, nor any director, officer, or employee thereof, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is:

(A) the subject of any sanctions ("**Sanctions**") administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**"), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past 3 years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.



(aa) The interactive data in eXtensbile Business Reporting Language included or incorporated by reference in each of the Preliminary Offering Memorandum, the Time of Sale Information and the Final Offering Memorandum fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

2. *Agreements to Sell and Purchase*. The Company hereby agrees to sell to the several Initial Purchasers, and each Initial Purchaser, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company the respective principal amounts of Firm Securities set forth in Schedule I hereto opposite its name at a purchase price of 97.375% of the principal amount thereof (the "**Purchase Price**"), plus accrued interest, if any, from February 12, 2013 to the Closing Date.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Initial Purchasers the Additional Securities, and the Initial Purchasers shall have the right to purchase, severally and not jointly, the Additional Securities at the Purchase Price, plus accrued interest, if any, from the Closing Date to the Option Closing Date. You may exercise this right on behalf of the Initial Purchasers in whole or from time to time in part by giving written notice not later than 30 days after the date of this Agreement. Any exercise notice shall specify the principal amount of Additional Securities to be purchased by the Initial Purchasers and the date on which such Additional Securities are to be purchased. Each purchase date must be at least two business days after the written notice is given, unless waived in writing by the Company, and may not be earlier than the closing date for the Firm Securities nor later than ten business days after the date of such notice. Additional Securities may be purchased as provided in Section 4 solely for the purpose of covering sales of securities in excess of the number of the Firm Securities. On each day, if any, that Additional Securities are to be purchased (an "**Option Closing Date**"), each Initial Purchaser agrees, severally and not jointly, to purchase the principal amount of Additional Securities (subject to such adjustments to eliminate fractional Securities as you may determine) that bears the same proportion to the total principal amount of Additional Securities to be purchased on such Option Closing Date as the principal amount of Firm Securities set forth in Schedule I opposite the name of such Initial Purchaser bears to the total principal amount of Firm Securities.

3. *Terms of Offering*. You have advised the Company that the Initial Purchasers will make an offering of the Securities purchased by the Initial Purchasers hereunder as soon as practicable after this Agreement is entered into as in your judgment is advisable.



4. *Payment and Delivery*. Payment for the Firm Securities shall be made to the Company in Federal or other funds immediately available to the account specified by the Company to you at the office of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto,

California, at approximately 7:00 a.m., California time, on February 12, 2013, or at such other time on the same or such other date, not later than the fifth business day thereafter, as may be mutually agreed in writing by you and the Company. The time and date of such payment are hereinafter referred to as the "**Closing Date.**"

Payment for any Additional Securities shall be made to the Company in Federal or other funds immediately available to the account specified by the Company to you, at approximately 7:00 a.m., California time, on the date specified in the corresponding notice described in Section 2 or at such other time on the same or on such other date, in any event not later than the tenth business day thereafter, as may be designated in writing by you.

The Securities shall be in definitive form or global form, as specified by you, and registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date or the applicable Option Closing Date, as the case may be. The Securities shall be delivered to you on the Closing Date or an Option Closing Date, as the case may be, for the respective accounts of the several Initial Purchasers, with any transfer taxes payable in connection with the transfer of the Securities to the Initial Purchasers duly paid, against payment of the Purchase Price therefor, plus accrued interest, if any, from the Closing Date to the Option Closing Date.

5. *Conditions to the Initial Purchasers' Obligations*. The several obligations of the Initial Purchasers to purchase and pay for the Firm Securities on the Closing Date are subject to the following conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or the applicable Option Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the debt securities of the Company by any "nationally recognized statistical rating organization," as such term is defined in Section 3(a)(62) of the Exchange Act; and

(ii) there shall not have occurred any material change, or any development involving a prospective Material Adverse Effect, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Memorandum that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Securities on the terms and in the manner contemplated in the Time of Sale Memorandum.



(b) The Initial Purchasers shall have received on the Closing Date and each Option Closing Date, if any, a certificate, dated the Closing Date or applicable Option Closing Date, as the case may be, and signed by the chief executive officer or the chief financial officer of the Company, to the effect set forth in Section 5(a)(i) and to the effect that the representations and warranties of the Company contained in this Agreement are (i) true and correct in all material respects (other than representations and warranties qualified by materiality, in which case such representations shall be true and correct in all respects) as of the Closing Date with the same effect as if made on such delivery date or applicable Option Closing Date, as the case may be, (ii) that the Company has complied in all material respects with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date or applicable Option Closing Date, as applicable, and (iii) since the date of the most recent financial statements included in the Time of Sale Memorandum, there has been no material adverse change in the financial condition, earnings, business or properties of the Company and its subsidiaries, taken as a whole, except as set forth or contemplated in the Time of Sale Memorandum.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Initial Purchasers shall have received on the Closing Date and each Option Closing Date, as the case may be, an opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation, outside counsel for the Company, dated the Closing Date and each Option Closing Date, as the case may be, to the effect set forth in Exhibit B. Such opinion shall be rendered to the Initial Purchasers at the request of the Company and shall so state therein.

(d) The Initial Purchasers shall have received on the Closing Date and each Option Closing Date, as the case may be, an opinion of Roderic W. Lewis, the Company's General Counsel, dated the Closing Date and each Option Closing Date, as the case may be, to the effect set forth in Exhibit C.

(e) The Initial Purchasers shall have received on the Closing Date and each Option Closing Date, as the case may be, an opinion of Simpson Thacher & Bartlett LLP, counsel for the Initial Purchasers, dated the Closing Date and each Option Closing Date, as the case may be, in form and substance reasonably satisfactory to the Initial Purchasers.



(f) The Initial Purchasers shall have received on each of the date hereof, the Closing Date and each Option Closing Date, if any, a letter, dated the date hereof, the Closing Date or applicable Option Closing Date, as the case may be, in form and substance satisfactory to the Initial Purchasers, from PricewaterhouseCoopers LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in or incorporated by reference into the Time of Sale Memorandum and the Final Memorandum; provided that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than February 4, 2013.

(g) The Initial Purchasers shall have received on each of the date hereof, the Closing Date and each Option Closing Date, if any, a letter, dated the date hereof, the Closing Date or applicable Option Closing Date, as the case may be, in form and substance satisfactory to the Initial Purchasers, from KPMG LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements of Inotera Memories, Inc. ("**Inotera**") contained in or incorporated by reference into the Time of Sale Memorandum and the Final Memorandum; provided that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than December 31, 2011.

(h) The Initial Purchasers shall have received on each of the date hereof, the Closing Date and each Option Closing Date, if any, a letter, dated the date hereof, the Closing Date or applicable Option Closing Date, as the case may be, in form and substance satisfactory to the Initial Purchasers, from Ernst & Young ShinNihon LLC, independent auditors, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements of Elpida Memory, Inc. ("**Elpida**") contained in or incorporated by reference into the Time of Sale Memorandum and the Final Memorandum; provided that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than February 4, 2013.

(i) The "lock up" agreements, each substantially in the form of Exhibit A, between you and certain officers and directors of the Company named in Schedule IV relating to sales and certain other dispositions of Securities, Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

(j) Prior to the Closing Date, the Company shall have received all waivers or consents under any agreement or other instrument binding upon the Company or any of its subsidiaries, including any indentures, mortgage, deed of trust, loan agreement, stockholder agreement or other



agreement that is material to the Company and its subsidiaries, taken as a whole, that are necessary for the issuance of the Securities and the performance by the Company of its obligations under this Agreement, the Indentures and the Securities.

The several obligations of the Initial Purchasers to purchase Additional Securities hereunder are subject to the delivery to you on the applicable Option Closing Date of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Securities to be sold on such Option Closing Date and other matters related to the issuance of such Additional Securities.

6. *Covenants of the Company*. The Company covenants with each Initial Purchaser as follows:

(a) To furnish to you in New York City, without charge, prior to 7:00 a.m., California time, on the business day next succeeding the date of this Agreement and during the period mentioned in Section 6(d) or (e), electronic copies of the Time of Sale Memorandum, the Final Memorandum, any documents incorporated by reference therein and any supplements and amendments thereto as you may reasonably request.

(b) Before amending or supplementing the Preliminary Memorandum, the Time of Sale Memorandum or the Final Memorandum, to furnish to you a copy of each such proposed amendment or supplement and not to use any such proposed amendment or supplement to which you reasonably object, except as may be required by applicable law.

(c) To furnish to you a copy of each proposed Additional Written Offering Communication to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed Additional Written Offering Communication to which you reasonably object.

(d) If the Time of Sale Memorandum is being used to solicit offers to buy the Securities at a time when the Final Memorandum is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Memorandum in order to make the statements therein, in the light of the circumstances, not misleading, or if, in the opinion of counsel for the Initial Purchasers, it is necessary to amend or supplement the Time of Sale Memorandum to comply with applicable law, forthwith to prepare and furnish, at its own expense, to the Initial Purchasers and to any dealer upon request, either amendments or supplements to the Time of Sale Memorandum so that the statements in the Time of Sale Memorandum as so amended or supplemented will not, in the light of the circumstances when delivered to a prospective purchaser, be misleading or so that the Time of Sale Memorandum, as amended or supplemented, will comply with applicable law.



(e) If, during such period after the date hereof and prior to the date on which all of the Securities shall have been sold by the Initial Purchasers, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Memorandum in order to make the statements therein, in the light of the circumstances when the Final Memorandum is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Initial Purchasers, it is necessary to amend or supplement the Final Memorandum to comply with applicable law, forthwith to prepare and furnish, at its own expense, to the Initial Purchasers, either amendments or supplements to the Final Memorandum so that the statements in the Final Memorandum as so amended or supplemented will not, in the light of the circumstances when the Final Memorandum is delivered to a purchaser, be misleading or so that the Final Memorandum, as amended or supplemented, will comply with applicable law.

(f) To endeavor to qualify the Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States and Canada as you shall reasonably request in writing prior to the Closing Date, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in respect of doing business in any jurisdiction in which it is otherwise not so subject.

(g) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the issuance and sale of the Securities and all other fees or expenses in connection with the preparation of the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum, any Additional Written Offering Communication prepared by or on behalf of, used by, or referred to by the Company and any amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Initial Purchasers, in the quantities herein above specified, (ii) all costs and expenses related to the transfer and delivery of the Securities to the Initial Purchasers, including any transfer or other similar taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or legal investment memorandum in connection with the offer and sale of the Securities under state securities laws and all expenses in connection with the qualification of the Securities for offer and sale under state securities laws as provided in Section 6(f),

including filing fees and the reasonable fees and disbursements of counsel for the Initial Purchasers in connection with such qualification and in connection with the Blue Sky or legal investment memorandum, (iv) any fees charged by rating agencies for the rating of the Securities, (v) the fees and expenses, if any, incurred in connection with the admission of the Securities for trading on any appropriate market system, (vi) the costs and charges of the Trustee and any transfer agent, registrar or depositary, (vii) the cost of the preparation, issuance and delivery of the Securities, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Securities, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants and the cost of any aircraft chartered in connection with the road show, (ix) the document production charges and expenses associated with printing this Agreement and (x) all other cost and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 8, and the last paragraph of Section 10, the Initial Purchasers will pay all of their costs and expenses, including fees and disbursements of their counsel, transfer taxes payable on resale of any of the Securities by them and any advertising expenses connected with any offers they may make.

(h) To use commercially reasonable efforts to list the Underlying Securities issuable upon conversion of the Securities on the NASDAQ Global Select Market or another U.S. national securities exchange or established automated over the counter trading market in the United States of America.

(i) To use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Time of Sale Memorandum under the caption "Use of Proceeds."

(j) To reserve and keep available at all times, free of preemptive rights, shares of Underlying Securities for the purpose of enabling the Company to satisfy any obligation to issue shares of its Underlying Securities upon conversion of the Securities.

(k) Neither the Company nor any Affiliate will sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) that could be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the Securities.



(l) Not to solicit any offer to buy or offer or sell the Securities or the Underlying Securities by means of any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act.

(m) While any of the Securities or the Underlying Securities remain "restricted securities" within the meaning of the Securities Act, to make available, upon request, to any seller of such Securities the information specified in Rule 144A(d)(4) under the Securities Act, unless the Company is then subject to Section 13 or 15(d) of the Exchange Act.

(n) During the period of one year after the Closing Date or any Option Closing Date, if later, the Company will not, and will use its commercially reasonable efforts to not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to resell any of the Securities or the Underlying Securities that constitute "restricted securities" under Rule 144 that have been reacquired by any of them.

(o) Not to take any action prohibited by Regulation M under the Exchange Act in connection with the distribution of the Securities contemplated hereby.

The Company also covenants with each Initial Purchaser that, without the prior written consent of Morgan Stanley & Co. LLC, it will not, for the period of sixty (60) days from the date of this Agreement, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) file any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock. The foregoing sentence shall not apply to (a) the Securities to be sold hereunder, (b) the issuance by the Company of shares of Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof of which the Underwriters have been advised in writing, (c) any grants under the Company's equity or stock plans in accordance with the terms of such plans as described in the Time of Sale Memorandum, (d) Common Stock or rights to receive Common Stock (including securities convertible into or exercisable or exchangeable for Common Stock)



issued or contemplated to be issued in connection with an acquisition or a strategic or minority investment transaction with a customer, supplier or other business partner (or a person that becomes a business partner in connection with such a transaction), provided that the aggregate number of shares of Common Stock issued in or issuable upon the exercise of rights to receive shares of Common Stock granted in such transactions in the aggregate shall not exceed five percent (5%) of the Company's outstanding Common Stock as of the Closing Date (it being understood that shares issued or issuable pursuant to clause (e) below shall not count against such five percent (5%) limit), (e) Common Stock or rights to receive Common Stock (including securities convertible into or exercisable or exchangeable for Common Stock) issued or contemplated to be issued in connection with an acquisition or a strategic or minority investment transaction with a customer, supplier or other business partner (or a person that becomes a business partner in connection with such a transaction),

provided that, prior to or concurrently with execution of any binding agreement providing for the issuance of any such shares or rights, the entity that is issued or to be issued such Common Stock or rights to receive such Common Stock pursuant to such agreement agrees with the Company that, from the date of such agreement until a date that is at least 60 days after the date of this Agreement, such entity and its controlled affiliates will be subject to restrictions at least as restrictive as those set forth in the form of "lock-up" agreement attached as Exhibit A solely with respect to such Common Stock received or rights to receive such Common Stock (and not with respect to other Common Stock or rights to receive Common Stock then owned or thereafter acquired by such entity or its controlled affiliates), provided that transfers among a party to such agreements and its controlled affiliates and among controlled affiliates will be permitted and that the exceptions provided for in the agreement attached as Exhibit A shall only apply if the party relying on such exception is an individual), (f) the capped call transactions described in the Time of Sale Memorandum, or, (g) the repurchase, redemption or repayment in cash of any series of the Company's outstanding convertible notes (it being understood that the unwinding of swaps or other derivative contracts by counterparties to such repurchases, redemptions or repayments is not restricted). The Company agrees that, prior to the date that is 60 days after the date of this Agreement, without your prior written consent, it will not waive any of the restrictions set forth in any of the "lock-up" agreements that qualify an issuance for the exception set forth in clause (e) of the preceding sentence.

7. *Offering of Securities; Restrictions on Transfer*. (a) Each Initial Purchaser, severally and not jointly, represents and warrants that such Initial Purchaser is a qualified institutional buyer as defined in Rule 144A under the Securities Act (a "**QIB**"). Each Initial Purchaser, severally and not jointly, agrees with the Company that (i) it will not solicit offers for, or offer or sell, such Securities by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act and (ii) it will solicit offers for such Securities only from, and will offer such Securities only to, persons that it reasonably believes to be QIBs.



(b) Each Initial Purchaser, severally and not jointly, represents, warrants, and agrees with respect to offers and sales outside the United States that:

(i) such Initial Purchaser understands that no action has been or will be taken in any jurisdiction by the Company that would permit a public offering of the Securities, or possession or distribution of the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum or any other offering or publicity material relating to the Securities, in any country or jurisdiction where action for that purpose is required;

(ii) such Initial Purchaser will comply with all applicable laws and regulations in each jurisdiction in which it acquires, offers, sells or delivers Securities or has in its possession or distributes the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum or any such other material, in all cases at its own expense; and

(iii) the Securities have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Rule 144A under the Securities Act or pursuant to another exemption from the registration requirements of the Securities Act.

(c) The Company agrees that the Initial Purchasers may provide copies of the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum and any other agreements or documents relating thereto, including without limitation, the Indentures, to Xtract Research LLC ("Xtract"), following completion of the offering, for inclusion in an online research service sponsored by Xtract, access to which shall be restricted by Xtract to QIBs.

8. *Indemnity and Contribution*. (a) The Company agrees to indemnify and hold harmless each Initial Purchaser, the directors, officers, employees and agents of the Initial Purchasers and each person, if any, who controls any Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Initial Purchaser within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the



Preliminary Memorandum, the Time of Sale Memorandum or any amendment or supplement thereto, any Additional Written Offering Communication prepared by or on behalf of, used by, or referred to by the Company, any "road show" as defined in Rule 433(h) under the Securities Act (a "road show") or the Final Memorandum or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through you expressly for use therein.

(b) Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, officers, employees 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 to the same extent as the foregoing indemnity from the Company to such Initial Purchaser, but only with reference to information relating to such Initial Purchaser furnished to the Company in writing by such Initial Purchaser through you expressly for use in the Preliminary Memorandum, the Time of Sale Memorandum, any Additional Written Offering Communication prepared by or on behalf of, used by or referred to by the Company, road show, or the Final Memorandum or any amendment or supplement thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8(a) or 8(b), such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing, but the omission so to notify the indemnifying party shall not relieve it from any liability that it may have to any indemnified party otherwise than under such subsection, and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such

counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them or (iii) the indemnifying party shall not have employed



counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by Morgan Stanley & Co. LLC, in the case of parties indemnified pursuant to Section 8(a), and by the Company, in the case of parties indemnified pursuant to Section 8(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) To the extent the indemnification provided for in Section 8 or 8(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Initial Purchasers on the other hand from the offering of the Securities or (ii) if the allocation provided by clause 8(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 8(d)(i) above but also the relative fault of the Company on the one hand and of the Initial Purchasers on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Initial Purchasers on the other hand in connection with the offering of the Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Securities (before deducting expenses) received by the Company and the total discounts and commissions received by the Initial Purchasers bear to the aggregate offering price of the Securities. The



relative fault of the Company on the one hand and of the Initial Purchasers on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Initial Purchasers' respective obligations to contribute pursuant to this Section 8 are several in proportion to the respective principal amount of Securities they have purchased hereunder, and not joint.

(e) The Company and the Initial Purchasers agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 8(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Initial Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Securities resold by it in the initial placement of such Securities were offered to investors exceeds the amount of any damages that such Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Initial Purchaser, any person controlling any Initial Purchaser or any affiliate of any Initial Purchaser or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Securities.



9. *Termination*. The Initial Purchasers may terminate this Agreement by notice given by you to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Market, the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of the Company shall have been suspended on any exchange, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State or Idaho State authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and that, singly or together with any other event specified in this clause 9, makes it, in your judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Securities on the terms and in the manner contemplated in the Time of Sale Memorandum or the Final Memorandum.

10. *Effectiveness; Defaulting Initial Purchasers*. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date, or an Option Closing Date, as the case may be, any one or more of the Initial Purchasers shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase is not more than one tenth of the aggregate principal amount of Securities to be purchased on such date, the other Initial Purchasers shall be obligated severally in the proportions that the principal amount of Firm Securities set forth opposite their respective names in Schedule I bears to the aggregate principal amount of Firm Securities set forth opposite the names of all such non defaulting Initial Purchasers, or in such other proportions as you may specify, to purchase the Securities that such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on such date; provided that in no event shall the principal amount of Securities that any Initial Purchaser has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 10 by an amount in excess of one ninth of such principal amount of Securities without the written consent of such Initial Purchaser. If, on the Closing Date any Initial Purchaser or Initial Purchasers shall fail or refuse to purchase Firm Securities which it or they have agreed to purchase hereunder on such date and the aggregate principal amount of Securities with respect to which such default occurs is more than one tenth of the aggregate principal amount of Firm Securities to be purchased on such date, and arrangements satisfactory to you and the Company for the purchase of such Firm Securities are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non defaulting Initial Purchaser or of the Company. In any such case either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Time of Sale Memorandum, the Final Memorandum or in any other documents or arrangements may be effected. If, on



an Option Closing Date, any Initial Purchaser or Initial Purchasers shall fail or refuse to purchase Additional Securities and the aggregate principal amount of Additional Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Additional Securities to be purchased on such Option Closing Date, the non-defaulting Initial Purchasers shall have the option to (a) terminate their obligation hereunder to purchase the Additional Securities to be sold on such Option Closing Date or (b) purchase not less than the principal amount of Additional Securities that such non-defaulting Initial Purchasers would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any defaulting Initial Purchaser from liability in respect of any default of such Initial Purchaser under this Agreement.

If this Agreement shall be terminated by the Initial Purchasers, or any of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Initial Purchasers or such Initial Purchasers as have so terminated this Agreement with respect to themselves, severally, for all out of pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Initial Purchasers in connection with this Agreement or the offering contemplated hereunder.

11. *Entire Agreement*. (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Securities, represents the entire agreement between the Company and the Initial Purchasers with respect to the preparation of the Preliminary Memorandum, the Time of Sale Memorandum, the Final Memorandum, the conduct of the offering, and the purchase and sale of the Securities.

(b) The Company acknowledges that in connection with the offering of the Securities: (i) the Initial Purchasers have acted at arm's length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (ii) the Initial Purchasers owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement) if any, and (iii) the Initial Purchasers may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Initial Purchasers arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

12. *Counterparts*. This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.



13. *Applicable Law*. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

14. *Headings*. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

15. *Notices*. All communications hereunder shall be in writing and effective only upon receipt (a) if to the Initial Purchasers shall be delivered, mailed or sent to you at: Morgan Stanley & Co. LLC, 1585 Broadway, New York, New York 10036, Attention: Convertible Debt Syndicate Desk, with a copy to the Legal Department; Goldman, Sachs & Co., 200 West Street, New York, New York 10282, Attention: Registration Department; and J.P. Morgan Securities LLC, 383 Madison Avenue, 28th Floor, New York, New York 10179, Attention: Convertible Capital Markets Desk; with a copy to Simpson Thacher & Bartlett LLP, 2475 Hanover Street, Palo Alto, California 94304, Attention: William H. Hinman, Jr., Fax: (650) 251 5002; and (b) if to the Company shall be delivered, mailed or sent to Micron Technology, Inc., 8000 South Federal Way, Boise, Idaho 83716, Attention: General Counsel, Fax: (208) 368 4540, with a copy to Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304, Attention: John A. Fore, Fax: (650) 493 6811.

In accordance with the requirements of the USA PATRIOT Act, the Initial Purchasers are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Initial Purchasers to properly identify their respective clients.

*[Signature Page Follows]*

Very truly yours,

MICRON TECHNOLOGY, INC.

By: /s/ Ronald C. Foster
Name: Ronald C. Foster
Title: Chief Financial Officer and
Vice President of Finance

[Signature Page to Purchase Agreement]

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Accepted as of the date hereof

MORGAN STANLEY & CO. LLC
J.P. MORGAN SECURITIES LLC
GOLDMAN, SACHS & CO.

Acting on behalf of themselves and the several
Initial Purchasers named in Schedule I
hereto.

By: MORGAN STANLEY & CO. LLC

By: /s/ David Oakes
Name: David Oakes
Title: Managing Director

By: J.P. MORGAN SECURITIES LLC

By: /s/ Jason M. Wood
Name: Jason M. Wood
Title: Managing Director

By: GOLDMAN, SACHS & CO.

By: /s/ Daniel M. Young
Name: Daniel M. Young
Title: Managing Director

[Signature Page to Purchase Agreement]

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**SCHEDULE I**

**2033E Notes**

| Initial Purchaser | Principal Amount of Firm Securities to be Purchased | Principal Amount of Additional Securities to be Purchased |
|---|---|---|
| Morgan Stanley & Co. LLC | $ 164,133,000 | $ 18,237,000 |
| Goldman, Sachs & Co. | 46,521,000 | 5,169,000 |
| J.P. Morgan Securities LLC | 46,521,000 | 5,169,000 |
| DBS Bank Ltd. | 4,275,000 | 475,000 |
| HSBC Securities (USA) Inc. | 4,275,000 | 475,000 |
| U.S. Bancorp Investments, Inc. | 4,275,000 | 475,000 |
| Total: | $ 270,000,000 | $ 30,000,000 |

**2033F Notes**

| Initial Purchaser | Principal Amount of Firm Securities to be Purchased | Principal Amount of Additional |
|---|---|---|

| | | Securities to be Purchased |
|---|---|---|
| Morgan Stanley & Co. LLC | $ 164,133,000 | $ 18,237,000 |
| Goldman, Sachs & Co. | 46,521,000 | 5,169,000 |
| J.P. Morgan Securities LLC | 46,521,000 | 5,169,000 |
| DBS Bank Ltd. | 4,275,000 | 475,000 |
| HSBC Securities (USA) Inc. | 4,275,000 | 475,000 |
| U.S. Bancorp Investments, Inc. | 4,275,000 | 475,000 |
| Total: | $ 270,000,000 | $ 30,000,000 |



**SCHEDULE II**

**Time of Sale Memorandum**

1. Preliminary Memorandum issued February 5, 2013

2. Pricing Term Sheet issued February 6, 2013

**SCHEDULE III**

**Jurisdictions of Qualification of Company**

Arizona
California
Colorado
Delaware
Idaho
Minnesota
New Mexico
New York
Oregon
Utah
Virginia
Washington



**SCHEDULE IV**

**Directors:**

Robert L. Bailey
Richard M. Beyer
Patrick J. Byrne
Mark Durcan
Mercedes Johnson
Lawrence N. Mondry
Robert E. Switz

**Officers:**

Mark Durcan
Ron Foster
Rod Lewis
Mark Adams
Glen Hawk
Brian Shirley
Brian Shields
Thomas Eby
Patrick Otte
Scott DeBoer
Michael J. Rayfield
Michael W. Sadler
Steven Thorsen, Jr.

**EXHIBIT A**

**FORM OF LOCK-UP LETTER**

February , 2013

Morgan Stanley & Co. LLC
Goldman, Sachs & Co.
J.P. Morgan Securities LLC

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

Ladies and Gentlemen:

The undersigned understands that Morgan Stanley & Co. LLC ("**Morgan Stanley**") proposes to enter into a Purchase Agreement (the "**Purchase Agreement**") with Micron Technology, Inc., a Delaware corporation (the "**Company**"), providing for the offering (the "**Offering**") by the several initial purchasers, including Morgan Stanley (the "**Initial Purchasers**"), of up to approximately $600,000,000 aggregate principal amount of Convertible Senior Notes (the "**Securities**"). The Securities will be convertible into shares of common stock, par value $0.10 per share, of the Company (the "**Common Stock**").

To induce the Initial Purchasers that may participate in the Offering to continue their efforts in connection with the Offering, the undersigned hereby agrees that, without the prior written consent of Morgan Stanley on behalf of the Initial Purchasers, it will not, during the period commencing on the date hereof and ending 60 days after the date of the final offering memorandum (the "**Restricted Period**") relating to the Offering (the "**Final Memorandum**"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Offering, provided that no filing under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), shall be required or shall be voluntarily made in



connection with subsequent sales of Common Stock or other securities acquired in such open market transactions, (b) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift, (c) to the extent applicable, distributions of shares of Common Stock or any security convertible into Common Stock to limited partners, stockholders, direct or indirect members or wholly owned subsidiaries of the undersigned, (d) transfers of shares of Common Stock or any security convertible into Common Stock to any trust, partnership or limited liability company for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, (e) transfers of shares of Common Stock or any security convertible into Common Stock to a wholly owned subsidiary of the undersigned or to the direct or indirect members or partners of the undersigned, (f) transfers of shares of Common Stock or any security convertible into Common Stock by will or intestate, (g) transfers of shares of Common Stock or any security convertible into Common Stock to a nominee or custodian of a person or entity to whom a transfer would be permissible under clauses (b) through (f), (h) in connection with the surrender or forfeiture of shares to the Company to satisfy tax withholding obligations upon exercise or vesting of stock options or awards, provided that in the case of any transfer or distribution pursuant to clause (b) through (h) (1) each donee or distributee shall sign and deliver a lock-up letter substantially in the form of this letter and (2) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Restricted Period, (i) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, provided that (A) such plan does not provide for the transfer of Common Stock during the Restricted Period and (B) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Restricted Period, (j) sales of shares of Common Stock or any security convertible into Common Stock upon the termination of the undersigned's employment or other relationship with the Company, (k) sales of shares of Common Stock of no more than two million shares in the aggregate by all persons who enter into a "lock-up" agreement with Morgan Stanley in connection with the Offering, provided that the undersigned has received written confirmation from the Company that, after giving effect to such sale, the aggregate number of shares sold pursuant to this exception will not exceed two million shares or (l) sales of shares of Common Stock pursuant to a trading plan established pursuant to Rule 10b5-1 under the Exchange Act in effect on the date hereof. In addition, the undersigned agrees that, without the prior written consent of Morgan Stanley on behalf of the Initial Purchasers, it will not, during the Restricted Period, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.



It is understood that the undersigned will be released from its obligations under this "lock-up" agreement if the Company notifies the undersigned that it does not intend to proceed with the Offering, if the Purchase Agreement (other than the provisions thereof that survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities or if the Offering shall not have occurred by April 30, 2013.

The undersigned understands that the Company and the Initial Purchasers are relying upon this agreement in proceeding toward consummation of the Offering. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives,

successors and assigns.

Whether or not the Offering actually occur depends on a number of factors, including market conditions. Any Offering will only be made pursuant to the Purchase Agreement, the terms of which are subject to negotiation between the Company and the Initial Purchasers.

Very truly yours,

_____

(Name)

_____

(Address)



**EXHIBIT B**

**FORM OF OPINION OF WILSON SONSINI GOODRICH & ROSATI, PROFESSIONAL CORPORATION, OUTSIDE COUNSEL TO THE COMPANY**

1. The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware and has the corporate power and authority to own its properties and to conduct its business as described in the Disclosure Package and the Final Offering Memorandum.

2. The Company has an authorized capitalization as set forth in the Disclosure Package and the Final Offering Memorandum.

3. The shares of Common Stock initially issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon conversion of the Securities by valid corporate action and are free from preemptive rights under the Company's charter or by-laws, the federal laws of the United States of America and the DGCL. When so issued and delivered upon such conversion in accordance with the terms of the applicable Indenture and the applicable Securities, such shares will be validly issued, fully paid and nonassessable and will conform in all material respects to the description thereof contained in the Disclosure Package and the Final Offering Memorandum under the caption "Description of Capital Stock."

4. The Purchase Agreement has been duly authorized, executed and delivered by the Company.

5. The Securities are in the form contemplated by the applicable Indenture, have been duly authorized by the Company and, when executed by the Company and authenticated by the Trustee in accordance with the terms of the applicable Indenture and delivered against the purchase price therefor specified herein (which fact such counsel has not determined by inspection of the Securities), will constitute valid and legally binding obligations of the Company and enforceable against the Company in accordance with their terms; and the Securities are entitled to the benefits of the applicable Indenture.

6. Each Indenture has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding instrument, enforceable against the Company in accordance with its terms.

7. None of the execution, delivery and performance of the Purchase Agreement, the Indentures, the issuance and sale of the Securities, the issuance of the shares of Common Stock issuable upon conversion of the Securities or the consummation of any other of the transactions contemplated thereby will conflict with, result in a breach or violation of any of the terms or provisions of, or constitute a default under (A) the charter or by-laws of the Company or (B) any



statute, decree, regulation or order known to such counsel to be applicable to the Company of any Delaware court, governmental authority or agency having jurisdiction over the Company or any of its properties or assets, except such conflicts, breaches, violations or defaults in clause (B) above as would not have a material adverse effect on the Company's ability to perform its obligations under the Operative Documents or to consummate the transactions contemplated thereby.

8. No consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the consummation by the Company of the transactions contemplated by the Purchase Agreement or the Indentures, except as contemplated by the Operative Documents and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Initial Purchasers.

9. The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof, will not be required to register as an "investment company," as such term is defined in the Investment Company Act.

10. The statements set forth in the Disclosure Package and the Final Offering Memorandum under the caption "Description of Notes" and "Description of Capital Stock," insofar as they purport to constitute a summary of the terms of the Securities and such Capital Stock, fairly summarize such terms and documents in all material respects.

11. The statements set forth in the Disclosure Package and the Final Offering Memorandum under the caption "Material U.S. Federal Income Tax Considerations," insofar as they purport to summarize provisions of the United States federal tax laws referred to therein, fairly summarize such laws in all material respects.

12. No registration of the Securities under the Act is required for the sale of the Securities by the Company to the Initial Purchasers pursuant to the Purchase Agreement or for the initial resale of the Securities by the Initial Purchasers in the manner contemplated by the Purchase Agreement, the Disclosure Package and the Final Offering Memorandum, and it is not necessary to qualify either Indenture under the Trust Indenture Act (it being understood that, in each case, no opinion is expressed as to any subsequent resale of the Securities or the consequences thereof.

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In addition, such counsel shall state that it has participated in conferences with certain officers and other representatives of the Company, the Initial Purchasers, counsel for the Initial Purchasers and the independent certified public



accountants of the Company, at which conferences the contents of the Disclosure Package, the Final Offering Memorandum and related matters were reviewed and discussed and, although such counsel does not assume any responsibility for the accuracy, completeness or fairness of the information contained in the Disclosure Package or the Final Offering Memorandum (other than as set forth in paragraphs 10 and 11 above), no facts have come to such counsel's attention, in the course of such review and discussion, that have caused it to believe that:

(i) the Disclosure Package, as of [ ] p.m. Eastern Time on February 5, 2013 (the "Applicable Time"), and on the date hereof, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading (other than the financial statements and related schedules and the financial and statistical data based on or derived from such financial statements or schedules, as to which we express no belief), or

(ii) the Final Offering Memorandum, as of its date or as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading (other than the financial statements and related schedules and the financial and statistical data based on or derived from such financial statements or schedules, as to which we express no belief).



**EXHIBIT C**

**FORM OF OPINION OF RODERIC W. LEWIS, GENERAL COUNSEL OF THE COMPANY**

1. To the best of such counsel's knowledge, but without inquiring into the dockets of any court, commissions, regulatory body, administrative agency or other government body, and other than as set forth in the Disclosure Package and Final Offering Memorandum, there are no legal or governmental proceedings pending to which the Company is a party or of which any property or assets of the Company is the subject, which such counsel believes individually or in the aggregate would be reasonably expected to have a Material Adverse Effect.

2. The shares of Common Stock issuable upon conversion of the Securities will be free of preemptive rights under any agreement known to me.

3. None of the execution, delivery and performance of the Purchase Agreement or the Indentures, the issuance and sale of the Securities, the issuance of the shares of Common Stock issuable upon conversion of the Securities or the consummation of any other of the transactions contemplated thereby will conflict with, result in a breach or violation of any of the terms or provisions of, or constitute a default under (A) any material indenture or other material agreement or instrument to which the Company or its subsidiaries is a party or bound, or (B) any statute, decree, regulation or order applicable to the Company of any U.S. Federal or Idaho court, governmental authority or agency having jurisdiction over the Company or any of its properties or assets, except such conflicts, breaches, violations or defaults as would not have a Material Adverse Effect on the Company's ability to perform its obligations under the Operative Documents or to consummate the transactions contemplated thereby.

4. Except as may be required by the Securities Act, and the rules and regulations promulgated thereunder or "blue sky" laws of any state of the United States, in connection with the sale of the Securities, no consent, approval, authorization or order of, or filing or registration with, any U.S. Federal or Idaho court or governmental agency or body is required for the execution, delivery and performance of the Purchase Agreement and the Indentures by the Company and the issuance of the Securities and the shares of Common Stock issuable upon conversion of the Securities and the consummation of the transactions contemplated thereby.

**MICRON TECHNOLOGY, INC.**

**as Issuer**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

**as Trustee**

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**Indenture**

**Dated as of February 12, 2013**

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**1.625% Convertible Senior Notes due 2033**

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**TABLE OF CONTENTS**

INDENTURE dated as of February 12, 2013 between Micron Technology, Inc., a Delaware corporation (the "**Company**"), and U.S. Bank National Association, a national banking association, as Trustee.

**RECITALS**

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of up to $300,000,000 aggregate principal amount of the Company's 1.625% Convertible Senior Notes due 2033 (the "**Notes**"). All things necessary to make this Indenture a valid and binding agreement of the Company, in accordance with its terms, have been done, and the Company has done all things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee and duly issued by the Company, the valid and binding obligations of the Company as hereinafter provided.

**THIS INDENTURE WITNESSETH**

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, the parties hereto covenant and agree, for the equal and proportionate benefit of all Holders, as follows:

**ARTICLE 1**

**DEFINITIONS AND INCORPORATION BY REFERENCE**

*Section 1.01. Definitions*.

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise.

"**Agent**" means any Registrar, Paying Agent or Conversion Agent.

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

"**Applicable Conversion Rate**" means the Conversion Rate on any day.

"**Applicable Procedures**" means, with respect to any transfer or exchange of beneficial ownership interests in a Global Note, the rules and procedures of the Depositary, in each case to the extent applicable to such transfer or exchange.

"**Bankruptcy Law**" means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors.

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"**Board of Directors**" means the board of directors or comparable governing body of the Company, or any committee thereof duly authorized to act on its behalf.

"**Business Day**" means any weekday that is not a day on which banking institutions in The City of Boise, The City of New York or a place of payment are authorized or obligated to close.

"**Capital Stock**" means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person's equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

"**Cash**" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"**Certificated Note**" means a Note in registered individual form without interest coupons.

"**Change in Control**" shall have the meaning set forth in Section 3.01(a) of this Indenture.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Price**" of Common Stock or any other security on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which Common Stock or such other security is listed. If Common Stock or such other security is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the Closing Price will be the last quoted bid price for Common Stock or such other security in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or a similar organization. If Common Stock or such other security is not so quoted, the Closing Price will be the average of the mid-point of the last bid and ask prices for Common Stock or such other security on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The Closing Price will be determined without reference to extended or after hours trading.

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

"**Common Stock**" means Common Stock of the Company, $0.10 par value, as it exists on the date of this Indenture and any shares of any class or classes of Capital Stock of the Company resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Notes shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.



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"**Company**" means the party named as such in the first paragraph of this Indenture or any successor obligor under this Indenture and the Notes pursuant to Section 5.01.

"**Conversion Price**" per share of Common Stock as of any day means $1,000 *divided by* the Conversion Rate on such day.

"**Corporate Trust Office**" means the office of the Trustee at which the corporate trust business of the Trustee is principally administered, which at the date of this Indenture is located at 633 West Fifth Street, 24th Floor, Los Angeles, California 90071.

"**Current Market Price**" of Common Stock on any day means the average of the Closing Prices of Common Stock for each of the five consecutive Trading Days ending on the earlier of the day in question and the day before the Ex-Date with respect to the issuance or distribution requiring such computation.

"**Daily Conversion Value**" means, for each of the 20 consecutive Trading Days during the Observation Period, 5.00% of the product of (a) the Conversion Rate in effect on such Trading Day and (b) the Daily VWAP on such Trading Day.

"**Daily Net Settlement Amount**" means for each of the 20 consecutive Trading Days during the applicable Observation Period (a) if the Company does not elect a Cash Percentage pursuant to Section 10.03(d), a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value on such Trading Day and $50.00, divided by (ii) the Daily VWAP for such Trading Day; (b) if the Company elects a Cash Percentage of 100% pursuant to Section 10.03(d), Cash in an amount equal to the difference between the Daily Conversion Value on such Trading Day and $50.00; or (c) if the Company elects a Cash Percentage of less than 100% pursuant to Section 10.03(d), (i) Cash in an amount equal to the product of (x) the difference between the Daily Conversion Value on such Trading Day and $50.00 and (y) the Cash Percentage, plus (ii) a number of shares of Common Stock equal to the product of

(x) (A) the difference between the Daily Conversion Value on such Trading Day and $50.00, divided by (B) the Daily VWAP for such Trading Day and (y) 100% minus the Cash Percentage.

"**Daily VWAP**" means, for each of the 20 consecutive Trading Days during the applicable Observation Period, the per share volume weighted average price of Common Stock as displayed on Bloomberg (or any successor service) page MU <equity>AQR in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, the Daily VWAP means the market value per share of Common Stock on such day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company. The "Daily VWAP" shall be determined without regard to after hours trading or any other trading outside of the regular trading session's trading hours.

"**Debt**" means, with respect to any Person, without duplication, all obligations (other than non-recourse obligations) of such Person for borrowed money or evidenced by bonds, debentures, notes or other similar instruments.

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



"**Depositary**" means DTC or the nominee thereof, or any successor thereto.

"**DTC**" means The Depository Trust Company, a New York corporation, and its successors.

"**DTC Legend**" means the legend set forth in Exhibit B.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

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

"**Freely Tradable**" means, with respect to the Notes and the shares of Common Stock issuable upon the conversion of the Notes, that such Notes and shares of Common Stock, if any, (a) are eligible to be sold by a Person who has not been an Affiliate of the Company during the preceding three months without any volume or manner of sale restrictions under the Securities Act, (ii) do not bear a Transfer Restricted Note Legend and (iii) with respect to Global Notes only, are identified by an unrestricted CUSIP number in the facilities of the applicable Depositary.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time.

"**Global Note**" means a Note in registered global form without interest coupons.

"**Holder**" means the registered holder of any Note.

"**Indenture**" means this indenture, as amended or supplemented from time to time.

"**Indirect Participant**" means an entity that, with respect to any Depositary, clears through or maintains a direct or indirect, custodial relationship with a Participant.

"**Initial Purchasers**" means Morgan Stanley & Co. LLC, Goldman, Sachs & Co., J.P. Morgan Securities LLC and the several other initial purchasers listed in Schedule I to the Purchase Agreement.

"**Interest Payment Date**" means February 15 and August 15 of each year, commencing August 15, 2013.

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



"**Maturity Date**" means February 15, 2033.

"**Notes**" has the meaning assigned to such term in the Recitals.

"**Observation Period**" with respect to any Note surrendered for conversion means:

(a) in the case of a conversion of a Note called for redemption pursuant to Section 3.02, the 20 consecutive Trading Day period beginning on, and including, the 22nd Scheduled Trading Day prior to the Redemption Date;

(b) except as addressed by (a) above, if the relevant Conversion Date occurs before the 24th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive Trading Day period beginning on, and including, the third Trading Day after such Conversion Date; and

(c) except as addressed by (a) above, if the relevant Conversion Date occurs on or after the 24th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive Trading Days beginning on, and including, the 22nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Offering Memorandum**" means the final offering memorandum, dated February 6, 2013, relating to the offering and sale of the Notes.

"**Officer**" means the chairman of the Board of Directors, the president or chief executive officer, any vice president, the chief financial officer, the treasurer or any assistant treasurer, or the secretary or any assistant secretary, of the Company.

"**Officers' Certificate**" means a certificate signed in the name of the Company (a) by the chairman of the Board of Directors, the president or chief executive officer or a vice president and (b) by the chief financial officer, the treasurer or any assistant treasurer or the secretary or any assistant secretary.

"**Opinion of Counsel**" means a written opinion signed by legal counsel, who may be an employee of or counsel to the Company, satisfactory to the Trustee.

"**Participant**" means a Person who has an account with the Depositary.

"**Paying Agent**" refers to a Person engaged to perform the obligations of the Trustee in respect of payments made or funds held hereunder in respect of the Notes.

"**Person**" means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, including a government or political subdivision or an agency or instrumentality thereof.

"**principal**" of any Debt (including the Notes) means the principal amount of such Debt (or if such Debt was issued with original issue discount, the face amount of such Debt less the remaining unamortized portion of the original issue discount of such Debt), together with, unless the context otherwise indicates, any premium then payable on such Debt.



"**Purchase Agreement**" means the Purchase Agreement, dated February 6, 2013, among the Company and the Initial Purchasers relating to the purchase of the Notes by the Initial Purchasers.

"**Redemption Date**" means the date specified for redemption of the Notes in accordance with the terms of the Notes and Article 11.

"**Regular Record Date**" for the interest payable on any Interest Payment Date means the February 1 or August 1 next preceding such Interest Payment Date.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer of the trustee within the Corporate Trust Office of the Trustee who has direct responsibility for the administration of this indenture and shall also mean any other officer of the Trustee to whom any corporate trust matter is referred because of such person's knowledge and familiarity with the particular subject matter.

"**Rule 144**" means Rule 144 promulgated under the Securities Act or any successor to such Rule.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act or any successor to such Rule.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

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

"**Subsidiary**" means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Securities is owned, directly or indirectly, by, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof).

"**Termination of Trading**" means the Common Stock, or other Capital Stock into which the Notes are then convertible, is not listed for trading on a United States national securities exchange or approved for quotation on a U.S. system of automated dissemination of quotations of securities prices similar to The NASDAQ Global Select Market prior to its designation as a national securities exchange.

"**Trading Day**" means, with respect to Common Stock or any other security, a day during which (a) trading in Common Stock or such other security generally occurs on The NASDAQ Global Select Market or, if the Common Stock is not then listed on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange, if any, on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market, if any, on which the Common Stock



is then admitted for trading, (b) there is no Market Disruption Event and (c) a Closing Price for Common Stock or such other security (other than a Closing Price referred to in the next to last sentence of such definition) is available on such securities exchange or market; *provided* that if Common Stock or such other security is not admitted for trading or quotation on or by any exchange, market, bureau or other organization, "Trading Day" will mean any Business Day.

"**Trading Price**" means, on any date of determination, the average of the secondary market bid quotations obtained by the Trustee for $5.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. Any such determination will be conclusive absent manifest error. If the Trustee cannot reasonably obtain at least one bid for $5.0 million principal amount of Notes

from a U.S. nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of relevant Notes will be deemed to be less than 98% of the product of the Closing Price of the Common Stock and the then Applicable Conversion Rate for the Notes.

"**Transfer Restricted Global Note**" means a Global Note that is a Transfer Restricted Note.

"**Transfer Restricted Note**" means a Note that is subject to resale restrictions pursuant to the Securities Act.

"**Transfer Restricted Note Legend**" means the legend set forth in Exhibit C.

"**Trustee**" means the party named as such in the first paragraph of this Indenture or any successor trustee under this Indenture pursuant to Article 7.

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

"**Unrestricted Global Note**" means a Global Note that is not a Transfer Restricted Note.

"**Unrestricted Note**" means a Note that is not a Transfer Restricted Note.

"**Voting Securities**" means, with respect to any Person, securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

*Section 1.02. Other Definitions*.

| Term | Defined in Section |
|---|---|
| "Act" | 13.01(b) |
| "Additional Interest" | 6.15(a) |
| "Bankruptcy Default" | 6.01(h) |
| "beneficial owner" | 3.01(a) |
| "Cash Percentage" | 10.03(d) |



| Term | Defined in Section |
|---|---|
| "Company Order" | 2.02 |
| "Conversion Agent" | 2.03 |
| "Conversion Date" | 10.02(a) |
| "Conversion Obligation" | 10.01(a) |
| "Conversion Rate" | 10.01(a) |
| "Conversion Trigger Price" | 10.01(c) |
| "Daily Settlement Amount" | 10.03(b) |
| "Defaulted Interest" | 12.02 |
| "Disposition Event" | 10.09 |
| "Distributed Assets" | 10.07(c) |
| "Effective Date" | 10.10(b) |
| "Event of Default" | 6.01 |
| "Expiration Date" | 10.07(e) |
| "Free Trade Date" | 6.15(b) |
| "Fundamental Change Repurchase Date" | 3.01(a) |
| "Fundamental Change Repurchase Price" | 3.01(a) |
| "Fundamental Change Repurchase Notice" | 3.01(c) |
| "group" | 3.01(a) |
| "Last Original Issuance Date" | 6.15(b) |
| "Legal Holiday" | 13.06 |
| "Make-Whole Change in Control" | 10.10(a) |
| "Make-Whole Shares" | 10.10(a) |
| "Merger Event" | 10.09 |
| "Optional Repurchase Date" | 3.02(a) |
| "Optional Repurchase Price" | 3.02(a) |
| "Optional Repurchase Notice" | 3.02(c) |
| "Paying Agent" | 2.03 |
| "person" | 3.01(a) |
| "Primary Registrar" | 2.03 |
| "Redemption Price" | 11.01(b) |
| "Reference Period" | 10.07(c) |
| "Reference Property" | 10.09 |
| "Register" | 2.03 |
| "Registrar" | 2.03 |
| "Repurchase Date" | 3.03(a) |
| "Repurchase Notice" | 3.03(a) |
| "Repurchase Price" | 3.03(a) |
| "Rights" | 10.20 |
| "Settlement Amount" | 10.03(a) |
| "Shareholders Rights Plan" | 10.20 |
| "Special Record Date" | 12.02(a) |
| "Spin-Off" | 10.07(c) |

| | |
|---|---|
| "Stock Price" | 10.10(b) |
| "Trading Price Condition" | 10.01(b) |



| Term | Defined in Section |
|---|---|
| "Trigger Event" | 10.08 |
| "Unit of Reference Property" | 10.09 |

*Section 1.03. Rules of Construction*. Unless the context otherwise requires or except as otherwise expressly provided,

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

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

(d) all references to Sections or Articles or Exhibits refer to Sections or Articles or Exhibits of or to this Indenture unless otherwise indicated;

(e) references to agreements or instruments, or to statutes or regulations, are to such agreements or instruments, or statutes or regulations, as amended from time to time (or to successor statutes and regulations);

(f) in the event that a transaction meets the criteria of more than one category of permitted transactions or listed exceptions the Company may classify such transaction as it, in its sole discretion, determines;

(g) "or" is not exclusive;

(h) "including" means including, without limitation; and

(i) words in the singular include the plural, and words in the plural include the singular.

*Section 1.04. Payments due on non-Business Days*. Notwithstanding anything herein to the contrary, any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day.

## ARTICLE 2

## THE NOTES

*Section 2.01. Form, Dating and Denominations; Legends.* (a) The Notes and the Trustee's certificate of authentication will be substantially in the form attached as Exhibit A. The terms and provisions contained in the form of the Note annexed as Exhibit A constitute and are hereby expressly made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, rules of or agreements with national securities exchanges to which the Company is subject, or usage. Each Note will be dated the date of its authentication.



The Notes will be issuable only in denominations of $1,000 in principal amount and any integral multiple thereof.

(b) *Global Notes in General*. Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, purchases, conversions or issuances of such Notes. Any adjustment of the aggregate principal amount of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.06 and shall be made on the records of the Trustee and the Depositary.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary or under the Global Note, and the Depositary (including, for this purpose, its nominee) may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) 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 Depositary or (ii) 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 Note.

(c) *Book-Entry Provisions*. The Company shall execute and the Trustee shall, in accordance with this Section 2.01(c), authenticate and deliver initially one or more Global Notes that (i) shall be registered in the name of the Depositary, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (iii) shall bear a legend substantially to the effect set forth in Exhibit B.

(d) *Transfer Restricted Note Legend*. All Transfer Restricted Notes shall bear the Transfer Restricted Note Legend.

*Section 2.02. Execution and Authentication*. An Officer shall sign the Notes for the Company by manual or facsimile signature. Typographic errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Note which has been authenticated and delivered by the Trustee.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee signs manually the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall authenticate and make available for delivery Notes for original issue on the date hereof in the aggregate principal amount of $300,000,000 upon receipt of a written order or orders of the Company signed by an Officer of the Company (each, a "**Company Order**"). The Company Order shall specify the amount of Notes to be authenticated, shall provide that all such



Notes will be represented by a Global Note and the date on which each original issue of Notes is to be authenticated. The initial aggregate principal amount of Notes outstanding at any time may not exceed $300,000,000 except as provided in Section 2.07.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent shall have the same rights as an Agent to deal with the Company or an Affiliate of the Company.

The Notes shall be issuable only in registered form without coupons and only in denominations of $1,000 principal amount and any integral multiple thereof.

*Section 2.03. Registrar, Paying Agent and Conversion Agent*. The Company shall maintain one or more offices or agencies where Notes may be presented for registration of transfer or for exchange (each, a "**Registrar**"), one or more offices or agencies where Notes may be presented for payment (each, a "**Paying Agent**"), one or more offices or agencies where Notes may be presented for conversion (each, a "**Conversion Agent**") and one or more offices or agencies where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will at all times maintain a Paying Agent, Conversion Agent, Registrar and an office or agency where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served in the United States. One of the Registrars (the "**Primary Registrar**") shall keep a register of the Notes and of their transfer and exchange (the "**Register**").

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent, Conversion Agent or agent for service of notices and demands in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent (except for the purposes of Article 8).

The Company hereby initially designates the Trustee as Paying Agent, Registrar, and Conversion Agent, and each of the Corporate Trust Office of the Trustee and the office or agency of the Trustee in the United States (located at c/o U.S. Bank Association, Corporate Trust Services, 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, Tel. (213) 615-6043, Attention: Paula Oswald (Micron 2033E Indenture)), one such office or agency of the Company for each of the aforesaid purposes.

*Section 2.04. Paying Agent to Hold Money in Trust*. Prior to 12:00 p.m., New York City time, on each date on which the principal amount of or interest (including Additional Interest), if any, on any Notes is due and payable, the Company shall deposit with a Paying Agent a sum sufficient to pay such principal amount or interest (including Additional Interest), if any, so becoming due. A Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal amount of or interest (including Additional Interest), if any, on the Notes, and shall notify the Trustee of any default



by the Company (or any other obligor on the Notes) in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 12:00 p.m., New York City time, on each date on which a payment of the principal amount of or interest (including any Additional Interest) on any Notes is due and payable, segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

*Section 2.05. Holder Lists*. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Primary Registrar, the Company shall furnish to the Trustee on or before 10 Business Days prior to the Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

*Section 2.06. Transfer and Exchange*. Subject to compliance with any applicable additional requirements contained in Section 2.13, when a Note is presented to a Registrar with a request to register a transfer thereof or to exchange such Note for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met; *provided* that every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form in the form included in Exhibit A, and in form satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Note for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.03, the Company shall execute and the Trustee shall authenticate Notes of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without service charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto; *provided* that this sentence shall not apply to any exchange pursuant to Section 2.10, Section 3.05, Section 9.03(b) or Section 11.06 not involving any transfer.

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

Any Registrar appointed pursuant to Section 2.03 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly



required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

*Section 2.07. Replacement Notes*. If any mutilated Note is surrendered to the Company, a Registrar or the Trustee, or the Company, a Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company, the applicable Registrar and the Trustee such security or indemnity as will be required by them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Note has been acquired by a protected purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

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

Upon the issuance of any new Notes under this Section 2.07, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.

Every new Note issued pursuant to this Section 2.07 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Note 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 Notes duly issued hereunder.

The provisions of this Section 2.07 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

*Section 2.08. Outstanding Notes*. Notes outstanding at any time are all Notes authenticated by the Trustee, except for those canceled by it, those converted pursuant to Article 10, those delivered to it for cancellation or surrendered for transfer or exchange and those described in this Section 2.08 as not outstanding.

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Company receives proof satisfactory to it that the replaced Note is held by a protected purchaser (as defined in Section 8-303 of the New York Uniform Commercial Code).

If a Paying Agent holds at 12:00 p.m., New York City time, on the Maturity Date Cash sufficient to pay the principal amount of the Notes payable on that date, then on and after the Maturity Date, such Notes shall cease to be outstanding and the principal amount thereof shall cease to bear interest.



Subject to the restrictions contained in Section 2.09, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

*Section 2.09. Treasury Notes*. In determining whether the Holders of the required principal amount of Notes have concurred in any notice, direction, waiver or consent, Notes owned by the Company or any other obligor on the Notes or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Notes which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Company or any other obligor on the Notes or any Affiliate of the Company or of such other obligor.

*Section 2.10. Temporary Notes*. Until definitive Notes are ready for delivery, the Company may prepare and execute, and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, temporary Notes. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Company with the consent of the Trustee considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate and deliver definitive Notes in exchange for temporary Notes.

*Section 2.11. Cancellation*. The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee or its agent any Notes surrendered to them for transfer, exchange, payment or conversion. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Notes surrendered for transfer, exchange, payment, conversion or cancellation and upon written request of the Company shall deliver evidence of the canceled Notes to the Company.

*Section 2.12. CUSIP Numbers*. The Company in issuing the Notes may use one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of purchase 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 Notes or as contained in any notice of a purchase and that reliance may be placed only on

the other identification numbers printed on the Notes, and any such purchase shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

*Section 2.13. Additional Transfer and Exchange Requirements*. (a) If Notes are issued upon the transfer, exchange or replacement of Notes subject to restrictions on transfer and bearing the Transfer Restricted Note Legend, or if a request is made to remove the Transfer Restricted Note Legend on a Note, the Notes so issued shall bear the Transfer Restricted Note Legend, or the Transfer Restricted Note Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel if requested by the Company or such Registrar, as may be reasonably required by the Company and the Registrar, that neither the Transfer Restricted Note



Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 or that such Notes are not "restricted" within the meaning of Rule 144; provided that no such evidence need be supplied in connection with the sale of such Note pursuant to a registration statement that is effective at the time of such sale. Upon (i) provision of such satisfactory evidence if requested, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Note pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Note that does not bear the Transfer Restricted Note Legend. If the Transfer Restricted Note Legend is removed from the face of a Note and the Note is subsequently held by an Affiliate of the Company, the Transfer Restricted Note Legend shall be reinstated.

(b) No transfer of a Note to any Person shall be effective under this Indenture or the Notes unless and until such Note has been registered in the name of such Person.

(c) The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures.

(i) Beneficial interests in any Transfer Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Note in accordance with the transfer restrictions set forth in the Transfer Restricted Note Legend. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same or any other Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.13(c)(i).

(ii) In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.13(c)(i), the transferor of such beneficial interest must deliver to the Registrar an order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase.

(iii) A beneficial interest in any Transfer Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Transfer Restricted Global Note if the transfer complies with the requirements of Section 2.13(c)(ii) and the Registrar receives a duly executed certificate substantially in the form of Exhibit D hereto.

(iv) A beneficial interest in any Transfer Restricted Global Note may be exchanged for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if (1) the exchange or transfer complies with the requirements of Section 2.13(c)(ii) and (2) if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form



reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Transfer Restricted Note Legend are no longer required in order to maintain compliance with the Securities Act.

(d) The restrictions imposed by the Transfer Restricted Note Legend upon the transferability of any Note shall cease and terminate when such Note has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(d) under the Securities Act (or any successor provision). Any Note as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Note for exchange to the Registrar in accordance with the provisions of this Section 2.13 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 (or any successor provision), by, if requested, an Opinion of Counsel reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Note has been made in compliance with Rule 144 (or such successor provision), be exchanged for a new Note, of like tenor and aggregate principal amount, which shall not bear the Transfer Restricted Note Legend.

(e) As used in Section 2.13(c) and (d), the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Note.

(f) This Section 2.13(f) shall apply only to Global Notes:

(i) Notwithstanding any other provisions of this Indenture or the Notes, a Global Note shall not be exchanged in whole or in part for a Note registered in the name of any Person other than the Depositary or one or more nominees thereof, provided that a Global Note may be exchanged for Notes registered in the names of any person designated by the Depositary in the event that (A) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days, (B) the Company has provided the Depositary with written notice that it has decided to discontinue use of the system of book-entry transfer through the Depositary or any successor Depositary or (C) an Event of Default has occurred

and is continuing. Any Global Note exchanged pursuant to clauses (A) or (B) above shall be so exchanged in whole and not in part, and any Global Note exchanged pursuant to clause (C) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; provided that any such Note so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Note.

(ii) Notes issued in exchange for a Global Note or any portion thereof shall be issued in definitive, fully-registered book entry form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Note or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global



Note to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Note to be exchanged in part, either such Global Note shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Note, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Note issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(iii) Subject to the provisions of clause (v) below, the registered Holder 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 Notes.

(iv) In the event of the occurrence of any of the events specified in clause (i) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Notes in definitive, fully registered form, without interest coupons.

(v) Neither Agent Members nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Note 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 Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Note. Neither the Trustee nor any Agent Member shall have any responsibility or liability for any actions taken or not taken by the Depositary.

## ARTICLE 3

## REPURCHASES

*Section 3.01. Repurchase at the Option of the Holders Upon Change in Control or Termination of Trading*. (a) Upon the occurrence of a Change in Control or a Termination of Trading, each Holder shall have the right, at such Holder's option, subject to the terms and conditions of this Article 3, to require the Company to repurchase for Cash all or any portion of such Holder's Notes in integral multiples of $1,000 principal amount at a price (the "**Fundamental Change Repurchase Price**") equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the Fundamental Change Repurchase Date; *provided* that if the Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, the interest accrued to the Interest Payment Date will be paid to Holders of the Notes as of the preceding Regular Record Date, and the Fundamental Change Repurchase



Price shall be equal to the principal amount of Notes subject to repurchase. Upon a valid exercise of such an option, the Company will be required to repurchase the Notes on a date selected by the Company (the "**Fundamental Change Repurchase Date**"), which shall be no earlier than 20 days or later than 35 days after the date on which the Company sends the notice contemplated by Section 3.01(b), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.01(c).

A "**Change in Control**" shall be deemed to have occurred at such time as any of the following events shall occur:

(i) any person or group, other than the Company, its Subsidiaries or any employee benefit plan of the Company or its Subsidiaries, files a Schedule 13D or Schedule TO (or any successor schedule, form or report) pursuant to the Exchange Act disclosing that such person has become the direct or indirect beneficial owner of shares with a majority of the total voting power of all of the Company's outstanding Voting Securities, unless such beneficial ownership (a) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (b) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act;

(ii) the Company consolidates with or merges with or into another person (other than a Subsidiary of the Company) and the outstanding Voting Securities of the Company are reclassified into, converted for or converted into the right to receive any other property or security, or the Company sells, conveys, transfers or leases all or substantially all of its properties and assets to any Person (other than a Subsidiary of the Company); *provided* that none of these circumstances will be a Change in Control if persons that beneficially own the Voting Securities of the Company immediately prior to the transaction own, directly or indirectly, a majority of the Voting Securities of the surviving or transferee person, or the direct or indirect parent thereof, immediately after the transaction in substantially the same proportion as their ownership of the Company's Voting Securities immediately prior to the transaction; or

(iii) the holders of Common Stock approve any plan or proposal for the liquidation or dissolution of the Company.

For purposes of defining a Change in Control:

(A) the term "**person**" and the term "**group**" have the meanings given by Section 13(d) and 14(d) of the Exchange Act or any successor provisions;

(B) the term "**group**" includes any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act or any successor provision; and

(C) the term "**beneficial owner**" is determined in accordance with Rules 13d-3 and 13d-5 under the Exchange Act or any successor provisions, except that a person will be deemed to have beneficial ownership of all shares that person has the right to acquire irrespective of whether that right is exercisable immediately or only after the passage of time.



Notwithstanding the foregoing, it will not constitute a Change in Control if at least 90% of the consideration for Common Stock (excluding Cash payments for fractional shares and Cash payments made in respect of dissenters' appraisal rights) in the transaction or transactions constituting the Change in Control consists of Common Stock traded on a United States national securities exchange, or which will be so traded when issued or exchanged in connection with the Change in Control, and as a result of such transaction or transactions the Notes become convertible solely into the consideration that holders of Common Stock receive in such transaction, other than any Cash in lieu of fractional shares.

(b) On or before the 15th day after the occurrence of a Change in Control or Termination of Trading, the Company will deliver a written notice of Change in Control or Termination of Trading, as applicable, to the Trustee and to each Holder at their addresses shown in the register of the Registrar (and to beneficial owners as required by applicable law). The notice shall include a form of Fundamental Change Repurchase Notice to be completed by the Holder and shall state:

(i) the events causing a Change in Control or Termination of Trading, as applicable;

(ii) the date of such Change in Control or Termination of Trading, as applicable;

(iii) the last date on which the repurchase right may be exercised;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

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

(vii) the then current Applicable Conversion Rate and any adjustments thereto;

(viii) whether a Change in Control constitutes a Make-Whole Change in Control;

(ix) that Notes with respect to which a Fundamental Change Repurchase Notice is given by the Holder may be converted pursuant to Article 10 hereof only if the Fundamental Change Repurchase Notice has been withdrawn in accordance with the terms of this Indenture; and

(x) the procedures a Holder must follow to exercise rights under this Section 3.01.

(c) A Holder may exercise its rights specified in Section 3.01 by delivery of a written notice (a "**Fundamental Change Repurchase Notice**") to the Paying Agent at any time



prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date. The Fundamental Change Repurchase Notice shall state:

(i) if Certificated Notes have been issued, the certificate number of the Notes (or if the Holder's Notes are Global Notes, such Holder's notice must comply with the Applicable Procedures);

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

(iii) that such Notes shall be repurchased by the Company pursuant to the terms and conditions specified in this Article 3.

The delivery of such Note to the Paying Agent prior to, on or after the Fundamental Change Repurchase Date (together with all necessary endorsements and compliance by the Holder with the Applicable Procedures) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Fundamental Change Repurchase Price therefor; *provided*, *however*, that such Repurchase Price shall be so paid pursuant to this Section 3.01 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Fundamental Change Repurchase Notice.

The Company shall repurchase from the Holder thereof, pursuant to this Section 3.01, a portion of a Note if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.01 shall be consummated by the delivery of the consideration to be received by the Holder (together with accrued and unpaid interest (including any Additional Interest) to but not including the Fundamental Change Repurchase Date) on or prior to the later of the Fundamental Change Repurchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 3.01.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 3.01(c) shall have the right to withdraw such Fundamental Change Repurchase Notice at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.03(b).

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

No Notes may be repurchased by the Company at the option of Holders upon a Change in Control or a Termination of Trading if the principal amount of the Notes has been accelerated (other than as a result of a default in the payment of the Fundamental Change Repurchase Price with respect to the Notes), and such acceleration has not been rescinded, on or prior to the date on which such repurchase is to be consummated. The Paying Agent will promptly return to the



respective Holders thereof any Notes (x) with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of acceleration described in the immediately preceding sentence in which case, upon such return, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

*Section 3.02. Repurchase of Securities by the Company at the Option of Holders*.

(a) On each of February 15, 2018 and February 15, 2023 (each, an "**Optional Repurchase Date**"), each Holder shall have the right, at such Holder's option, subject to the terms and conditions of this Article 3, to require the Company to repurchase for Cash all or any portion of such Holder's Notes in integral multiples of $1,000 principal amount at a price (the "**Optional Repurchase Price**") equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the applicable Optional Repurchase Date; *provided* that if such Optional Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, the interest accrued to the Interest Payment Date will be paid to Holders of the Notes as of the preceding Regular Record Date, and the Optional Repurchase Price shall be equal to the principal amount of Notes subject to repurchase.

(b) On or before the 20th Business Day prior to each Optional Repurchase Date, the Company shall deliver or cause to be delivered to all Holders of record on such date at their addresses shown in the Register of the Registrar (and to beneficial owners as required by applicable law) an Optional Repurchase Notice as set forth in Section 3.02(c). No failure of the Company to give the foregoing notices and no defect therein shall limit the repurchase rights of Holders or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.02.

(c) For Notes to be so repurchased at the option of the Holder, the Holder must deliver to the Paying Agent, at any time during the period beginning at 9:00 a.m., New York City time, on the date that is 20 Business Days prior to the applicable Optional Repurchase Date and ending at the Close of Business on the Business Day immediately preceding such Optional Repurchase Date, (i) a notice (the "**Optional Repurchase Notice**") in the form set forth on the reverse of the Notes duly completed (if the Notes are certificated) or comply with Applicable Procedures (if the Notes are represented by a Global Note) together with (ii) such Notes duly endorsed for transfer (if the Notes are certificated) or book-entry transfer of such Notes (if such Notes are represented by a Global Note). The delivery of such Notes to the Paying Agent with, or at any time after delivery of, the Optional Repurchase Notice (together with all necessary endorsements), at the office of the Paying Agent shall be a condition to the payment by the Company to the Holder of the Optional Repurchase Price, therefor; *provided* that such Optional Repurchase Price shall be so paid pursuant to this Section 3.02 only if the Notes so delivered to the Paying Agent shall conform in all respects to the description thereof in the Optional Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Notes for repurchase shall be determined in good faith by the Company, whose determination shall be final and binding absent manifest error. The Optional Repurchase Notice, shall state:



(i) the certificate numbers of the Notes to be repurchased, if they are Certificated Notes;

(ii) the portion of the principal amount of a Holder's Notes to be repurchased, which must be in integral multiples of $1,000 principal amount; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture.

(d) The Company shall repurchase from the Holder thereof, pursuant to this Section 3.02, a portion of a Note, if the principal amount of such portion is in integral multiples of $1,000 principal amount.

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

(f) Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.02 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the applicable Optional Repurchase Date and the time of the book-entry transfer or delivery of the Notes, as the case may be.

*Section 3.03.* *Effect of Repurchase Notice*. (a) Upon receipt by the Paying Agent of the Fundamental Change Repurchase Notice specified in Section 3.01(c) or the Optional Repurchase Notice specified in Section 3.02(c) (each of the foregoing, a "**Repurchase Notice**"), the Holder of the Note in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is withdrawn as specified in this Section 3.03) thereafter be entitled to receive solely the Fundamental Change Repurchase Price or Optional Repurchase Price (each of the foregoing, a "**Repurchase Price**"), as applicable, and any accrued and unpaid interest (including any Additional Interest) to but not including the Fundamental Change Repurchase Date or Optional Repurchase Date (each of the foregoing, a "**Repurchase Date**"), as applicable, with respect to such Note. Such Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on or prior to the later of (x) the Repurchase Date with respect to such Note (*provided* the conditions in Section 3.01(c) or Section 3.02(c), as applicable, have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01(c) or Section 3.02(c), as applicable. Notes in respect of which a Repurchase Notice has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Repurchase Notice unless such Repurchase Notice has first been validly withdrawn as specified in this Section 3.03.

(b) A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent at any time prior to the Close of Business on the Business Day immediately preceding the Repurchase Date. If a Repurchase Notice is withdrawn, the Company will not be obligated to repurchase such Notes listed in the Repurchase Notice. Such notice of withdrawal shall state:

(i) the principal amount being withdrawn;



(ii) if Certificated Notes are to be withdrawn, the certificate numbers of the Notes being withdrawn (or, if Global Notes or a portion thereof are to be withdrawn, such Holder's notice must comply with the Applicable Procedures);

(iii) the principal amount, if any, of the Notes that remain subject to a Repurchase Notice, which must be $1,000 or whole multiples thereof.

*Section 3.04.* *Deposit of Repurchase Price*. Prior to 12:00 p.m., New York City time, on or prior to the Repurchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary of the Company or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Trading Day) sufficient to pay the aggregate Repurchase Price of all the Notes or portions thereof which are to be repurchased as of the Repurchase Date.

If the Paying Agent holds money sufficient to pay the Repurchase Price with respect to the Notes to be repurchased on the Repurchase Date in accordance with the terms of this Indenture, then, immediately on and after the Repurchase Date, those Notes shall cease to be outstanding, interest (including any Additional Interest) on such Notes shall cease to accrue, whether or not the Notes are delivered to the Paying Agent, and all other rights of the Holders of such Notes shall terminate, other than the right to receive the Repurchase Price upon delivery of such Notes.

*Section 3.05.* *Notes Repurchased in Part*. Any Note which is to be repurchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Note, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not repurchased.

*Section 3.06.* *Covenant to Comply with Securities Laws upon Repurchase of Notes*. In connection with any repurchase upon the occurrence of a Change in Control or in connection with the Optional Repurchase Date to the extent required by applicable law, the Company shall:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable;

(b) file a Schedule TO or any other schedule required in connection with any offer by the Company to repurchase the Notes; and

(c) otherwise comply with all federal and state securities laws as necessary to effect a repurchase of Notes by the Company at the option of Holder.



## ARTICLE 4

## COVENANTS

*Section 4.01.* *Payment of Notes*. (a) The Company agrees to pay the principal of and interest (including any Additional Interest) on the Notes on the dates and in the manner provided in the Notes and this Indenture. Not later than 12:00 p.m. New York City time, on the due date of any principal of or interest (including any Additional Interest) on any Notes, or any Repurchase Date or Redemption Date, as the case may be, the Company will deposit with the Trustee (or Paying Agent) money in immediately available funds sufficient to pay the amounts then due; *provided* that if the Company or any Affiliate of the Company is acting as Paying Agent, it will, on or before each due date, segregate and hold in a separate trust fund for the benefit of the Holders a sum of money sufficient to pay such amounts until paid to such Holders or otherwise disposed of as provided in this Indenture. In each case the Company will promptly notify the Trustee of its compliance with this paragraph.

(b) An installment of principal or interest (including any Additional Interest) will be considered paid on the date due if the Trustee (or Paying Agent, other than the Company or any Affiliate of the Company) holds on that date money designated for and sufficient to pay the installment. If the Company or any Affiliate of the Company acts as Paying Agent, an installment of principal or interest (including any Additional Interest) will be considered paid on the due date only if paid to the Holders.

(c) The Company agrees to pay interest on overdue principal, and, to the extent lawful, overdue installments of interest at the rate per annum specified in the Notes.

(d) Payments in respect of the Notes represented by the Global Notes are to be made by wire transfer of same-day funds to the Depositary for the purpose of permitting such party to credit the payments received by it in respect of such Global Note to the accounts of the beneficial owners thereof. With respect to Certificated Notes, the Company will make all payments in same-day funds by transfer to an account maintained by the payee located inside the United States, if the Trustee shall have received proper wire transfer instructions from such payee not later than the related Regular Record Date or, if no such instructions have been received by check drawn on a bank in the United States mailed to the payee at its address set forth on the Registrar's books.

*Section 4.02. Maintenance of Office or Agency*. The Company will maintain in the United States, an office or agency where Notes may be surrendered for registration of transfer or exchange or for presentation for payment and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company hereby initially designates the Corporate Trust Office of the Trustee as such office of the Company. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served to the Trustee.



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

*Section 4.03. Existence*. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and the existence, rights and franchises of the Company; *provided* that the Company is not required to preserve any such right or franchise if the preservation thereof is no longer desirable in the conduct of the business of the Company; *provided*, *further*, that this Section does not prohibit any transaction otherwise permitted by Section 5.01.

*Section 4.04. Reports; 144A Information*. (a) The Company shall deliver to the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the Company's annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; *provided* that any such information, documents or reports filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system shall be deemed to be filed with the Trustee.

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

(c) If, at any time that any of the Notes are "restricted securities" within the meaning of Rule 144 under the Securities Act, the Company is not subject to the reporting requirements of the Exchange Act, the Company shall, upon the request of a Holder, beneficial owner or prospective purchaser of the Notes or any shares of Common Stock issuable upon conversion of the Notes, promptly furnish such Holder, beneficial owner or prospective purchaser the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of the Notes pursuant to Rule 144A.

*Section 4.05. Reports to Trustee*. The Company will deliver to the Trustee:

(a) within 120 days after the end of each fiscal year commencing August 31, 2012 a certificate from the principal executive, financial or accounting officer of the Company stating that the officer has conducted or supervised a review of the activities of the Company and its performance under this Indenture and that, based upon such review, no Default exists hereunder or, if there has been a Default, specifying the Default and its nature and status.

(b) promptly and in any event within 30 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of the Default, and the action which the Company proposes to take with respect thereto.



*Section 4.06. Stay, Extension and Usury Laws*. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture, and the Company (in each case, to the extent that it may lawfully do so) hereby covenants that it will not, by resort to any such law to the extent it would 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 5

## CONSOLIDATION, MERGER, SALE OR LEASE OF ASSETS

*Section 5.01. Consolidation, Merger, Sale or Lease of Assets by the Company*. (a) The Company may consolidate with or merge into any Person or convey, transfer or lease its properties and assets substantially as an entirety to another Person (other than a Subsidiary of the Company) only if:

(i) the resulting, surviving or transferee Person (if other than the Company) is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(ii) such corporation (if other than the Company) assumes all of the obligations of the Company under the Notes and this Indenture;

(iii) immediately after giving effect to the transaction, no Event of Default and no Default has occurred and is continuing; and

(iv) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and the supplemental indenture (if any) comply with this Indenture.

(b) Upon the consummation of any transaction effected in accordance with these provisions, if the Company is not the resulting, surviving or transferee Person, the resulting, surviving or transferee Person shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such successor Person had been named as the Company in this Indenture. Upon such substitution, except in the case of a lease, unless the successor is one or more of the Company's Subsidiaries, the Company will be released from its obligations under the Notes and this Indenture.

## ARTICLE 6

## DEFAULT AND REMEDIES

*Section 6.01. Events of Default*. An "**Event of Default**" occurs with respect to the Notes if:



(a) the Company defaults in payment of the principal or any Repurchase Price or Redemption Price with respect to any Note, when such becomes due and payable upon required purchase, upon declaration or otherwise;

(b) the Company defaults in payment of any interest (including any Additional Interest) due on any Note when the same becomes due and payable, and such default continues for a period of 30 days;

(c) the Company fails to issue any notice of a Termination of Trading or a Change in Control as required under Section 3.01(b) of this Indenture or a Make-Whole Change in Control that does not constitute a Change in Control as required under Section 10.10(a) of this Indenture, and such default continues for a period of three Business Days;

(d) the Company fails to comply with its obligation to convert the Notes into Cash up to the aggregate principal amount of the Notes to be converted and shares of Common Stock, Cash or a combination thereof in respect of the remainder, if any, as described in Section 10.03, upon exercise of a Holder's right to convert its Notes pursuant to Article 10;

(e) the Company fails to comply with any of its other covenants or agreements in the Notes or this Indenture and fails to cure (or obtain a waiver of) such default, within 60 days after the Company receives a notice of such default by the Trustee or by Holders of not less than 25% in aggregate principal amount of the Notes then outstanding;

(f) (1) the Company fails to make any payment at maturity (after giving effect to any applicable grace period) of any Debt of the Company in a principal amount in excess of $100,000,000 and continuance of such failure, or (2) the acceleration of Debt of the Company in an amount in excess of $100,000,000 because of a default with respect to such Debt without such Debt having been discharged or such acceleration having been cured, waived, rescinded or annulled within a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding; *provided* that if any such failure or acceleration referred to in (1) or (2) above shall cease or be cured, waived, rescinded or annulled, then the resulting Event of Default shall be deemed not to have occurred;

(g) the Company, pursuant to or under or within the meaning of any Bankruptcy Law, (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it; (iii) consents to the appointment of any receiver, trustee, assignee, liquidator, custodian or similar official of it or for any substantial part of its property; (iv) makes a general assignment for the benefit of its creditors; (v) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or (vi) consents to the filing of such petition or the appointment of or taking possession by any receiver, trustee, assignee, liquidator, custodian or similar official; or

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the Company in an involuntary case or proceeding, or adjudicates the Company insolvent or bankrupt; (ii) appoints any receiver, trustee, assignee,



liquidator, custodian or similar official of the Company or for any substantial part of its property; or (iii) orders the winding up or liquidation of the Company, and the order or decree remains unstayed and in effect for 30 days (an event of default specified in clause (g) or (h) a "**Bankruptcy Default**").

*Section 6.02. Acceleration*. If an Event of Default, other than a Bankruptcy Default and subject to Section 6.15 of this Indenture, occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in aggregate of the outstanding principal amount of the Notes, by written notice to the Company (and to the Trustee if the notice is given by the Holders), may, and the Trustee at the request of such Holders may, declare the principal of and accrued and unpaid interest (including any Additional Interest) on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal and interest (including any Additional Interest) will become immediately due and payable. If a Bankruptcy Default occurs, the principal of and accrued and unpaid interest (including any Additional Interest) on the Notes then outstanding will become immediately due and payable automatically without any declaration or other act on the part of the Trustee or any Holder.

*Section 6.03. Other Remedies*. If an Event of Default occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of principal of and interest (including any Additional Interest) on

the Notes or to enforce the performance of any provision of the Notes or this Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

*Section 6.04. Waiver of Past Defaults*. Except as otherwise provided in Section 6.07 and Section 9.02(b), Holders of a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may waive any existing or past Default or Event of Default and its consequences and rescind and annul a declaration of acceleration with respect to such Default or Event of Default and its consequences (other than an uncured default (a) in the payment of the principal amount with respect to any Note, accrued and unpaid interest (including any Additional Interest) with respect to any Note or the Repurchase Price or Redemption Price with respect to any Note, (b) in the payment or delivery of Cash and shares of Common Stock, if any, due upon conversion or the redemption of the Notes or (c) in respect of any provision that under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected) if:

(i) all existing Events of Default, other than the nonpayment of the principal of and interest (including any Additional Interest) on the Notes that have become due solely by the declaration of acceleration, have been cured or waived, and

(ii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

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



*Section 6.05. Control by Majority*. The Holders of a majority in aggregate principal amount of the outstanding Notes may 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. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction, and may take any other action it deems proper that is not inconsistent with any such direction received from Holders.

*Section 6.06. Limitation on Suits*. A Holder may not institute any proceeding, judicial or otherwise, with respect to this Indenture or the Notes, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture or the Notes, unless:

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

(ii) Holders of at least 25% in aggregate principal amount of outstanding Notes have made written request to the Trustee to institute proceedings in respect of the Event of Default in its own name as Trustee under this Indenture;

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

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

(v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction that is inconsistent with such written request.

*Section 6.07. Rights of Holders to Receive Payment*. Notwithstanding anything to the contrary, the right of a Holder of a Note to receive (w) payment of principal of or interest (including any Additional Interest) on its Note on the Maturity Date or the relevant Interest Payment Date, as the case may be, (x) payment of the Repurchase Price on the Repurchase Date, (y) payment of the Redemption Price on the Redemption Date and (z) delivery of Cash and shares of Common Stock, if any, upon conversion of such Note on the date specified in Section 10.02(b), or to bring suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates, may not be impaired or affected without the consent of that Holder.

*Section 6.08. Collection Suit by Trustee*. If an Event of Default in payment of principal or interest (including any Additional Interest) specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust for the whole amount of principal and accrued interest (including any Additional Interest) remaining unpaid, together with interest on overdue principal and, to the extent lawful, overdue installments of interest, in each case at the rate specified in the Notes, and such further amount as is sufficient to cover the costs and expenses of collection, including the reasonable



compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee hereunder.

*Section 6.09. Trustee May File Proofs of Claim*. The Trustee may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee hereunder) and the Holders allowed in any judicial proceedings relating to the Company or its creditors or property, and is entitled and empowered to collect, receive and distribute any money, securities or other property payable or deliverable upon conversion or exchange of the Notes or upon any such claims. Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due the Trustee hereunder. Nothing in this Indenture will be deemed to empower the Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

*Section 6.10.* *Priorities*. If the Trustee collects any money or property pursuant to this Article, it shall pay out the money or property in the following order:

First: to the Trustee for all amounts due under Section 7.07 hereof;

Second: to Holders for amounts then due and unpaid for principal of and interest (including any Additional Interest) on the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest (including any Additional Interest);

Third: to Holders for other amounts then due and unpaid in respect of the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable in respect of the Notes; and

Fourth: to the Company or as a court of competent jurisdiction may direct.

The Trustee, upon written notice to the Company, may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Trustee shall send to each Holder and the Company a notice that states the record date, the payment date and the amount to be paid.

*Section 6.11.* *Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted a proceeding to enforce any right or remedy under this Indenture and the proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the proceeding, the Company, the Trustee and the Holders will be restored severally and respectively to their former positions



hereunder and thereafter all rights and remedies of the Company, the Trustee and the Holders will continue as though no such proceeding had been instituted.

*Section 6.12.* *Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by a Holder to enforce payment of (a) principal of or interest (including any Additional Interest) on any Note on the respective due dates, (b) the Change of Control Purchase Price on the Change of Control Repurchase Date, (c) the Redemption Price on the Redemption Date, (d) the Cash and shares of Common Stock, if any, due upon conversion of a Note or (e) a suit by Holders of more than 10% in principal amount of the outstanding Notes.

*Section 6.13.* *Rights and Remedies Cumulative*. No right or remedy conferred or reserved to the Trustee or to the Holders under this Indenture is intended to be exclusive of any other right or remedy, and all such rights and remedies are, to the extent permitted by law, cumulative and in addition to every other right and remedy hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or exercise of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or exercise of any other right or remedy.

*Section 6.14.* *Delay or Omission Not Waiver*. No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default will 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 6.15.* *Additional Interest; Failure to File*; *Delegending*. (a) Notwithstanding anything in this Article 6, the Company may, at its option, elect that the sole remedy for an Event of Default relating to its failure to comply with its obligations described under Section 4.04 or its failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act will for the first 180 days after the occurrence of such an Event of Default (which will be the 60th day after written notice is provided to the Company in accordance with Section 6.01(e)), consist exclusively of the right to receive additional interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes (the "**Additional Interest**"). If the Company elects to pay Additional Interest, such Additional Interest will be payable on all outstanding Notes from and including the date on which such Event of Default first occurs to but excluding the 181st day thereafter (or such earlier date on which the Event of Default relating to a failure to comply with such requirements has been cured or waived). On the 181st day after such Event of Default (if such violation is not cured or waived prior to such 181st day), the Notes will be subject to acceleration as provided in Section 6.02. In the event the Company does not elect to pay the Additional Interest upon any such Event of Default in accordance with this Section 6.15, the Notes will be subject to acceleration as provided in Section 6.02. This Section 6.15 shall not affect the rights of Holders if any other Event of Default occurs under this Indenture.



In order elect to pay the Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default relating to the failure to comply with the reporting obligations in accordance with the preceding paragraph, the Company shall notify all Holders and the Trustee and Paying Agent of such election in writing prior to the Close of Business on the date on which such Event of Default occurs. If the Company fails to timely give such notice, the Notes will be immediately subject to acceleration as provided in Section 6.02.

(b) If, at any time during the period beginning six months from the last date of original issuance of the Notes (including the last date of issuance of additional Notes pursuant to the exercise of the Initial Purchasers' option to purchase additional Notes) (such date, the "**Last Original Issuance Date**") and ending on the one-year anniversary of the Last Original Issuance Date (the "**Free Trade Date**"), the Company fails to make available adequate current public information in accordance with Rule 144(c) of the Securities Act, the Company shall pay Additional Interest on the Notes, accruing from and including the first day on which the Company fails to make available adequate current public information in accordance with Rule 144(c) and continuing until the earlier of (i) the Free Trade Date and (ii) the date on which the Company corrects such failure. During the first 90 days on which such Additional Interest is payable, such Additional Interest shall accrue at a rate of 0.25% per annum; thereafter, such Additional Interest shall accrue at a rate of 0.50% per annum.

(c) In addition, if the Company fails to cause the Notes or any shares of Common Stock issuable upon conversion of the Notes to become Freely Tradable on and at all times after the Free Trade Date (or the next succeeding Business Day if the Free Trade Date is not a Business Day), the Company shall pay Additional Interest on the Notes accruing from and including the Free Trade Date and until the date on which the Notes and any shares of Common Stock issuable upon the conversion of the Notes become Freely Tradable. During the first 90 days on which such Additional Interest is payable, such Additional Interest will accrue at a rate of 0.25% per annum; thereafter, such Additional Interest will accrue at a rate of 0.50% per annum.

(d) Notwithstanding anything herein to the contrary, in no event will the combined rate of any Additional Interest payable under this Section 6.15 exceed 0.50% per annum.

(e) Additional Interest shall be payable at the same time, in the same manner and to the same Persons as ordinary interest.

(f) If the Company is required to pay Additional Interest to Holders, the Company shall provide a direction or order in the form of a written notice to the Trustee (and if the Trustee is not the Paying Agent, to the Paying Agent) of the Company's obligation to pay such Additional Interest no later than three Business Days prior to the date on which any such Additional Interest is scheduled to be paid. Such notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date and direct the Trustee (or, if the Trustee is not the Paying Agent, to the Paying Agent) to make payment to the extent it receives funds from the Company to do so. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine whether the Additional Interest is payable, or with



respect to the nature, extent or calculation of the amount of the Additional Interest owed, or with respect to the method employed in such calculation of the Additional Interest.

## ARTICLE 7

## THE TRUSTEE

*Section 7.01. General*. (a) The duties and responsibilities of the Trustee are as provided by the Trust Indenture Act and as set forth herein. Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to this Article.

(b) Except during the continuance of an Event of Default, the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee. In case an Event of Default has occurred and is continuing, the Trustee shall exercise those rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

*Section 7.02. Certain Rights of Trustee*. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) In the absence of bad faith on its part, the Trustee may rely, and will 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 Person. The Trustee need not investigate any fact or matter stated in the document, but, in the case of any document which is specifically required to be furnished to the Trustee pursuant to any provision hereof, the Trustee shall examine the document to determine whether it conforms to the form requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). The Trustee, in its discretion, may make further inquiry or investigation into such facts or matters as it sees fit.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel conforming to Section 13.05 and the Trustee will not be liable for any action it takes or omits to take in good faith in reliance on the certificate or opinion.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care.



(d) The Trustee will 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, unless such Holders have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(e) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the direction of the Holders in accordance with Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(f) The Trustee may consult with counsel, and the written advice of such counsel or any Opinion of Counsel will 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.

(g) No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, or in the exercise of its rights or powers, unless it receives indemnity satisfactory to it against any loss, liability or expense.

(h) Except with respect to Section 4.01, the Trustee shall have no duty to inquire as to performance of the Company with respect to the covenants contained in Article 4. In addition, the Trustee shall not be deemed to have knowledge of a Default or an Event of Default except (i) a Default or Event of Default occurring pursuant to Section 6.01(a) and 6.01(b), or (ii) any Default or Event of Default of which the Trustee shall have received written notification from the Company or the Holders of at least 25% in aggregate principal amount of Notes or obtained actual knowledge.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee including without limitation, its rights to be indemnified are extended to and shall be enforced by the Trustee in its capacities hereunder and each agent, custodian and other person employed to act hereunder.

(j) The permissive rights of the Trustee to take certain actions under this Indenture shall not be construed as a duty unless so specified herein.

*Section 7.03. Individual Rights of Trustee*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311.

*Section 7.04. Trustee's Disclaimer*. The Trustee (a) makes no representation as to the validity or adequacy of this Indenture or the Notes, (b) is not accountable for the Company's use or application of the proceeds from the Notes and (c) is not responsible for any statement in the Notes other than its certificate of authentication.



*Section 7.05. Notice of Default*. If any Default or Event of Default occurs and is continuing and is known to the Trustee, the Trustee will send notice of the Default or Event of Default to each Holder within 90 days after it occurs, unless the Default or Event of Default has been cured; *provided* that, except in the case of a default (w) in the payment of the principal of or interest (including any Additional Interest) on any Note (x) in the payment of the Repurchase Price on the Repurchase Date, (y) in the payment of the Redemption Price on the Redemption Date or (z) in the delivery of Common Stock upon conversion of such Note on the date specified in Section 10.02(b), the Trustee may withhold the notice if and so long as a Responsible Officer or a committee of Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of the Holders. Notice to Holders under this Section will be given in the manner and to the extent provided in Trust Indenture Act Section 313(c).

*Section 7.06. Reports by Trustee to Holders*. Within 60 days after each February 15, beginning with February 15, 2014, the Trustee will mail to each Holder, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such February 15, if required by Trust Indenture Act Section 313(a), and file such reports with each stock exchange upon which its Notes are listed and with the Commission as required by Trust Indenture Act Section 313(d).

*Section 7.07. Compensation and Indemnity*. (a) The Company will pay the Trustee compensation as agreed upon in writing for its services. The compensation of the Trustee is not limited by any law on compensation of a Trustee of an express trust. The Company will reimburse the Trustee upon request for all out-of-pocket expenses, disbursements and advances incurred or made by the Trustee, including the compensation and expenses of the Trustee's agents and counsel.

(b) The Company will indemnify the Trustee for, and hold it harmless against, any loss or liability or expense incurred by it without negligence or bad faith on its part arising out of or in connection with the acceptance or administration of this Indenture and its duties under this Indenture and the Notes, including the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers in connection with the exercise or performance of any of its powers or duties under this Indenture and the Notes.

(c) To secure the Company's payment obligations in this Section, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay principal of, and interest (including any Additional Interest) on particular Notes.

*Section 7.08. Replacement of Trustee*. (a) (i) The Trustee may resign at any time by written notice to the Company.

(ii) The Holders of a majority in principal amount of the outstanding Notes may remove the Trustee by written notice to the Trustee.

(iii) If the Trustee is no longer eligible under Section 7.10 or in the circumstances described in Trust Indenture Act Section 310(b), any Holder that satisfies the



requirements of Trust Indenture Act Section 310(b) may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(iv) The Company may remove the Trustee if (A) the Trustee is no longer eligible under Section 7.10; (B) the Trustee is adjudged a bankrupt or an insolvent; (C) a receiver or other public officer takes charge of the Trustee or its property; or (D) the Trustee becomes incapable of acting.

A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

(b) If the Trustee has been removed by the Holders, Holders of a majority in principal amount of the Notes may appoint a successor Trustee with the consent of the Company. Otherwise, if the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. If the successor Trustee does not deliver its written acceptance within 30 days after the retiring Trustee

resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in principal amount of the outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) Upon delivery by the successor Trustee of a written acceptance of its appointment to the retiring Trustee and to the Company, (i) the retiring Trustee will transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07(c), (ii) the resignation or removal of the retiring Trustee will become effective, and (iii) the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. Upon request of any successor Trustee, the Company will execute any and all reasonable instruments for fully and vesting in and confirming to the successor Trustee all such rights, powers and trusts. The Company will give notice of any resignation and any removal of the Trustee and each appointment of a successor Trustee to all Holders, and include in the notice the name of the successor Trustee and the address of its Corporate Trust Office.

(d) Notwithstanding replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 will continue for the benefit of the retiring Trustee.

(e) The Trustee agrees to give the notices provided for in, and otherwise comply with, Trust Indenture Act Section 310(b).

*Section 7.09. Successor Trustee by Merger*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any further act will be the successor Trustee with the same effect as if the successor Trustee had been named as the Trustee in this Indenture.

*Section 7.10. Eligibility*. This Indenture must always have a Trustee that satisfies the requirements of Trust Indenture Act Section 310(a) and has a combined capital and surplus of at least $25,000,000 as set forth in its most recent published annual report of condition.



*Section 7.11. Money Held in Trust*. The Trustee will not be liable for interest on any money received by it except as it may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law and except for money held in trust under Article 8.

## ARTICLE 8

## DISCHARGE

*Section 8.01. Satisfaction and Discharge of this Indenture*. (a) This Indenture shall cease to be of further effect if either: (i) all outstanding Notes (other than Notes replaced pursuant to Section 2.07) have been delivered to the Trustee for cancellation, (ii) all outstanding Notes have become due and payable on the Maturity Date or on any Repurchase Date in connection with any repurchase upon the occurrence of a Change in Control or Termination of Trading or on any Redemption Date in connection with any redemption of all outstanding Notes or (iii) all outstanding Notes have been delivered for conversion pursuant to Article 10, and the Company irrevocably deposits or delivers, as the case may be, prior to the applicable date on which such payment is due and payable, or such conversion is to be settled, with the Trustee, the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) or the Conversion Agent, Cash in respect of such payment or Cash, Common Stock or a combination thereof in respect of any such conversion on the Maturity Date, the Repurchase Date, the Redemption Date or the date such conversion is to be settled, as the case may be; *provided* that, in all cases, the Company shall pay to the Trustee all other sums payable hereunder by the Company.

(b) The Company may exercise its satisfaction and discharge option with respect to the Notes only if:

(i) no Default or Event of Default with respect to the Notes shall exist on the date of such deposit;

(ii) such deposit or delivery, as the case may be, shall not result in a breach or violation of, or constitute a Default or Event of Default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound; and

(iii) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel (which may rely upon such Officers' Certificate as to the absence of Defaults and Events of Default and as to any factual matters), each stating that all conditions precedent provided for herein relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.07 shall survive and, if money shall have been deposited with or Common Stock shall have been delivered to the Trustee pursuant to clause (a) of this Section, the provisions of Section 2.03, Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.12, Section 3.01, Article 5, Article 10 and this Article 8, shall survive and the Company shall be required to make all payments and deliveries required by such Sections or



Articles, as the case may be, irrespective of any prior satisfaction and discharge until the Notes have been paid in full.

*Section 8.02. Application of Trust Money*. Subject to the provisions of Section 8.03, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money, Common Stock or other consideration paid or delivered to it, as the case may be, pursuant to Section 8.01 and shall apply such money, Common Stock or other consideration in accordance with this Indenture and the Notes to the payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) and interest (including any Additional Interest) on the Notes or delivery of Cash and shares of Common Stock, if any, issuable upon conversion of the Notes.

*Section 8.03. Repayment to Company*. The Trustee and each Paying Agent shall promptly pay or deliver, as the case may be, to the Company upon request any excess money, Common Stock or other consideration (x) paid or delivered to them pursuant to Section 8.01 and (y) held by them at any

time.

Subject to applicable abandoned property law, the Trustee and each Paying Agent shall also pay or deliver, as the case may be, to the Company upon request any money, Common Stock or other consideration held by them for the payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) and interest on, or the amount due in connection with any conversion of, the Notes that remains unclaimed for two years after a right to such money, Common Stock or other consideration has matured (which maturity shall occur, for the avoidance of doubt, on the Maturity Date, the Repurchase Date, the Redemption Date or the date specified in Section 10.02(b), as the case may be); *provided* that the Trustee or such Paying Agent, before being required to make any such payment or delivery, may at the expense of the Company cause to be mailed to each Holder entitled to such money, Common Stock or other consideration or publish in a newspaper of general circulation in the City of New York notice that such money, Common Stock or other consideration remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing or publication, any unclaimed balance or portion of such money, Common Stock or other consideration then remaining will be repaid or re-delivered to the Company. After payment or delivery, as the case may be, to the Company, Holders entitled to such money, Common Stock or other consideration must look to the Company for payment or delivery as general creditors unless an applicable abandoned property law designates another Person.

*Section 8.04. Reinstatement*. If the Trustee or any Paying Agent is unable to apply any money, Common Stock or other consideration in accordance with Section 8.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no payment or delivery, as the case may be, had occurred pursuant to Section 8.01 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 8.02; *provided* that if the Company has made any payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) or interest (including any Additional Interest) on, or the amount due in connection with any conversion of, the Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of



such Notes to receive any such payment or delivery from the money, Common Stock or other consideration held by the Trustee or such Paying Agent.

## ARTICLE 9

## AMENDMENTS, SUPPLEMENTS AND WAIVERS

*Section 9.01. Amendments Without Consent of Holders*. The Company and the Trustee may amend or supplement this Indenture or the Notes without notice to or the consent of any Holder:

(a) to cure any ambiguity, omission, defect or inconsistency in this Indenture or the Notes or to conform this Indenture or the Notes to the section entitled "Description of Notes" contained in the Offering Memorandum;

(b) to evidence a successor to the Company and the assumption by that successor of the obligations of the Company under this Indenture in accordance with Article 5 or Section 10.09, including to provide for the adjustments to the Conversion Rate as set forth in Section 10.09;

(c) to secure the obligations of the Company in respect of the Notes and this Indenture;

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

(e) to make any change to comply with the Trust Indenture Act, or any amendment thereto; and

(f) to make any change that does not adversely affect the rights of any Holder of the Notes.

*Section 9.02. Amendments With Consent of Holders*. (a) Except as otherwise provided in Section 6.07 or paragraph (b), the Company and the Trustee may amend this Indenture and the Notes with the written consent of the Holders of at least a majority in principal amount of the outstanding Notes, and the Holders of a majority in principal amount of the outstanding Notes by written notice to the Trustee may, on behalf of the Holders of such Notes, waive any existing or past default under this Indenture and its consequences, except an uncured default (i) in the payment of the principal amount, or accrued and unpaid interest (including any Additional Interest), with respect to any Note, (ii) the Repurchase Price with respect to any Note (iii) the Redemption Price with respect to any Note, (iv) in the payment or delivery of the Cash and shares of Common Stock, if any, due upon conversion or redemption of the Notes or (v) in respect of any provision that under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

(b) Notwithstanding the provisions of paragraph (a), without the consent of each Holder affected, an amendment or waiver may not:



(i) reduce the principal amount of, or premium or interest payment on, any Note, or reduce the Repurchase Price or Redemption Price on any Note;

(ii) make any Note payable in any currency or securities other than that stated in the Note;

(iii) change the Maturity Date of any Note;

(iv) change the ranking of the Notes;

(v) make any change that adversely affects the right of a Holder to convert any Note;

(vi) make any change that adversely affects the right of a Holder to require the Company to repurchase a Note upon the occurrence of a Change in Control or Termination of Trading or on an Optional Repurchase Date;

(vii) impair the right to convert or receive payment with respect to the Notes or the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Notes; or

(viii) change the provisions in this Indenture that relate to modifying or amending the provisions of this Indenture.

(c) It is not necessary for Holders to approve the particular form of any proposed amendment, supplement or waiver, but is sufficient if their consent approves the substance thereof.

(d) An amendment, supplement or waiver delivered under this Section will become effective on receipt by the Trustee of written consents (including consents delivered in accordance with the Applicable Procedures with respect to Global Notes) from the Holders of the requisite percentage in principal amount of the outstanding Notes. After an amendment, supplement or waiver under this Section becomes effective, the Company will send to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Company will send supplemental indentures to Holders upon request. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

*Section 9.03. Effect of Consent*. (a) After an amendment, supplement or waiver becomes effective, it will bind every Holder unless it is of the type requiring the consent of each Holder affected. If the amendment, supplement or waiver is of the type requiring the consent of each Holder affected, the amendment, supplement or waiver shall bind each Holder that has consented to it and every subsequent Holder of a Note that evidences the same debt as the Note of the consenting Holder.

(b) If an amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder to deliver it to the Trustee so that the Trustee may place an appropriate notation of the changed terms on the Note and return it to the Holder, or exchange it



for a new Note that reflects the changed terms. The Trustee may also place an appropriate notation on any Note thereafter authenticated. However, the effectiveness of the amendment, supplement or waiver is not affected by any failure to annotate or exchange Notes in this fashion.

*Section 9.04. Trustee's Rights and Obligations*. The Trustee is entitled to receive, and will be fully protected in relying upon, an Officers' Certificate and/or an Opinion of Counsel stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article is authorized or permitted by this Indenture. If the Trustee has received such an Officers' Certificate and/or Opinion of Counsel, it shall sign the amendment, supplement or waiver so long as the same does not adversely affect the rights of the Trustee. The Trustee may, but is not obligated to, execute any amendment, supplement or waiver that affects the Trustee's own rights, duties or immunities under this Indenture.

*Section 9.05. Payments for Consents*. The Company shall not, and shall not permit or suffer any of its Subsidiaries or Affiliates to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid or agreed to be paid to all Holders of the Notes that consent, waive or agree to amend such term or provision within the time period set forth in the solicitation documents relating to the consent, waiver or amendment.

## ARTICLE 10

## CONVERSION

*Section 10.01. Conversion Privilege*. (a) Subject to and upon compliance with the provisions of this Article 10, a Holder shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Holder's Notes at any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date, upon the occurrence of any of the events set forth in clauses (i) through (ix) of Section 10.01(b), at a Conversion Rate (the "**Conversion Rate**") of 91.4808 shares of Common Stock per $1,000 principal amount of Notes. Upon conversion of any Notes, the Company shall deliver to the converting Holder Cash up to the aggregate principal amount of Notes to be converted and shares of Common Stock, Cash or a combination thereof in respect of the remainder, if any, of its conversion obligation in excess of the aggregate principal amount of the Notes being converted as described in Section 10.03 and subject to adjustment as set forth in this Article 10 (the Company's obligation to deliver such consideration being herein called the "**Conversion Obligation**").

(b) A Holder may convert its Notes prior to the Close of Business on the Business Day immediately preceding the Maturity Date, upon the occurrence of any of the events set forth below:

(i) during any calendar quarter commencing at any time after March 7, 2013, and only during such calendar quarter, if the Closing Price of Common Stock for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of



the preceding calendar quarter exceeds the Conversion Trigger Price (as defined in Section 10.01(c)) on the last Trading Day of such preceding calendar quarter;

(ii) during the five Business Day period immediately after any five consecutive Trading Day period in which the Trading Price per $1,000 principal amount of Notes for each Trading Day during that five-day period was less than 98% of the product of the Closing Price of Common Stock on such Trading Day and the then Applicable Conversion Rate for the Notes on such Trading Day, subject to compliance with the procedures and conditions described in Section 10.01(d) concerning the Trustee's obligation to make a Trading Price determination (the "**Trading Price Condition**");

(iii) if the Company elects to distribute to all holders of Common Stock rights, options or warrants entitling all holders of Common Stock to subscribe for or purchase Common Stock, for a period expiring within 60 days after the record date for such distribution, at less than the average of the Closing Prices of Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of such distribution, during the period beginning on, and including, the date the Company provides notice to Holders of such distribution as set forth in Section 10.01(e) and ending on, and including, the earlier of (x) the Close of Business on the Business Day prior to the Ex-Date for such distribution and (y) the Company's announcement that such distribution will not take place;

(iv) if the Company elects to distribute to all holders of Common Stock Cash, debt securities (or other evidence of indebtedness) or other assets (excluding dividends or distributions described in Section 10.07(a)), which distribution, together with all other such distributions within the preceding twelve months, has a per share value, as determined by the Board of Directors, exceeding 15% of the average of the Closing Prices of Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of such distribution, during the period beginning on, and including, the date the Company provides notice to Holders of such distribution as set forth in Section 10.01(e) and ending on, and including, the earlier of (x) the Close of Business on the Business Day prior to the Ex-Date for such distribution and (y) the Company's announcement that such distribution will not take place;

(v) if a Termination of Trading occurs, during the period from, and including, the earlier of (i) the date the applicable securities exchange announces that a Termination of Trading will occur and (ii) the effective date of the Termination of Trading, to, and including, the related Repurchase Date;

(vi) if a Make-Whole Change in Control that does not constitute a Change in Control occurs or if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of the Company's assets, pursuant to which Common Stock would be converted into Cash, securities or other assets, during the period from, and including, the date that is 25 Business Days prior to the anticipated effective date of the transaction, to, and including, the date that is 35 Trading Days after the actual closing date of such transaction;



(vii) if a Change of Control occurs, during the period from, and including, the date that is 25 Business Days prior to the anticipated effective date of the transaction, to, and including, the related Repurchase Date;

(viii) for Notes that have been called for redemption, at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date, even if the Notes are not otherwise convertible at such time; or

(ix) at any time on or after November 15, 2032 until the Close of Business on the Business Day immediately preceding the Maturity Date.

(c) The "**Conversion Trigger Price**" shall equal 130% of the Conversion Price. The Conversion Trigger Price will initially equal $14.209 and shall be automatically adjusted whenever the Conversion Price is adjusted as a result of an adjustment in the Conversion Rate pursuant to this Article 10. The Company will determine at the beginning of each calendar quarter commencing at any time after March 7, 2013, whether the Notes are convertible as a result of the price of Common Stock exceeding the Conversion Trigger Price in accordance with Section 10.01(b)(i) and will notify the Conversion Agent and the Trustee.

(d) In connection with any conversion upon satisfaction of the Trading Price Condition as set forth in Section 10.01(b)(ii) above, the Trustee shall have no obligation to determine the Trading Price of the Notes unless the Company has requested such determination, and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of the Notes at such time would be less than 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate. At such time, the Company shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of the Notes is greater than or equal to 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate. If the Company does not, when it is obligated to, make a request to the Trustee to determine the Trading Price per $1,000 principal amount of Notes, or if the Company makes such request to the Trustee, but the Trustee does not or cannot make such determination, then the Trading Price per $1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate on each day the Company or the Trustee fails to do so. If the Trading Price Condition has been met, the Company shall so notify the Holders and the Trustee. If, at any point after the Trading Price Condition has been met, the Trading Price per $1,000 principal amount of Notes is greater than 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate, the Company shall so notify the Holders and the Trustee.

(e) Upon the first public announcement of any distribution described in Section 10.01(b)(iii) or Section 10.01(b)(iv), the Company shall notify the Holders at least 35 Business Days prior to the Ex-Date for such distribution by (i) issuing a press release and using its reasonable efforts to post such information on its website or otherwise publicly disclose this information or (ii) providing written notice to Holders by mailing such notice to Holders at their address in the Register (in the case of a Certificated Note), or through the facilities of the Depositary (in the case of a Global Note).



(f) In connection with the transactions described in Section 10.01(b)(v), (vi) or (vii), the Company shall notify the Holders and the Trustee (i) in the case of a Change in Control or a Make-Whole Change in Control, as promptly as practicable following the date the Company publicly announces such transaction, which shall be at least 25 Business Days prior to the anticipated effective date in the case of transactions to which the Company is a party, and (ii) in the case of a Termination of Trading, the earlier of (x) the day immediately following the date the applicable securities exchange announces that a termination of trading will occur and (y) the effective date of a Termination of Trading by (A) issuing a press release and using its reasonable efforts to post such information on its website or otherwise publicly disclose this information or (B) providing written notice to Holders by mailing such notice to Holders at their address in the Register (in the case of a Certificated Note), or through the facilities of the Depositary (in the case of a Global Note).

(g) Upon determining that Holders are entitled to convert their Notes in accordance with the provisions set forth in Section 10.01(b), the Company shall promptly (i) issue a press release and use its reasonable efforts to post such information on its website or otherwise publicly disclose such

information or (ii) provide written notice to Holders by mailing such notice to Holders at their address in the Register (in the case of a Certificated Note), or through the facilities of the Depositary (in the case of a Global Note).

(h) Holders shall not have the right to convert their Notes pursuant to Section 10.01(b)(iii) or Section 10.01(b)(iv) if in connection with the distribution described in Section 10.01(b)(iii) or Section 10.01(b)(iv) that gives rise to a right to convert their Notes, such Holders are entitled to participate (as a result of holding the Notes, and at the same time as holders of Common Stock participate) in the distribution described in such Section as if such Holders held a number of shares of Common Stock equal to the Applicable Conversion Rate on the Ex-Date for such distribution, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holder, without having to convert their Notes.

*Section 10.02. Conversion Procedures; Conversion Settlement*. (a) To convert a Note that is represented by a Certificated Note, a Holder must (1) complete and manually sign a Conversion Notice, a form of which is on the back of the Note, and deliver such Conversion Notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) if required, furnish appropriate endorsement and transfer documents, (4) if required, pay all transfer or similar taxes and (5) if required, pay Cash equal to amount of interest due on the next Interest Payment Date for such Note. If a Holder holds a beneficial interest in a Global Note, to convert such beneficial interest, such Holder must comply with requirements (4) and (5) as set forth in the immediately preceding sentence and comply with the Applicable Procedures of the Depositary for converting a beneficial interest in a Global Note. The first date on which all of the requirements set forth in the first sentence of this Section 10.02 (in the case of a Certificated Note) or the second sentence of this Section 10.02 (in the case of a Global Note or a beneficial interest therein) have been satisfied is referred to in this Indenture as the "**Conversion Date**." The Conversion Agent shall, within one (1) Business Day of any Conversion Date, provide notice to the Company, as set forth in Section 13.02, of the occurrence of such Conversion Date.



(b) Subject to Section 10.09 and Section 10.10, the Company will deliver the consideration due in respect of conversion on the third Business Day immediately following the last Trading Day of the relevant Observation Period.

(c) A Holder receiving Common Stock upon conversion shall not be entitled to any rights as a holder of Common Stock, including, among other things, the right to vote and receive dividends and notices of stockholder meetings, until the Close of Business on the last Trading Day of the Observation Period.

(d) No payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 10. Upon conversion of a Note, a Holder will not receive, except as described below, any Cash payment representing accrued interest (including any Additional Interest). Instead, accrued interest (including any Additional Interest) will be deemed paid by the Cash and shares of Common Stock, if any, received by the Holder upon conversion. Delivery to the Holder of such Cash and shares of Common Stock, if any, shall thus be deemed to satisfy (1) the Company's obligation to pay the principal amount of a Note, and (2) the Company's obligation to pay any accrued and unpaid interest (including any Additional Interest) on the Note from the last Interest Payment Date to the Conversion Date. As a result, upon conversion of a Note, accrued and unpaid interest (including any Additional Interest) on such Note to, but not including, the Conversion Date is deemed paid in full rather than cancelled, extinguished or forfeited.

(e) Notwithstanding Section 10.02(d), if Notes are converted after a Regular Record Date but prior to the next succeeding Interest Payment Date, Holders of such Notes at the Close of Business on such Regular Record Date will receive the interest payable (including Additional Interest) on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Such Notes, upon surrender for conversion, must be accompanied by Cash equal to the amount of interest (including any Additional Interest) payable on such Interest Payment Date on the Notes so converted; *provided* that no such payment need be made (1) if the Company has specified a Redemption Date that is after a Regular Record Date but on or prior to the next succeeding Interest Payment Date, (2) if the Company has specified a Repurchase Date that is after a Regular Record Date but on or prior to the next succeeding Interest Payment Date, (3) with respect to any Notes converted after the Regular Record Date immediately preceding February 15, 2018 or February 15, 2023, or (4) to the extent of any Defaulted Interest that exists at the time of conversion with respect to such Note.

(f) If a Holder converts more than one Note at the same time, the number of shares of Common Stock and the amount of Cash delivered in lieu of fractional shares, if any, due upon conversion shall be determined based on the total principal amount of the Notes converted.

(g) Upon surrender of a Note that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Note in an authorized denomination equal in principal amount to the unconverted portion of the Note surrendered.

*Section 10.03. Settlement Upon Conversion*. (a) Subject to Section 10.09, upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting



Holder, in respect of each $1,000 principal amount of Notes being converted, a "**Settlement Amount**" equal to the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the relevant Observation Period for such Note, together with Cash, if applicable, in lieu of any fractional share of Common Stock in accordance with Section 10.04.

(b) "**Daily Settlement Amount**," for each of the 20 consecutive Trading Days during the applicable Observation Period, shall consist of (i) Cash in an amount equal to the lesser of (x) $50.00 and (y) the Daily Conversion Value on such Trading Day; and (ii) if the Daily Conversion Value on such Trading Day exceeds $50.00, the Daily Net Settlement Amount.

(c) All conversions occurring on or after the 24th Scheduled Trading Day immediately preceding the Maturity Date shall be settled using the same forms and amounts of consideration. Before the 24th Scheduled Trading Day immediately preceding the Maturity Date, the Company shall use the same forms and amounts of consideration for all conversions based on a single Observation Period, but the Company shall not have any obligation to use the same forms and amounts of consideration with respect to conversions that occur based on different Observation Periods.

(d) With respect to any conversion of Notes, subject to subsection (c) of this Section 10.03, the Company may irrevocably elect to settle all or a portion of the remainder, if any, of its Conversion Obligation in excess of the aggregate principal portion of the Notes being converted in Cash by informing the Trustee, the converting Holders, through the Trustee, and the Depositary no later than the Close of Business on the Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions occurring on or after the 24th Scheduled Trading Day immediately preceding the Maturity Date, no later than the 24th Scheduled Trading Day immediately preceding the Maturity Date), and the Company shall indicate in such notice the percentage of the remainder, if any, of the Company's Conversion Obligation in excess of the aggregate principal portion of the Notes being converted that will be paid in Cash (the "**Cash Percentage**").

(e) The Daily Settlement Amounts (if applicable), the Daily Net Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts, the Daily Net Settlement Amounts (if applicable) or the Daily Conversion Values, as the case may be, and the amount of Cash, if any, deliverable in lieu of any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts, the Daily Net Settlement Amounts (if applicable) or the Daily Conversion Values, as the case may be, and the amount of Cash, if any, deliverable in lieu of fractional shares of Common Stock. In calculating the Daily Settlement Amounts (if applicable) and the Daily Net Settlement Amounts (if applicable), the Conversion Rate on any day shall be appropriately adjusted to take into account the occurrence on or before such Trading Day of any event that would require an adjustment to the Conversion Rate as set forth in Section 10.07. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

*Section 10.04. Fractional Share*. The Company will not issue a fractional share of Common Stock upon conversion of a Note. Instead, the Company shall pay Cash in lieu of



fractional shares based on the Closing Price of Common Stock on the last Trading Day of the relevant Observation Period.

*Section 10.05. Taxes on Conversion*. If a Holder converts a Note, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon the 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 may refuse to deliver the certificates representing 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 Common Stock is to be delivered in a name other than the Holder's name.

*Section 10.06. Company to Provide Common Stock*. The Company shall, from time to time as may be necessary, reserve out of its authorized but unissued shares of Common Stock a sufficient number of shares of Common Stock to permit the delivery in respect of all outstanding Notes of the number of shares of Common Stock due upon conversion.

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

The Company will comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Notes, if any, and shall list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which Common Stock is then listed or quoted.

In addition, if any shares of Common Stock that would be issuable upon conversion of Notes hereunder require registration with or approval of any governmental authority before such shares of Common Stock may be issued upon such conversion, the Company will cause such shares of Common Stock to be duly registered or approved, as the case may be.

*Section 10.07. Adjustment to Conversion Rate*. The Conversion Rate shall be adjusted, at any time and from time to time while any of the Notes are outstanding, by the Company if any of the following events occur.

(a) If the Company issues dividends or makes distributions on Common Stock payable in shares of Common Stock, or if the Company subdivides, combines or reclassifies shares of Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such dividend or distribution, or immediately prior to the



opening of business on the effective date for such subdivision, combination or reclassification, as applicable;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date or effective date, as applicable;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to such dividend, distribution, subdivision, combination or reclassification; and

$OS_1$ = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, subdivision, combination or reclassification.

Any adjustment made under this Section 10.07(a) shall become effective immediately after the opening of business on the Ex-Date for such dividend or distribution, or immediately after the opening of business on the effective date for such subdivision, combination or reclassification, as applicable. If any dividend or distribution of the type described in this Section 10.07(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not subdivided, combined or reclassified, as the case may be, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution or to effect such subdivision, combination or reclassification, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution or subdivision, combination or reclassification had not been declared.

(b) If the Company distributes to all holders of shares of Common Stock rights, options or warrants (other than pursuant to a stockholder rights plan, *provided* that such rights plan provides for the issuance of such rights with respect to the Common Stock issued upon conversion of the Notes) to purchase shares of Common Stock for a period expiring within 60 days after the record date for such distribution at less than the average of the Closing Prices of Common Stock for the five consecutive Trading Days immediately preceding the public announcement of such distribution, the Conversion Rate shall be increased based on the following formula:

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

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such distribution;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date;

$OS_0$ = the number of shares of Common Stock outstanding at the Close of Business



on the Business Day immediately preceding the Ex-Date for such distribution;

X = the total number of additional shares of Common Stock so offered for purchase pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock that the aggregate offering price of the total number of shares of Common Stock so offered would purchase at the Current Market Price of Common Stock on the first public announcement date for such distribution (determined by multiplying such total number of shares of Common Stock so offered by the exercise price of such rights, options or warrants and dividing the product so obtained by such Current Market Price).

Any increase made under this Section 10.07(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the opening of business on the Ex-Date for such distribution. However, to the extent that shares of Common Stock are not delivered pursuant to such rights or upon the expiration or termination of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In the event that such rights, options or warrants are not so distributed, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if the Ex-Date for such distribution had not occurred. In determining whether any rights, options or warrants entitle the holders to purchase shares of Common Stock at less than the average of the Closing Prices for the five consecutive Trading Days immediately preceding the first public announcement of the relevant distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights, options or warrants and the value of such consideration if other than Cash, to be determined in good faith by the Board of Directors. Except in connection with any readjustment expressly provided for in this clause, in no event shall the Conversion Rate be decreased pursuant to this Section 10.07(b).

(c) If the Company distributes to all holders of shares of Common Stock, any of its Capital Stock, assets (including shares of any Subsidiary of the Company or business unit of the Company) or debt securities or certain rights to purchase securities of the Company (excluding (i) any dividends or distributions described in Section 10.07(a), (ii) any rights, options or warrants described in Section 10.07(b), (iii) any dividends or other distributions described in Section 10.07(d) and (iv) the initial distribution of rights issued pursuant to a stockholder rights plan; *provided* that such rights plan provides for the issuance of such rights with respect to the Common Stock issued upon conversion of the Notes) (such Capital Stock, assets, debt securities or rights to purchase securities of the Company hereinafter in this Section 10.07(c) called the "**Distributed Assets**"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{CMP_0}{CMP_0 - FMV}$$



where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such distribution;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date;

$CMP_0$ = the Current Market Price of Common Stock on the business day immediately preceding the Ex-Date for such distribution; and

FMV = the fair market value, as determined by the Board of Directors, of the portion of Distributed Assets applicable to one share of Common Stock.

Such increase shall become effective immediately after the opening of business on the Ex-Date for such distribution; *provided* that if "FMV" (as defined in this Section 10.07(c)) is equal to or greater than "$CMP_0$" (as defined in this Section 10.07(c)), in lieu of the foregoing increase, adequate provision shall be made so that each Holder shall receive on the date on which the Distributed Assets are distributed to holders of Common Stock, for each $1,000 principal amount of Notes, the amount of Distributed Assets such Holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the record date for such distribution. In the event that such distribution is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10.07(c) by reference to the actual or when issued trading market for any Distributed Assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "**Reference Period**") used in computing the Current Market Price for purposes of the definition of "$CMP_0$" in this Section 10.07(c), unless the Board of Directors determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holders.

Notwithstanding anything to the contrary in this Section 10.07(c), if the Company distributes Capital Stock of, or similar equity interests in, any Subsidiary of the Company or business unit of the Company (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

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

where,



$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the 15th Trading Day immediately following the Ex-Date for such Spin-Off;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on the Ex-Date for such Spin-Off;

$FMV_0$ = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the ten consecutive Trading Day period immediately following, and including, the fifth Trading Day after the Ex-Date for such Spin-Off; and

$MP_0$ = the average of the Closing Prices of Common Stock over the ten consecutive Trading Day period immediately following, and including, the fifth Trading Day after the Ex-Date for such Spin-Off.

Any adjustment pursuant to the preceding paragraph shall be determined on the last Trading Day of such ten consecutive Trading Day period but shall be given effect immediately after the opening of business on the Ex-Date for the Spin-Off. In no event shall the Conversion Rate be decreased pursuant to this Section 10.07(c).

(d) If the Company distributes dividends or makes other distributions paid entirely in Cash to all or substantially all holders of Common Stock, other than (i) distributions described in Section 10.07(e) or (ii) any dividend or distribution in connection with the Company's liquidation, dissolution or winding up, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{CMP_0}{CMP_0 - C}$$

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such dividend or distribution;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date;

$CMP_0$ = the Current Market Price of Common Stock on the Business Day immediately preceding the Ex-Date for such dividend or distribution; and

C = the amount in Cash per share of such dividend or distribution.

Such increase shall become effective immediately after the opening of business on the Ex-Date for such distribution or dividend; *provided* that if "C" (as defined in this Section 10.07(d)) is equal to or greater than "$CMP_0$" (as defined in this Section 10.07(d)), in lieu of the foregoing increase, adequate provision shall be made so that each Holder shall have the right to receive on the date on which the relevant Cash dividend or



distribution is distributed to holders of Common Stock, for each $1,000 principal amount of Notes upon conversion, at the same time and upon the same terms as holders of shares of Common Stock, the amount of Cash such Holder would have received had such Holder owned a number of shares

equal to the Conversion Rate on the record date for such dividend or distribution. In the event that such distribution or dividend is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Except in connection with any readjustment expressly provided for in the immediately preceding sentence, in no event shall the Conversion Rate be decreased pursuant to this Section 10.07(d).

(e) If the Company or any of its Subsidiaries distribute Cash or other consideration in respect of a tender offer or exchange offer for Common Stock, where such Cash and the value of any such other consideration per share of Common Stock validly tendered or exchanged exceeds the Closing Price of Common Stock on the Trading Day immediately following the last date (such last date, the "**Expiration Date**") on which tenders or exchanges may be made pursuant to the tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + (OS_1 \times CP_1)}{OS_0 \times CP_1}$$

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Business Day immediately following the Trading Day immediately following the Expiration Date;

$CR_1$ = the Conversion Rate in effect immediately prior to the opening of business on the second Trading Day immediately following the Expiration Date;

FMV = the fair market value, as determined by the Board of Directors, of the aggregate consideration payable for all shares of Common Stock that the Company purchases in such tender or exchange offer;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer;

$OS_1$ = the number of shares of Common Stock outstanding immediately after giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer; and

$CP_1$ = the Closing Price of Common Stock on the Trading Day immediately following the Expiration Date.



An adjustment, if any, to the Conversion Rate pursuant to this Section 10.07(e) shall become effective immediately prior to the opening of business on the second Trading Day immediately following the Expiration Date. In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. Except as provided in the immediately preceding sentence, if the application of this Section 10.07(e) to any tender offer or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section 10.07(e).

*Section 10.08. Provisions Governing Adjustment to Conversion Rate*. Rights, options 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, options 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 Section 10.07 (and no adjustment to the Conversion Rate under Section 10.07 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under Section 10.07(c), and, if applicable, Section 10.20. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof), except as set forth in Section 10.20. In addition, except as set forth in Section 10.20, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under Section 10.07 was made (including any adjustment contemplated in Section 10.20), (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

*Section 10.09. Disposition Events*. If any of the following events (a "**Disposition Event**") occurs:



(a) any reclassification of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination);

(b) consolidation, merger, or other combination involving the Company; or

(c) sale or conveyance to another Person of all or substantially all of the assets of the Company;

in each case as a result of which Common Stock would be converted into, or exchanged for, or would constitute solely the right to receive, stock, other securities or other property or assets (including Cash or any combination thereof) (any such event, a "**Merger Event**"), then, at the effective time of such Merger Event, the Company, or such successor, purchaser or transferee Person, as the case may be, shall execute and deliver to the Trustee a supplemental indenture permitted under Section 9.01(b) to provide that the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including Cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately before such Merger Event would have owned or been entitled to receive (the **"Reference Property"**) upon such Merger Event; *provided*, *however*, that at and after the effective time of the Merger Event, (i) the amount otherwise payable in Cash upon conversion of the Notes as set forth under Section 10.03 above shall continue to be payable in Cash, (ii) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, in respect of the remainder, if any, of its Conversion Obligation in excess of the aggregate principal portion of the Notes being converted as set forth under Section 10.03, (iii) each share of Common Stock that would otherwise have been required to be delivered upon a conversion of the Notes as set forth under Section 10.03 shall instead be deliverable in the amount and type of Reference Property that a holder of one share of Common Stock would have been entitled to receive in such Merger Event (a "**unit of Reference Property**") and (iv) the Daily VWAP shall be calculated based on the value of one unit of Reference Property.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, or constitute solely the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (x) the Reference Property into which the Notes will be convertible or used to calculate the Daily VWAP, as the case may be, shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election and (y) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (x) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

If, in the case of any Disposition Event, the Reference Property includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such reclassification, 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 as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent required by the Board of Directors and practicable the provisions providing for the repurchase rights set forth in Article 3 herein.

In the event the Company shall execute a supplemental indenture pursuant to this Section 10.09, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefore, the kind or amount of Cash, securities or property or asset that will comprise the Reference Property after any such Disposition Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at its address appearing on the Register provided for in this Indenture, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The Company shall not become a party to any such Merger Event unless its terms are consistent with this Section 10.09.

*Section 10.10. Adjustment to Conversion Rate Upon a Make-Whole Change in Control; Discretionary Adjustment*. (a) If, after the date hereof, a Change in Control (determined after giving effect to any exceptions or exclusions to such definition, but without regard to the *proviso* in clause (ii) of the definition thereof, a "**Make-Whole Change in Control**") occurs and a Holder elects to convert its Notes in connection with such Make-Whole Change in Control, the Company will, under certain circumstances, increase the Applicable Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Make-Whole Shares**"), as described in this Section 10.10. A conversion of Notes will be deemed for these purposes to be "in connection with" a Make-Whole Change in Control if the notice of conversion of the Notes is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Change in Control up to, and including, the Business Day immediately prior to the related Repurchase Date (or, in the case of an event that would have been a Change in Control but for the *proviso* in clause (ii) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Change in Control).

On or before the 15th day after the occurrence of a Make-Whole Change in Control that does not also constitute a Change in Control, the Company will deliver to the Trustee and to all Holders at their addresses shown in the Register of the Registrar, and to beneficial owners as required by applicable law, written notice indicating that a Make-Whole Change in Control has occurred.

(b) The number of Make-Whole Shares will be determined by reference to the table below and is based on the date that such Make-Whole Change in Control transaction becomes effective (the "**Effective Date**") and the price paid per share of Common Stock in the Make-Whole Change in Control (in the case of a Make-Whole Change in Control described in clause (ii) of the definition of Change in Control in which holders of Common Stock receive only Cash), or in the case of any other Make-Whole Change in Control, the average of the Closing Prices per share of Common Stock over the five Trading-Day period ending on the Trading Day immediately preceding the Effective Date of such Make-Whole Change in Control (the "**Stock Price**").



(c) The Stock Prices set forth in the first row of the table below will be adjusted as of any date on which the Applicable Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the Applicable Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment, and the denominator of which is the Applicable Conversion Rate as so adjusted. In addition, the number of Make-Whole Shares will be subject to adjustment in the same manner as the Applicable Conversion Rate as set forth in Section 10.07.

The following table sets forth the Stock Price, Effective Date and number of Make-Whole Shares to be added to the Conversion Rate per $1,000 principal amount of the Notes:

| **Effective** | **Stock Price** |
|---|---|

| Date | 7.95 | 10.00 | 12.00 | 14.00 | 16.00 | 18.00 | 20.00 | 25.00 | 30.00 | 35.00 | 40.00 | 50.00 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2/12/2013 | 34.305 | 20.969 | 13.875 | 9.6978 | 7.0955 | 5.3984 | 4.2401 | 2.5869 | 1.7596 | 1.2815 | 0.9755 | 0.6145 |
| 2/15/2014 | 34.305 | 20.423 | 13.009 | 8.7759 | 6.2286 | 4.6256 | 3.5685 | 2.131 | 1.4495 | 1.0658 | 0.8219 | 0.5313 |
| 2/15/2015 | 34.305 | 19.329 | 11.639 | 7.4469 | 5.0543 | 3.6304 | 2.7399 | 1.6137 | 1.1169 | 0.8423 | 0.6654 | 0.4485 |
| 2/15/2016 | 34.305 | 17.485 | 9.5751 | 5.5912 | 3.5256 | 2.4162 | 1.7862 | 1.0779 | 0.789 | 0.6245 | 0.5123 | 0.3663 |
| 2/15/2017 | 34.305 | 14.489 | 6.3958 | 3.0207 | 1.6566 | 1.0972 | 0.8442 | 0.6012 | 0.4898 | 0.4147 | 0.359 | 0.2824 |
| 2/15/2018 | 34.305 | 8.5192 | — | — | — | — | — | — | — | — | — | — |

(d) If the exact Stock Price and Effective Date is not set forth in the table, then (i) if the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the Make-Whole Shares issued upon conversion of the Notes will be determined by a straight-line interpolation between the number of Make-Whole Shares set forth for the higher and lower Stock Prices and/or the earlier and later Effective Dates in the table, as applicable, based on a 365-day year, (ii) if the Stock Price is in excess of $50.00 per share of Common Stock (subject to adjustment as set forth in Section 10.10(c)), no Make-Whole Shares will be issued upon conversion of the Notes; and (iii) if the Stock Price is less than $7.95 per share of Common Stock (subject to adjustment as set forth in Section 10.10(c)), no Make-Whole Shares will be issued upon conversion of the Notes.

(e) To the extent permitted by applicable law and the listing rules of The NASDAQ Global Select Market, the Company may make such increases in the Conversion Rate, in addition to those required by Section 10.07, as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(f) To the extent permitted by applicable law and the listing rules of The NASDAQ Global Select Market, 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 twenty (20) Business Days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the



preceding sentence, the Company shall file with the Conversion Agent and provide written notice to the Holders of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(g) Notwithstanding anything in this Article 10 to the contrary, in the event of any increase in the Conversion Rate that would result in the Notes, in the aggregate and taken together with the 2033F Notes (as defined in the Offering Memorandum), becoming convertible into shares of Common Stock in excess of the share issuance limitations of the listing standards of The NASDAQ Global Select Market or the principal U.S. securities exchange on which the Common Stock is then listed, the Company shall, at its option, either obtain stockholder approval of such issuances or deliver Cash in lieu of any shares otherwise deliverable upon conversions in excess of such limitations (calculated based on the Daily VWAP on the last Trading Day of the applicable Observation Period).

*Section 10.11. When Adjustment May Be Deferred*. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. Any adjustments that are less than 1% of the Conversion Rate will be carried forward and taken into account in determining any subsequent adjustment. In addition, the Company shall make any carry forward adjustments not otherwise effected on each anniversary of the date hereof, upon conversion of any Note (but only with respect to such converted Note), upon required repurchases of the Notes pursuant to Section 3.01, and on the Scheduled Trading Day prior to the Maturity Date.

*Section 10.12. When No Adjustment Required*. (a) No adjustment need be made for a transaction referred to in Section 10.07 if Holders participate, without conversion, in the transaction or event that would otherwise give rise to an adjustment pursuant to such Section at the same time as holders of Common Stock participate with respect to such transaction or event and on the same terms as holders of Common Stock participate with respect to such transaction or event as if Holders, at such time, held a number of shares of Common Stock equal to the Applicable Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder, without having to convert their Notes.

(b) No adjustment need be made for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase Common Stock or any such security.

(c) No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

(d) No adjustment need be made for a change in the par value or no par value of Common Stock.

(e) To the extent the Notes become convertible pursuant to this Article 10 solely into Cash, no adjustment need be made thereafter as to the Cash. Interest will not accrue on the Cash.



*Section 10.13. Notice of Adjustment*. Whenever the Conversion Rate is adjusted, the Company shall promptly send to Holders a written notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

*Section 10.14. Notice of Certain Transactions*. If (a) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 10.07 (unless no adjustment is to occur pursuant to Section 10.11 or Section 10.12), (b) the Company takes any action that would require a supplemental indenture pursuant to Section 10.09, (c) there is a liquidation or dissolution of the Company or (d) the Company makes any distribution

described in Section 10.07(b), Section 10.07(c) or Section 10.07(d) that has a per share value equal to more than 15% of the Closing Price of shares of Common Stock on the Trading Day preceding the declaration date for such issuance, dividend or distribution, then the Company shall send to Holders and file with the Trustee and the Conversion Agent a written notice stating the proposed Ex-Date for a issuance, dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, combination, sale or conveyance. The Company shall file and send the notice at least 15 days before such date. Failure to file or send the notice or any defect in it shall not affect the validity of the transaction.

*Section 10.15. Right of Holders to Convert*. Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right to convert its Note in accordance with this Article 10 and to bring an action for the enforcement of any such right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

*Section 10.16. Company Determination Final*. The Company shall be responsible for making all calculations called for hereunder and under the Notes. The Company shall make all these calculations using commercially reasonable means and, absent manifest error, the Company's calculations will be final and binding on Holders. The Company shall provide a schedule of the Company's calculations to the Trustee, and the Trustee is entitled to rely upon the accuracy of the Company's calculations without independent verification.

*Section 10.17. Trustee's Adjustment Disclaimer*. The Trustee has no duty to determine when an adjustment under this Article 10 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under Section 10.12 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Notes. The Trustee shall not be responsible for the Company's failure to comply with this Article 10. Each Conversion Agent shall have the same protection under this Section 10.17 as the Trustee.

*Section 10.18. Simultaneous Adjustments*. For purposes of Section 10.07(a), 10.07(b) and 10.07(c), any dividend or distribution to which Section 10.07(c) is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase



shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the debt securities, assets or shares of Capital Stock other than such shares of Common Stock or rights (and any Conversion Rate adjustment required by Section 10.07(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights (and any further Conversion Rate adjustment required by Section 10.07(a) and 10.07(b) with respect to such dividend or distribution shall then be made), except any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the Close of Business on the Business Day immediately preceding such Ex-Date" within the meaning of Section 10.07(a).

*Section 10.19. Successive Adjustments*. After an adjustment to the Conversion Rate under this Article 10, any subsequent event requiring an adjustment under this Article 10 shall cause an adjustment to the Conversion Rate as so adjusted.

*Section 10.20. Rights Issued in Respect of Common Stock Issued Upon Conversion*. Each share of Common Stock issued upon conversion of Notes pursuant to this Article 10 shall be entitled to receive the appropriate number of rights ("**Rights**"), if any, and the certificates representing 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 plan (i.e., a poison pill) adopted by the Company, as the same may be amended from time to time, is in effect, (in each case, a "**Shareholders Rights Plan**"). Upon conversion of the Notes a Holder will receive, in addition to any Common Stock received in connection with such conversion, the Rights under the Shareholders Rights Plan, unless prior to any conversion, the Rights have separated from Common Stock, in which case the Applicable Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of Common Stock, shares of Company Capital Stock, assets, debt securities or certain rights to purchase securities of the Company as described in Section 10.07(c), and further adjusted in the event of certain events affecting such Rights following any separation from the Common Stock and subject to readjustment in the event of the expiration, termination or redemption of such Rights. Any distribution of Rights pursuant to the Shareholders Rights Plan that would allow a Holder to receive upon conversion, in addition to shares of Common Stock, the Rights described therein (unless such Rights have separated from Common Stock) shall not constitute a distribution of Rights that would entitle the Holder to an adjustment to the Conversion Rate.

*Section 10.21. Withholding Taxes for Adjustments in Conversion Rate*. The Company may, at its option, set-off withholding taxes due with respect to Notes against delivery of Common Stock upon conversion of the Notes. In the case of any such set-off against Common Stock delivered upon conversion of the Notes, such Common Stock shall be valued based on the Closing Price of the Common Stock on the Trading Day immediately following the Conversion Date.



## ARTICLE 11

## REDEMPTION

*Section 11.01. Right to Redeem; Notices to Trustee*.

(a) The Notes are not redeemable by the Company prior to February 20, 2018. On or after February 20, 2018, the Notes may be redeemed for Cash in whole or in part at the option of the Company.

(b) On or after February 20, 2018, the redemption price at which the Notes are redeemable (the "**Redemption Price**") shall be equal to the sum of 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, including Additional Interest, if any, to, but excluding, the Redemption Date; *provided*, *however*, that if the Redemption Date is after a Regular Record Date and prior to the Interest Payment Date to which it relates, then the accrued and unpaid interest, if any, to, but excluding, the Redemption Date, shall be paid on such Interest Payment Date to the holders of record of such Notes on the applicable Regular Record Date instead of the holders surrendering such Notes for redemption on the Redemption Date.

(c) The Company may not redeem any Notes unless all accrued and unpaid interest (including any Additional Interest) thereon has been or is simultaneously paid for all semi-annual periods or portions thereof terminating prior to the Redemption Date. In addition, the Company shall not redeem any Notes or deliver to any Holder a notice of redemption pursuant to Section 11.03 at any time when there exists any accrued and unpaid Defaulted Interest.

*Section 11.02. Selection of Notes to be Redeemed*. If less than all the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed pro rata or by lot or by any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of The NASDAQ Global Select Market or any other stock exchange on which the Notes are then listed, as applicable). The Trustee shall make the selection within seven days from its receipt of the notice from the Company delivered pursuant to Section 11.03 from outstanding Notes not previously called for redemption.

Notes and portions of them the Trustee selects shall be in principal amounts of $1,000 or integral multiples of $1,000. Provisions of this Indenture that apply to Notes called for redemption in whole also apply to Notes called for redemption in part. The Trustee shall notify the Company promptly of the Notes or portions of Notes to be redeemed.

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

*Section 11.03. Notice of Redemption*. At least 25 Scheduled Trading Days but not more than 50 Scheduled Trading Days before a Redemption Date, the Company shall delivery a notice of redemption to the Trustee, the Paying Agent and each Holder of Notes to be redeemed; *provided*, *however*, that the Company shall not deliver any such notice to any Holder at any time when there exists any accrued and unpaid Defaulted Interest.

The notice shall specify the Notes to be redeemed and shall state:



(i) the Redemption Date;

(ii) the Redemption Price;

(iii) the Applicable Conversion Rate and any adjustments thereto;

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

(v) that Notes called for redemption may be converted at any time before the Close of Business on the Business Day immediately preceding the Redemption Date; and

(vi) the procedures a Holder must follow to exercise rights under Section 3.01.

At the Company's written request delivered at least 30 days prior to the date such notice is to be given to the Holders (unless a shorter time period shall be acceptable to the Trustee), the Trustee shall give the notice of redemption to each Holder of Notes to be redeemed in the Company's name and at the Company's expense.

*Section 11.04. Effect of Notice of Redemption*. Once notice of redemption is given, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Notes that are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Notes shall be paid at the Redemption Price stated in the notice.

*Section 11.05. Deposit of Redemption Price*. Prior to 12:00 p.m., New York City time, on or prior to the Redemption Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary of the Company or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Trading Day) sufficient to pay the aggregate Redemption Price of all the Notes or portions thereof which are to be redeemed as of the Redemption Date.

If the Paying Agent holds money sufficient to pay the Redemption Price with respect to the Notes to be redeemed on the Redemption Date in accordance with the terms of this Indenture, then, immediately on and after the Redemption Date, interest on such Notes shall cease to accrue, whether or not the Notes are delivered to the Paying Agent, and all other rights of the Holders of such Notes shall terminate, other than the right to receive the Redemption Price upon delivery of such Notes.

*Section 11.06. Notes Redeemed in Part*. Any Note which is to be redeemed only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Note, of any



authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not redeemed; *provided* that the Company shall not be required to (i) issue, register the transfer of or exchange any Notes during a period beginning immediately prior to the opening of business 15 days before any selection for redemption of Notes and ending at the Close of Business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of Notes to be redeemed or (ii) register the transfer of or exchange any Notes so selected for redemption, in whole or in part, except the unredeemed portion of any Notes being redeemed in part.

**ARTICLE 12**

**PAYMENT OF INTEREST**

*Section 12.01. Interest Payments*. Interest (including any Additional Interest) on any Note that is payable, and is punctually paid or duly provided for, on any applicable Interest Payment Date shall be paid to the Person in whose name that Note is registered at the Close of Business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose. Each installment of interest payable in Cash on any Note shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States, if the Trustee shall have received proper wire transfer instructions from such payee not later than the related Regular Record Date or, if no such instructions have been received by check drawn on a bank in the United States mailed to the payee at its address set forth on the Registrar's books. In the case of a Global Note, interest payable on any applicable payment date will be paid by wire transfer of same-day funds to the Depositary for the purpose of permitting such party to credit the interest received by it in respect of such Global Note to the accounts of the beneficial owners thereof.

*Section 12.02. Defaulted Interest*. Any interest (including any Additional Interest) on any Note that is payable, but is not punctually paid or duly provided for, within 30 days following any applicable payment date (herein called "**Defaulted Interest**," which term shall include any accrued and unpaid interest (including any Additional Interest) that has accrued on such defaulted amount in accordance with paragraph 1 of the Notes), shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below.

(a) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Notes are registered at the Close of Business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), 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 on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided.



Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 20 days and not less than 15 days prior to the date of the proposed payment and not less than 10 days (or such shorter period as is acceptable to the Trustee) after the receipt by the Trustee of the notice of the proposed payment (the "**Special Record Date**"). The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at its address as it appears on the list of Holders maintained pursuant to Section 2.05 not less than 25 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Notes are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

*Section 12.03. Interest Rights Preserved*. Subject to the foregoing provisions of this Article 12 and Section 2.06, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, including any Additional Interest, and to accrue, which were carried by such other Notes.

**ARTICLE 13**

**MISCELLANEOUS**

*Section 13.01. Holder Communications; Holder Actions*. (a) The rights of Holders to communicate with other Holders with respect to this Indenture or the Notes are as provided by the Trust Indenture Act, and the Company and the Trustee shall comply with the requirements of Trust Indenture Act Sections 312(a) and 312(b). Neither the Company nor the Trustee will be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

(b) (i) Any request, demand, authorization, direction, notice, consent to amendment, supplement or waiver or other action provided by this Indenture to be given or taken by a Holder 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 the Applicable Procedures or customary procedures of the Trustee) of substantially similar tenor signed by such Holders in person or by 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 Holders signing such



instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent (either of which may be in electronic form) shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(ii) The Trustee may make reasonable rules for action by or at a meeting of Holders, which will be binding on all the Holders.

(c) Any act by the Holder of any Note binds that Holder and every subsequent Holder of a Note that evidences the same debt as the Note of the acting Holder, even if no notation thereof appears on the Note. Subject to paragraph (d), a Holder may revoke an act as to its Notes, but only if the Trustee receives the notice of revocation before the date the amendment or waiver or other consequence of the act becomes effective.

(d) The Company may, but is not obligated to, fix a record date (which need not be within the time limits otherwise prescribed by Trust Indenture Act Section 316(c)) for the purpose of determining the Holders entitled to act with respect to any amendment or waiver or in any other regard, except that during the continuance of an Event of Default, only the Trustee may set a record date as to notices of Default, any declaration or acceleration or any other remedies or other consequences of the Event of Default. If a record date is fixed, those Persons that were Holders at such record date and only those Persons will be entitled to act, or to revoke any previous act, whether or not those Persons continue to be Holders after the record date. No act will be valid or effective for more than 90 days after the record date.

*Section 13.02. Notices*. (a) Any notice or communication to the Company will be deemed given if in writing (i) when delivered in person or (ii) five days after mailing when mailed by first class mail, or (iii) when sent by facsimile transmission, with transmission confirmed. Any notice to the Trustee will be effective only upon receipt. In each case the notice or communication should be addressed as follows:

*if to the Company*:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716
Attention: General Counsel
Tel: (208) 368-4000
Fax: (208) 368-4540

*with a copy to*:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: John A. Fore
Tel: (650) 493-9300
Fax: (650) 493-6811



*if to the Trustee*:

U.S. Bank National Association
Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, CA 9007
Attention: Paula Oswald (Micron 2033E Indenture)
Tel: 213.615.6043
Fax: 213.615.6197

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

(b) Except as otherwise expressly provided with respect to published notices, any notice or communication to a Holder will be deemed given when sent to the Holder at its address as it appears on the Register by first class mail or, as to any Global Note registered in the name of the Depository or its nominee, as agreed by the Company, the Trustee and the Depository. Copies of any notice or communication to a Holder, if given by the Company, will be sent to the Trustee at the same time. Any defect in sending a notice or communication to any particular Holder will not affect its sufficiency with respect to other Holders.

(c) Where this Indenture provides for notice, the notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and the waiver will be the equivalent of the notice. Waivers of notice by Holders must be filed with the Trustee, but such filing is not a condition precedent to the validity of any action taken in reliance upon such waivers.

*Section 13.03. Communication by Holders with Other Holders*. Holders may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act.

*Section 13.04. Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

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

(2) an Opinion of Counsel stating that all such conditions precedent have been complied with.

Notwithstanding the foregoing, no such Opinion of Counsel shall be required with respect to the authentication and delivery of any Notes.

*Section 13.05. Statements Required in Certificate or Opinion*. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

(1) a statement that each person signing the certificate or opinion has read the covenant or condition and the related definitions;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in the certificate or opinion is based;

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

(4) a statement as to whether or not, in the opinion of each such person, such condition or covenant has been complied with, *provided* that an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials with respect to matters of fact.

*Section 13.06. Legal Holiday*. A "**Legal Holiday**" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, with the same force and effect as if made on the Interest Payment Date or Redemption Date, at the Stated Maturity or the last date of conversion, as the case may be.

*Section 13.07. Rules by Trustee, Paying Agent, Conversion Agent and Registrar*. The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

*Section 13.08. Governing Law*. THIS INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

*Section 13.09. No Adverse Interpretation of Other Agreements*. This Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any Subsidiary of the Company, and no such indenture or loan or debt agreement may be used to interpret this Indenture.

*Section 13.10. Successors*. All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successor.

*Section 13.11. Counterparts*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.



*Section 13.12. Severability*. In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

*Section 13.13. Table of Contents and Headings*. The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and in no way modify or restrict any of the terms and provisions of this Indenture.

*Section 13.14. No Liability of Directors, Officers, Employees, Incorporators, Members and Stockholders*. No director, officer, employee, incorporator, member or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of, or by reason of, such obligations. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

*[Signature Page Follows]*



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

MICRON TECHNOLOGY, INC., as Issuer

By: /s/ Ronald C. Foster
Name: Ronald C. Foster
Title: Vice President of Finance and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Paula Oswald
Name: Paula Oswald
Title: Vice President

*[Signature Page to Indenture – 1.625% Senior Convertible Notes due 2033]*

**EXHIBIT A**

[FACE OF NOTE]

[INSERT DTC LEGEND, IF APPLICABLE]

[INSERT TRANSFER RESTRICTED NOTE LEGEND, IF APPLICABLE]

Micron Technology, Inc.

1.625% Convertible Senior Note due 2033

No. [E- ]

CUSIP: 595112 AS2

ISIN: US595112AS28

Micron Technology, Inc., a Delaware corporation (the "**Company**," which term includes any successor under the Indenture hereinafter referred to), for value received, promises to pay to Cede & Co. or its registered assigns, the principal sum of [ ] Dollars ($[ ]) [(which principal amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other outstanding Notes, shall not exceed $[ ]) by adjustments made by the Trustee as set forth on Schedule I hereto)]* on February 15, 2033.

Initial Interest Rate: 1.625% per annum.

Interest Payment Dates: February 15 and August 15, commencing August 15, 2013.

Regular Record Dates: February 1 and August 1.

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

* This schedule should be included only if the Note is a Global Note.



IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

Date:

MICRON TECHNOLOGY, INC.

By: _____
Name:
Title:

(Form of Trustee's Certificate of Authentication)

This is one of the 1.625% Convertible Senior Notes due 2033 described in the Indenture referred to in this Note.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory



[REVERSE SIDE OF NOTE]

Micron Technology, Inc.

1.625% Convertible Senior Note due 2033

1. *Principal and Interest*.

The Company promises to pay the principal of this Note on February 15, 2033.

The Company promises to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth on the face of this Note, at the rate of 1.625% per annum.

Interest will be payable semiannually in arrears (to the holders of record of the Notes at the Close of Business on the Regular Record Date immediately preceding the Interest Payment Date) on each Interest Payment Date, commencing August 15, 2013.

Interest on this Note will accrue from the most recent date to which interest has been paid or provided for on this Note or the Note surrendered in exchange for this Note or, if no interest has been paid, from February 12, 2013, through the day before each Interest Payment Date. Interest will be computed in the basis of a 360-day year of twelve 30-day months. Interest will cease to accrue on this Note upon its maturity, conversion, redemption or repurchase by the Company, including repurchase by the Company at the option of a holder upon a Change in Control or Termination of Trading.

If the Company elects or is required to pay Additional Interest pursuant to Section 6.15 of the Indenture referred to below, the Company will pay any such Additional Interest on the date or dates described in such Indenture.

The Company will pay interest on overdue principal, premium, if any, and, to the extent lawful, interest at a rate per annum that is 1% in excess of 1.625%. Defaulted Interest shall be paid to the Persons that are Holders on a Special Record Date, which will established as set forth in the Indenture.

2. *Method of Payment*.

Subject to the terms and conditions of the Indenture, the Company shall pay interest (including any Additional Interest) on this Note to the person who is the Holder of this Note at the Close of Business on the Regular Record Date next preceding the related Interest Payment Date. The Company will pay any Cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

3. *Paying Agent, Conversion Agent and Registrar*.

Initially, the Trustee will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-



registrar without notice, other than notice to the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar. The Company may maintain deposit accounts and conduct other banking transactions with the Trustee in the normal course of business.

4. *Indenture*.

This is one of the Notes issued under an Indenture dated as of February 12, 2013 (as amended from time to time, the "**Indenture**"), between the Company and U.S. Bank National Association, as Trustee. Capitalized terms used herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture will control. The Notes are general unsecured obligations of the Company.

5. *Repurchase at the Option of the Holders*.

On February 15, 2018 and February 15, 2023 and upon the occurrence of a Change in Control or Termination of Trading, a Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Repurchase Date at a price equal to the Repurchase Price.

6. *Redemption at the Option of the Company.*

No sinking fund is provided for the Notes. The Notes are redeemable as a whole, or from time to time in part, at any time commencing on February 20, 2018 at the option of the Company. The redemption price (the "**Redemption Price**") for any such redemption is equal to (i) 100% of the Principal Amount of Notes to be redeemed, plus (ii) accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the Redemption Date.

7. *Conversion*.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert this Note or portion thereof that is $1,000 or an integral multiple thereof, into the consideration specified in the Indenture, as adjusted from time to time as provided in the Indenture.

8. *Defaults and Remedies*.

Subject to certain exceptions, if an Event of Default, other than a Bankruptcy Default, occurs and is continuing under the Indenture, the Trustee or the Holders of at least 25% in aggregate of the outstanding principal amount of the Notes, by written notice to the Company (and to the Trustee if the notice is given by the Holders), may, and the Trustee at the request of



such Holders may, declare the principal of and accrued interest (including any Additional Interest) on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal and interest (including any Additional Interest) will become immediately due and payable. If a Bankruptcy Default

occurs, the principal of and accrued interest (including any Additional Interest) on the Notes then outstanding will become immediately due and payable automatically without any declaration or other act on the part of the Trustee or any Holder.

9. *Amendment and Waiver*.

Subject to certain exceptions set forth in the Indenture, the Indenture and the Notes may be amended, or default may be waived, with the consent of the Holders of a majority in principal amount of the outstanding Notes. Without notice to or the consent of any Holder, the Company and the Trustee may amend or supplement the Indenture or this Note to, among other things, cure any ambiguity, omission, defect or inconsistency in the Indenture or this Note that does not adversely affect the rights of any Holder of the Notes.

10. *Registered Form; Denominations; Transfer; Exchange*.

The Notes are in registered form without coupons in denominations of $1,000 principal amount and integral multiples of $1,000. A Holder may register the transfer or exchange of Notes in accordance with the Indenture. The Trustee may require a Holder to furnish appropriate endorsements and transfer documents and to pay any taxes and fees as set forth in the Indenture. Pursuant to the Indenture, there are certain periods during which the Trustee will not be required to issue, register the transfer of or exchange any Note or certain portions of a Note.

11. *Persons Deemed Owners*.

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

12. *Unclaimed Money or Notes*.

Subject to applicable abandoned property law, the Trustee and each Paying Agent shall pay or deliver, as the case may be, to the Company upon request any money, Common Stock or other consideration held by them for the payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) and interest (including any Additional Interest) on, or the Common Stock due in connection with any conversion of, this Note that remains unclaimed for two years after a right to such money, Common Stock or other consideration has matured.

13. *Trustee Dealings with the Company*.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of this Note and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311.



14. *No Recourse Against Others*.

No director, officer, employee, incorporator, member or stockholder of the Company, as such, will have any liability for any obligations of the Company under this Note or the Indenture or for any claim based on, in respect of, or by reason of, such obligations. Each Holder of this Note by accepting this Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of this Note.

15. *Authentication*.

This Note shall not be valid until an authorized officer of the Trustee signs manually the Trustee's Certificate of Authentication on the other side of this Note.

16. *Governing Law*.

THE INDENTURE AND THE NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. *Abbreviations*.

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

The Company will furnish a copy of the Indenture to any Holder upon written request and without charge.



[FORM OF TRANSFER NOTICE]

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

_____

_____

Please print or typewrite name and address, including zip code of assignee

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

attorney to transfer said Note on the books of the Company with full power of substitution in the premises.

Your Signature:

Date:

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

*Signature guaranteed by:

By:

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716
Attention: General Counsel
Fax: (208) 368-4540

U.S. Bank National Association
Corporate Trust Services
633 West Fifth Street, 24th Floor
Attention: Paula Oswald (Micron 2033E Indenture)
Fax: (213) 615-6197

**CONVERSION NOTICE**

To convert this Note, check the box: o

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

If you want the Cash paid to another person or the stock certificate, if any, made out in another person's name, fill in the form below:

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

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

and irrevocably appoint

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Your Signature:

Date:

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

*Signature guaranteed by:

By:



* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

**Schedule I***

No. [E- ]

The initial principal amount of this Global Note is $[ ].

| Date | Principal Amount of this Global Note | Notation Explaining Change in Principal Amount | Authorized Signature of Trustee |
|---|---|---|---|
| | | | |
| | | | |

* This schedule should be included only if the Note is a Global Note.



**EXHIBIT B**

DTC LEGEND

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

TRANSFERS OF THIS GLOBAL NOTE ARE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE ARE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE TRANSFER PROVISIONS OF THE INDENTURE.



**EXHIBIT C**

TRANSFER RESTRICTED NOTE LEGEND

THE SALE OF THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, THIS SECURITY MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT WITHIN THE LATER OF (X) ONE YEAR AFTER THE LATEST ISSUE DATE OF THIS SECURITY AND (Y) THREE MONTHS AFTER IT CEASES TO BE AN AFFILIATE (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE ISSUER, OFFER, RESELL, PLEDGE OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY, EXCEPT (A) TO THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY WITHIN THE LATER OF (X) SIX MONTHS (OR, IF THE ISSUER HAS NOT SATISFIED THE CURRENT PUBLIC INFORMATION REQUIREMENTS OF RULE 144, ONE YEAR) AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF NOTES (INCLUDING THROUGH THE EXERCISE OF THE OPTION TO PURCHASE ADDITIONAL NOTES) AND (Y) THREE MONTHS AFTER IT CEASES TO BE AN AFFILIATE (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE ISSUER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED PURSUANT TO THE INDENTURE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.



**EXHIBIT D**

**CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER OF TRANSFER RESTRICTED NOTES**

Re: 1.625% Convertible Senior Notes due 2033 (the "**Notes**") of Micron Technology, Inc.

This certificate relates to $ principal amount of Notes owned in (check applicable box)

o book-entry or o definitive form by (the "**Transferor**").

The Transferor has requested a Registrar or the Trustee to exchange or register the transfer of such Notes.

In connection with such request and in respect of each such Note, the Transferor does hereby certify that the Transferor is familiar with transfer restrictions relating to the Notes as provided in Section 2.13 of the Indenture dated as of February 12, 2013 between Micron Technology, Inc. and U.S. Bank National Association, as trustee (the "**Indenture**"), and the transfer of such Note is being made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "**Securities Act**") (check applicable box) or the transfer or exchange, as the case may be, of such Note does not require registration under the Securities Act because (check applicable box):

o Such Note is being transferred pursuant to an effective registration statement under the Securities Act.

o Such Note is being acquired for the Transferor's own account, without transfer.

o Such Note is being transferred to the Company or a Subsidiary (as defined in the Indenture) of the Company.

o Such Note is being transferred to a person the Transferor reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A or any successor provision thereto ("**Rule 144A**") under the Securities Act) that is purchasing for its own account or for the account of a "qualified institutional buyer", in each case to whom notice has been given that the transfer is being made in reliance on such Rule 144A, and in each case in reliance on Rule 144A.



o Such Note is being transferred pursuant to and in compliance with an exemption from the registration requirements under the Securities Act in accordance with Rule 144 (or any successor thereto) ("**Rule 144**") under the Securities Act.

o Such Note is being transferred pursuant to and in compliance with an exemption from the registration requirements of the Securities Act (other than an exemption referred to above) and as a result of which such Note will, upon such transfer, cease to be a "restricted security" within the meaning of Rule 144 under the Securities Act.

Date: _____ _____

(Insert Name of Transferor)

**MICRON TECHNOLOGY, INC.**

**as Issuer**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

**as Trustee**

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**Indenture**

**Dated as of February 12, 2013**

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**2.125% Convertible Senior Notes due 2033**

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**TABLE OF CONTENTS**

INDENTURE dated as of February 12, 2013 between Micron Technology, Inc., a Delaware corporation (the "**Company**"), and U.S. Bank National Association, a national banking association, as Trustee.

**RECITALS**

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of up to $300,000,000 aggregate principal amount of the Company's 2.125% Convertible Senior Notes due 2033 (the "**Notes**"). All things necessary to make this Indenture a valid and binding agreement of the Company, in accordance with its terms, have been done, and the Company has done all things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee and duly issued by the Company, the valid and binding obligations of the Company as hereinafter provided.

**THIS INDENTURE WITNESSETH**

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, the parties hereto covenant and agree, for the equal and proportionate benefit of all Holders, as follows:

**ARTICLE 1**

**DEFINITIONS AND INCORPORATION BY REFERENCE**

*Section 1.01. Definitions*

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"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise.

"**Agent**" means any Registrar, Paying Agent or Conversion Agent.

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

"**Applicable Conversion Rate**" means the Conversion Rate on any day.

"**Applicable Procedures**" means, with respect to any transfer or exchange of beneficial ownership interests in a Global Note, the rules and procedures of the Depositary, in each case to the extent applicable to such transfer or exchange.

"**Bankruptcy Law**" means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors.

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"**Board of Directors**" means the board of directors or comparable governing body of the Company, or any committee thereof duly authorized to act on its behalf.

"**Business Day**" means any weekday that is not a day on which banking institutions in The City of Boise, The City of New York or a place of payment are authorized or obligated to close.

"**Capital Stock**" means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person's equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

"**Cash**" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"**Certificated Note**" means a Note in registered individual form without interest coupons.

"**Change in Control**" shall have the meaning set forth in Section 3.01(a) of this Indenture.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Price**" of Common Stock or any other security on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which Common Stock or such other security is listed. If Common Stock or such other security is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the Closing Price will be the last quoted bid price for Common Stock or such other security in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or a similar organization. If Common Stock or such other security is not so quoted, the Closing Price will be the average of the mid-point of the last bid and ask prices for Common Stock or such other security on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The Closing Price will be determined without reference to extended or after hours trading.

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

"**Common Stock**" means Common Stock of the Company, $0.10 par value, as it exists on the date of this Indenture and any shares of any class or classes of Capital Stock of the Company resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Notes shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.



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"**Company**" means the party named as such in the first paragraph of this Indenture or any successor obligor under this Indenture and the Notes pursuant to Section 5.01.

"**Conversion Price**" per share of Common Stock as of any day means $1,000 *divided by* the Conversion Rate on such day.

"**Corporate Trust Office**" means the office of the Trustee at which the corporate trust business of the Trustee is principally administered, which at the date of this Indenture is located at 633 West Fifth Street, 24th Floor, Los Angeles, California 90071.

"**Current Market Price**" of Common Stock on any day means the average of the Closing Prices of Common Stock for each of the five consecutive Trading Days ending on the earlier of the day in question and the day before the Ex-Date with respect to the issuance or distribution requiring such computation.

"**Daily Conversion Value**" means, for each of the 20 consecutive Trading Days during the Observation Period, 5.00% of the product of (a) the Conversion Rate in effect on such Trading Day and (b) the Daily VWAP on such Trading Day.

"**Daily Net Settlement Amount**" means for each of the 20 consecutive Trading Days during the applicable Observation Period (a) if the Company does not elect a Cash Percentage pursuant to Section 10.03(d), a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value on such Trading Day and $50.00, divided by (ii) the Daily VWAP for such Trading Day; (b) if the Company elects a Cash Percentage of 100% pursuant to Section 10.03(d), Cash in an amount equal to the difference between the Daily Conversion Value on such Trading Day and $50.00; or (c) if the Company elects a Cash Percentage of less than 100% pursuant to Section 10.03(d), (i) Cash in an amount equal to the product of (x) the difference between the Daily Conversion Value on such Trading Day and $50.00 and (y) the Cash Percentage, plus (ii) a number of shares of Common Stock equal to the product of

(x) (A) the difference between the Daily Conversion Value on such Trading Day and $50.00, divided by (B) the Daily VWAP for such Trading Day and (y) 100% minus the Cash Percentage.

"**Daily VWAP**" means, for each of the 20 consecutive Trading Days during the applicable Observation Period, the per share volume weighted average price of Common Stock as displayed on Bloomberg (or any successor service) page MU <equity>AQR in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, the Daily VWAP means the market value per share of Common Stock on such day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company. The "Daily VWAP" shall be determined without regard to after hours trading or any other trading outside of the regular trading session's trading hours.

"**Debt**" means, with respect to any Person, without duplication, all obligations (other than non-recourse obligations) of such Person for borrowed money or evidenced by bonds, debentures, notes or other similar instruments.

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



"**Depositary**" means DTC or the nominee thereof, or any successor thereto.

"**DTC**" means The Depository Trust Company, a New York corporation, and its successors.

"**DTC Legend**" means the legend set forth in Exhibit B.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

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

"**Freely Tradable**" means, with respect to the Notes and the shares of Common Stock issuable upon the conversion of the Notes, that such Notes and shares of Common Stock, if any, (a) are eligible to be sold by a Person who has not been an Affiliate of the Company during the preceding three months without any volume or manner of sale restrictions under the Securities Act, (ii) do not bear a Transfer Restricted Note Legend and (iii) with respect to Global Notes only, are identified by an unrestricted CUSIP number in the facilities of the applicable Depositary.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time.

"**Global Note**" means a Note in registered global form without interest coupons.

"**Holder**" means the registered holder of any Note.

"**Indenture**" means this indenture, as amended or supplemented from time to time.

"**Indirect Participant**" means an entity that, with respect to any Depositary, clears through or maintains a direct or indirect, custodial relationship with a Participant.

"**Initial Purchasers**" means Morgan Stanley & Co. LLC, Goldman, Sachs & Co., J.P. Morgan Securities LLC and the several other initial purchasers listed in Schedule I to the Purchase Agreement.

"**Interest Payment Date**" means February 15 and August 15 of each year, commencing August 15, 2013.

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



"**Maturity Date**" means February 15, 2033.

"**Notes**" has the meaning assigned to such term in the Recitals.

"**Observation Period**" with respect to any Note surrendered for conversion means:

(a) in the case of a conversion of a Note called for redemption pursuant to Section 3.02, the 20 consecutive Trading Day period beginning on, and including, the 22nd Scheduled Trading Day prior to the Redemption Date;

(b) except as addressed by (a) above, if the relevant Conversion Date occurs before the 24th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive Trading Day period beginning on, and including, the third Trading Day after such Conversion Date; and

(c) except as addressed by (a) above, if the relevant Conversion Date occurs on or after the 24th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive Trading Days beginning on, and including, the 22nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Offering Memorandum**" means the final offering memorandum, dated February 6, 2013, relating to the offering and sale of the Notes.

"**Officer**" means the chairman of the Board of Directors, the president or chief executive officer, any vice president, the chief financial officer, the treasurer or any assistant treasurer, or the secretary or any assistant secretary, of the Company.

"**Officers' Certificate**" means a certificate signed in the name of the Company (a) by the chairman of the Board of Directors, the president or chief executive officer or a vice president and (b) by the chief financial officer, the treasurer or any assistant treasurer or the secretary or any assistant secretary.

"**Opinion of Counsel**" means a written opinion signed by legal counsel, who may be an employee of or counsel to the Company, satisfactory to the Trustee.

"**Participant**" means a Person who has an account with the Depositary.

"**Paying Agent**" refers to a Person engaged to perform the obligations of the Trustee in respect of payments made or funds held hereunder in respect of the Notes.

"**Person**" means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, including a government or political subdivision or an agency or instrumentality thereof.

"**principal**" of any Debt (including the Notes) means the principal amount of such Debt (or if such Debt was issued with original issue discount, the face amount of such Debt less the remaining unamortized portion of the original issue discount of such Debt), together with, unless the context otherwise indicates, any premium then payable on such Debt.



"**Purchase Agreement**" means the Purchase Agreement, dated February 6, 2013, among the Company and the Initial Purchasers relating to the purchase of the Notes by the Initial Purchasers.

"**Redemption Date**" means the date specified for redemption of the Notes in accordance with the terms of the Notes and Article 11.

"**Regular Record Date**" for the interest payable on any Interest Payment Date means the February 1 or August 1 next preceding such Interest Payment Date.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer of the trustee within the Corporate Trust Office of the Trustee who has direct responsibility for the administration of this indenture and shall also mean any other officer of the Trustee to whom any corporate trust matter is referred because of such person's knowledge and familiarity with the particular subject matter.

"**Rule 144**" means Rule 144 promulgated under the Securities Act or any successor to such Rule.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act or any successor to such Rule.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

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

"**Subsidiary**" means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Securities is owned, directly or indirectly, by, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof).

"**Termination of Trading**" means the Common Stock, or other Capital Stock into which the Notes are then convertible, is not listed for trading on a United States national securities exchange or approved for quotation on a U.S. system of automated dissemination of quotations of securities prices similar to The NASDAQ Global Select Market prior to its designation as a national securities exchange.

"**Trading Day**" means, with respect to Common Stock or any other security, a day during which (a) trading in Common Stock or such other security generally occurs on The NASDAQ Global Select Market or, if the Common Stock is not then listed on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange, if any, on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market, if any, on which the Common Stock



is then admitted for trading, (b) there is no Market Disruption Event and (c) a Closing Price for Common Stock or such other security (other than a Closing Price referred to in the next to last sentence of such definition) is available on such securities exchange or market; *provided* that if Common Stock or such other security is not admitted for trading or quotation on or by any exchange, market, bureau or other organization, "Trading Day" will mean any Business Day.

"**Trading Price**" means, on any date of determination, the average of the secondary market bid quotations obtained by the Trustee for $5.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. Any such determination will be conclusive absent manifest error. If the Trustee cannot reasonably obtain at least one bid for $5.0 million principal amount of Notes

from a U.S. nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of relevant Notes will be deemed to be less than 98% of the product of the Closing Price of the Common Stock and the then Applicable Conversion Rate for the Notes.

"**Transfer Restricted Global Note**" means a Global Note that is a Transfer Restricted Note.

"**Transfer Restricted Note**" means a Note that is subject to resale restrictions pursuant to the Securities Act.

"**Transfer Restricted Note Legend**" means the legend set forth in Exhibit C.

"**Trustee**" means the party named as such in the first paragraph of this Indenture or any successor trustee under this Indenture pursuant to Article 7.

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

"**Unrestricted Global Note**" means a Global Note that is not a Transfer Restricted Note.

"**Unrestricted Note**" means a Note that is not a Transfer Restricted Note.

"**Voting Securities**" means, with respect to any Person, securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

*Section 1.02. Other Definitions*.

| Term | Defined in Section |
|---|---|
| "Act" | 13.01(b) |
| "Additional Interest" | 6.15(a) |
| "Bankruptcy Default" | 6.01(h) |
| "beneficial owner" | 3.01(a) |
| "Cash Percentage" | 10.03(d) |



| Term | Defined in Section |
|---|---|
| "Company Order" | 2.02 |
| "Conversion Agent" | 2.03 |
| "Conversion Date" | 10.02(a) |
| "Conversion Obligation" | 10.01(a) |
| "Conversion Rate" | 10.01(a) |
| "Conversion Trigger Price" | 10.01(c) |
| "Daily Settlement Amount" | 10.03(b) |
| "Defaulted Interest" | 12.02 |
| "Disposition Event" | 10.09 |
| "Distributed Assets" | 10.07(c) |
| "Effective Date" | 10.10(b) |
| "Event of Default" | 6.01 |
| "Expiration Date" | 10.07(e) |
| "Free Trade Date" | 6.15(b) |
| "Fundamental Change Repurchase Date" | 3.01(a) |
| "Fundamental Change Repurchase Price" | 3.01(a) |
| "Fundamental Change Repurchase Notice" | 3.01(c) |
| "group" | 3.01(a) |
| "Last Original Issuance Date" | 6.15(b) |
| "Legal Holiday" | 13.06 |
| "Make-Whole Change in Control" | 10.10(a) |
| "Make-Whole Shares" | 10.10(a) |
| "Merger Event" | 10.09 |
| "Optional Repurchase Date" | 3.02(a) |
| "Optional Repurchase Price" | 3.02(a) |
| "Optional Repurchase Notice" | 3.02(c) |
| "Paying Agent" | 2.03 |
| "person" | 3.01(a) |
| "Primary Registrar" | 2.03 |
| "Redemption Price" | 11.01(b) |
| "Reference Period" | 10.07(c) |
| "Reference Property" | 10.09 |
| "Register" | 2.03 |
| "Registrar" | 2.03 |
| "Repurchase Date" | 3.03(a) |
| "Repurchase Notice" | 3.03(a) |
| "Repurchase Price" | 3.03(a) |
| "Rights" | 10.20 |
| "Settlement Amount" | 10.03(a) |
| "Shareholders Rights Plan" | 10.20 |
| "Special Record Date" | 12.02(a) |
| "Spin-Off" | 10.07(c) |

| | |
|---|---|
| "Stock Price" | 10.10(b) |
| "Trading Price Condition" | 10.01(b) |



| Term | Defined in Section |
|---|---|
| "Trigger Event" | 10.08 |
| "Unit of Reference Property" | 10.09 |

*Section 1.03. Rules of Construction*. Unless the context otherwise requires or except as otherwise expressly provided,

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

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

(d) all references to Sections or Articles or Exhibits refer to Sections or Articles or Exhibits of or to this Indenture unless otherwise indicated;

(e) references to agreements or instruments, or to statutes or regulations, are to such agreements or instruments, or statutes or regulations, as amended from time to time (or to successor statutes and regulations);

(f) in the event that a transaction meets the criteria of more than one category of permitted transactions or listed exceptions the Company may classify such transaction as it, in its sole discretion, determines;

(g) "or" is not exclusive;

(h) "including" means including, without limitation; and

(i) words in the singular include the plural, and words in the plural include the singular.

*Section 1.04. Payments due on non-Business Days*. Notwithstanding anything herein to the contrary, any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day.

## ARTICLE 2

## THE NOTES

*Section 2.01. Form, Dating and Denominations; Legends.* (a) The Notes and the Trustee's certificate of authentication will be substantially in the form attached as Exhibit A. The terms and provisions contained in the form of the Note annexed as Exhibit A constitute and are hereby expressly made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, rules of or agreements with national securities exchanges to which the Company is subject, or usage. Each Note will be dated the date of its authentication.



The Notes will be issuable only in denominations of $1,000 in principal amount and any integral multiple thereof.

(b) *Global Notes in General*. Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, purchases, conversions or issuances of such Notes. Any adjustment of the aggregate principal amount of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.06 and shall be made on the records of the Trustee and the Depositary.

Agent Members shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary or under the Global Note, and the Depositary (including, for this purpose, its nominee) may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) 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 Depositary or (ii) 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 Note.

(c) *Book-Entry Provisions*. The Company shall execute and the Trustee shall, in accordance with this Section 2.01(c), authenticate and deliver initially one or more Global Notes that (i) shall be registered in the name of the Depositary, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (iii) shall bear a legend substantially to the effect set forth in Exhibit B.

(d) *Transfer Restricted Note Legend*. All Transfer Restricted Notes shall bear the Transfer Restricted Note Legend.

*Section 2.02. Execution and Authentication*. An Officer shall sign the Notes for the Company by manual or facsimile signature. Typographic errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Note which has been authenticated and delivered by the

Trustee.

If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee signs manually the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall authenticate and make available for delivery Notes for original issue on the date hereof in the aggregate principal amount of $300,000,000 upon receipt of a written order or orders of the Company signed by an Officer of the Company (each, a "**Company Order**"). The Company Order shall specify the amount of Notes to be authenticated, shall provide that all such



Notes will be represented by a Global Note and the date on which each original issue of Notes is to be authenticated. The initial aggregate principal amount of Notes outstanding at any time may not exceed $300,000,000 except as provided in Section 2.07.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent shall have the same rights as an Agent to deal with the Company or an Affiliate of the Company.

The Notes shall be issuable only in registered form without coupons and only in denominations of $1,000 principal amount and any integral multiple thereof.

*Section 2.03. Registrar, Paying Agent and Conversion Agent*. The Company shall maintain one or more offices or agencies where Notes may be presented for registration of transfer or for exchange (each, a "**Registrar**"), one or more offices or agencies where Notes may be presented for payment (each, a "**Paying Agent**"), one or more offices or agencies where Notes may be presented for conversion (each, a "**Conversion Agent**") and one or more offices or agencies where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will at all times maintain a Paying Agent, Conversion Agent, Registrar and an office or agency where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served in the United States. One of the Registrars (the "**Primary Registrar**") shall keep a register of the Notes and of their transfer and exchange (the "**Register**").

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent, Conversion Agent or agent for service of notices and demands in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent (except for the purposes of Article 8).

The Company hereby initially designates the Trustee as Paying Agent, Registrar, and Conversion Agent, and each of the Corporate Trust Office of the Trustee and the office or agency of the Trustee in the United States (located at c/o U.S. Bank Association, Corporate Trust Services, 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, Tel. (213) 615-6043, Attention: Paula Oswald (Micron 2033F Indenture)), one such office or agency of the Company for each of the aforesaid purposes.

*Section 2.04. Paying Agent to Hold Money in Trust*. Prior to 12:00 p.m., New York City time, on each date on which the principal amount of or interest (including Additional Interest), if any, on any Notes is due and payable, the Company shall deposit with a Paying Agent a sum sufficient to pay such principal amount or interest (including Additional Interest), if any, so becoming due. A Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal amount of or interest (including Additional Interest), if any, on the Notes, and shall notify the Trustee of any default



by the Company (or any other obligor on the Notes) in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 12:00 p.m., New York City time, on each date on which a payment of the principal amount of or interest (including any Additional Interest) on any Notes is due and payable, segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

*Section 2.05. Holder Lists*. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Primary Registrar, the Company shall furnish to the Trustee on or before 10 Business Days prior to the Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

*Section 2.06. Transfer and Exchange*. Subject to compliance with any applicable additional requirements contained in Section 2.13, when a Note is presented to a Registrar with a request to register a transfer thereof or to exchange such Note for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met; *provided* that every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form in the form included in Exhibit A, and in form satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Note for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.03, the Company shall execute and the Trustee shall authenticate Notes of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without service charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax,

assessment or other governmental charge that may be imposed in relation thereto; *provided* that this sentence shall not apply to any exchange pursuant to Section 2.10, Section 3.05, Section 9.03(b) or Section 11.06 not involving any transfer.

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

Any Registrar appointed pursuant to Section 2.03 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly



required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

*Section 2.07. Replacement Notes*. If any mutilated Note is surrendered to the Company, a Registrar or the Trustee, or the Company, a Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company, the applicable Registrar and the Trustee such security or indemnity as will be required by them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Note has been acquired by a protected purchaser, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

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

Upon the issuance of any new Notes under this Section 2.07, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.

Every new Note issued pursuant to this Section 2.07 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Note 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 Notes duly issued hereunder.

The provisions of this Section 2.07 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

*Section 2.08. Outstanding Notes*. Notes outstanding at any time are all Notes authenticated by the Trustee, except for those canceled by it, those converted pursuant to Article 10, those delivered to it for cancellation or surrendered for transfer or exchange and those described in this Section 2.08 as not outstanding.

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Company receives proof satisfactory to it that the replaced Note is held by a protected purchaser (as defined in Section 8-303 of the New York Uniform Commercial Code).

If a Paying Agent holds at 12:00 p.m., New York City time, on the Maturity Date Cash sufficient to pay the principal amount of the Notes payable on that date, then on and after the Maturity Date, such Notes shall cease to be outstanding and the principal amount thereof shall cease to bear interest.



Subject to the restrictions contained in Section 2.09, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

*Section 2.09. Treasury Notes*. In determining whether the Holders of the required principal amount of Notes have concurred in any notice, direction, waiver or consent, Notes owned by the Company or any other obligor on the Notes or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Notes which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Company or any other obligor on the Notes or any Affiliate of the Company or of such other obligor.

*Section 2.10. Temporary Notes*. Until definitive Notes are ready for delivery, the Company may prepare and execute, and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, temporary Notes. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Company with the consent of the Trustee considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate and deliver definitive Notes in exchange for temporary Notes.

*Section 2.11. Cancellation*. The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee or its agent any Notes surrendered to them for transfer, exchange, payment or conversion. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Notes surrendered for transfer, exchange, payment, conversion or cancellation and upon written request of the Company shall deliver evidence of the canceled Notes to the Company.

*Section 2.12. CUSIP Numbers*. The Company in issuing the Notes may use one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of purchase 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 Notes or as contained in any notice of a purchase and that reliance may be placed only on the other identification numbers printed on the Notes, and any such purchase shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

*Section 2.13. Additional Transfer and Exchange Requirements*. (a) If Notes are issued upon the transfer, exchange or replacement of Notes subject to restrictions on transfer and bearing the Transfer Restricted Note Legend, or if a request is made to remove the Transfer Restricted Note Legend on a Note, the Notes so issued shall bear the Transfer Restricted Note Legend, or the Transfer Restricted Note Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel if requested by the Company or such Registrar, as may be reasonably required by the Company and the Registrar, that neither the Transfer Restricted Note



Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 or that such Notes are not "restricted" within the meaning of Rule 144; provided that no such evidence need be supplied in connection with the sale of such Note pursuant to a registration statement that is effective at the time of such sale. Upon (i) provision of such satisfactory evidence if requested, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Note pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Note that does not bear the Transfer Restricted Note Legend. If the Transfer Restricted Note Legend is removed from the face of a Note and the Note is subsequently held by an Affiliate of the Company, the Transfer Restricted Note Legend shall be reinstated.

(b) No transfer of a Note to any Person shall be effective under this Indenture or the Notes unless and until such Note has been registered in the name of such Person.

(c) The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures.

(i) Beneficial interests in any Transfer Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Note in accordance with the transfer restrictions set forth in the Transfer Restricted Note Legend. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same or any other Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.13(c)(i).

(ii) In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.13(c)(i), the transferor of such beneficial interest must deliver to the Registrar an order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase.

(iii) A beneficial interest in any Transfer Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Transfer Restricted Global Note if the transfer complies with the requirements of Section 2.13(c)(ii) and the Registrar receives a duly executed certificate substantially in the form of Exhibit D hereto.

(iv) A beneficial interest in any Transfer Restricted Global Note may be exchanged for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if (1) the exchange or transfer complies with the requirements of Section 2.13(c)(ii) and (2) if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form



reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Transfer Restricted Note Legend are no longer required in order to maintain compliance with the Securities Act.

(d) The restrictions imposed by the Transfer Restricted Note Legend upon the transferability of any Note shall cease and terminate when such Note has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(d) under the Securities Act (or any successor provision). Any Note as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Note for exchange to the Registrar in accordance with the provisions of this Section 2.13 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 (or any successor provision), by, if requested, an Opinion of Counsel reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Note has been made in compliance with Rule 144 (or such successor provision), be exchanged for a new Note, of like tenor and aggregate principal amount, which shall not bear the Transfer Restricted Note Legend.

(e) As used in Section 2.13(c) and (d), the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Note.

(f) This Section 2.13(f) shall apply only to Global Notes:

(i) Notwithstanding any other provisions of this Indenture or the Notes, a Global Note shall not be exchanged in whole or in part for a Note registered in the name of any Person other than the Depositary or one or more nominees thereof, provided that a Global Note may be exchanged for Notes registered in the names of any person designated by the Depositary in the event that (A) the Depositary has notified the Company that it

is unwilling or unable to continue as Depositary for such Global Note or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days, (B) the Company has provided the Depositary with written notice that it has decided to discontinue use of the system of book-entry transfer through the Depositary or any successor Depositary or (C) an Event of Default has occurred and is continuing. Any Global Note exchanged pursuant to clauses (A) or (B) above shall be so exchanged in whole and not in part, and any Global Note exchanged pursuant to clause (C) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; provided that any such Note so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Note.

(ii) Notes issued in exchange for a Global Note or any portion thereof shall be issued in definitive, fully-registered book entry form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Note or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global



Note to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Note to be exchanged in part, either such Global Note shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Note, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Note issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(iii) Subject to the provisions of clause (v) below, the registered Holder 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 Notes.

(iv) In the event of the occurrence of any of the events specified in clause (i) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Notes in definitive, fully registered form, without interest coupons.

(v) Neither Agent Members nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Note 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 Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Note. Neither the Trustee nor any Agent Member shall have any responsibility or liability for any actions taken or not taken by the Depositary.

## ARTICLE 3

## REPURCHASES

*Section 3.01. Repurchase at the Option of the Holders Upon Change in Control or Termination of Trading.* (a) Upon the occurrence of a Change in Control or a Termination of Trading, each Holder shall have the right, at such Holder's option, subject to the terms and conditions of this Article 3, to require the Company to repurchase for Cash all or any portion of such Holder's Notes in integral multiples of $1,000 principal amount at a price (the "**Fundamental Change Repurchase Price**") equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the Fundamental Change Repurchase Date; *provided* that if the Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, the interest accrued to the Interest Payment Date will be paid to Holders of the Notes as of the preceding Regular Record Date, and the Fundamental Change Repurchase



Price shall be equal to the principal amount of Notes subject to repurchase. Upon a valid exercise of such an option, the Company will be required to repurchase the Notes on a date selected by the Company (the "**Fundamental Change Repurchase Date**"), which shall be no earlier than 20 days or later than 35 days after the date on which the Company sends the notice contemplated by Section 3.01(b), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.01(c).

A "**Change in Control**" shall be deemed to have occurred at such time as any of the following events shall occur:

(i) any person or group, other than the Company, its Subsidiaries or any employee benefit plan of the Company or its Subsidiaries, files a Schedule 13D or Schedule TO (or any successor schedule, form or report) pursuant to the Exchange Act disclosing that such person has become the direct or indirect beneficial owner of shares with a majority of the total voting power of all of the Company's outstanding Voting Securities, unless such beneficial ownership (a) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (b) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act;

(ii) the Company consolidates with or merges with or into another person (other than a Subsidiary of the Company) and the outstanding Voting Securities of the Company are reclassified into, converted for or converted into the right to receive any other property or security, or the Company sells, conveys, transfers or leases all or substantially all of its properties and assets to any Person (other than a Subsidiary of the Company); *provided* that none of these circumstances will be a Change in Control if persons that beneficially own the Voting Securities of the Company immediately prior to the transaction own, directly or indirectly, a majority of the Voting Securities of the surviving or transferee person, or the direct or indirect parent thereof, immediately after the transaction in substantially the same proportion as their ownership of the Company's Voting Securities immediately prior to the transaction; or

(iii) the holders of Common Stock approve any plan or proposal for the liquidation or dissolution of the Company.

For purposes of defining a Change in Control:

(A) the term "**person**" and the term "**group**" have the meanings given by Section 13(d) and 14(d) of the Exchange Act or any successor provisions;

(B) the term "**group**" includes any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act or any successor provision; and

(C) the term "**beneficial owner**" is determined in accordance with Rules 13d-3 and 13d-5 under the Exchange Act or any successor provisions, except that a person will be deemed to have beneficial ownership of all shares that person has the right to acquire irrespective of whether that right is exercisable immediately or only after the passage of time.



Notwithstanding the foregoing, it will not constitute a Change in Control if at least 90% of the consideration for Common Stock (excluding Cash payments for fractional shares and Cash payments made in respect of dissenters' appraisal rights) in the transaction or transactions constituting the Change in Control consists of Common Stock traded on a United States national securities exchange, or which will be so traded when issued or exchanged in connection with the Change in Control, and as a result of such transaction or transactions the Notes become convertible solely into the consideration that holders of Common Stock receive in such transaction, other than any Cash in lieu of fractional shares.

(b) On or before the 15th day after the occurrence of a Change in Control or Termination of Trading, the Company will deliver a written notice of Change in Control or Termination of Trading, as applicable, to the Trustee and to each Holder at their addresses shown in the register of the Registrar (and to beneficial owners as required by applicable law). The notice shall include a form of Fundamental Change Repurchase Notice to be completed by the Holder and shall state:

(i) the events causing a Change in Control or Termination of Trading, as applicable;

(ii) the date of such Change in Control or Termination of Trading, as applicable;

(iii) the last date on which the repurchase right may be exercised;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

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

(vii) the then current Applicable Conversion Rate and any adjustments thereto;

(viii) whether a Change in Control constitutes a Make-Whole Change in Control;

(ix) that Notes with respect to which a Fundamental Change Repurchase Notice is given by the Holder may be converted pursuant to Article 10 hereof only if the Fundamental Change Repurchase Notice has been withdrawn in accordance with the terms of this Indenture; and

(x) the procedures a Holder must follow to exercise rights under this Section 3.01.

(c) A Holder may exercise its rights specified in Section 3.01 by delivery of a written notice (a "**Fundamental Change Repurchase Notice**") to the Paying Agent at any time



prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date. The Fundamental Change Repurchase Notice shall state:

(i) if Certificated Notes have been issued, the certificate number of the Notes (or if the Holder's Notes are Global Notes, such Holder's notice must comply with the Applicable Procedures);

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

(iii) that such Notes shall be repurchased by the Company pursuant to the terms and conditions specified in this Article 3.

The delivery of such Note to the Paying Agent prior to, on or after the Fundamental Change Repurchase Date (together with all necessary endorsements and compliance by the Holder with the Applicable Procedures) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Fundamental Change Repurchase Price therefor; *provided*, *however*, that such Repurchase Price shall be so paid pursuant to this Section 3.01 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Fundamental Change Repurchase Notice.

The Company shall repurchase from the Holder thereof, pursuant to this Section 3.01, a portion of a Note if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of such portion of such Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.01 shall be consummated by the delivery of the consideration to be received by the Holder (together with accrued and unpaid interest (including any Additional Interest) to but not including the Fundamental Change Repurchase Date) on or prior to the later of the Fundamental Change Repurchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 3.01.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 3.01(c) shall have the right to withdraw such Fundamental Change Repurchase Notice at any time prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.03(b).

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

No Notes may be repurchased by the Company at the option of Holders upon a Change in Control or a Termination of Trading if the principal amount of the Notes has been accelerated (other than as a result of a default in the payment of the Fundamental Change Repurchase Price with respect to the Notes), and such acceleration has not been rescinded, on or prior to the date on which such repurchase is to be consummated. The Paying Agent will promptly return to the



respective Holders thereof any Notes (x) with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of acceleration described in the immediately preceding sentence in which case, upon such return, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

*Section 3.02. Repurchase of Securities by the Company at the Option of Holders*.

(a) On each of February 15, 2020 and February 15, 2023 (each, an "**Optional Repurchase Date**"), each Holder shall have the right, at such Holder's option, subject to the terms and conditions of this Article 3, to require the Company to repurchase for Cash all or any portion of such Holder's Notes in integral multiples of $1,000 principal amount at a price (the "**Optional Repurchase Price**") equal to 100% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the applicable Optional Repurchase Date; *provided* that if such Optional Repurchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, the interest accrued to the Interest Payment Date will be paid to Holders of the Notes as of the preceding Regular Record Date, and the Optional Repurchase Price shall be equal to the principal amount of Notes subject to repurchase.

(b) On or before the 20th Business Day prior to each Optional Repurchase Date, the Company shall deliver or cause to be delivered to all Holders of record on such date at their addresses shown in the Register of the Registrar (and to beneficial owners as required by applicable law) an Optional Repurchase Notice as set forth in Section 3.02(c). No failure of the Company to give the foregoing notices and no defect therein shall limit the repurchase rights of Holders or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.02.

(c) For Notes to be so repurchased at the option of the Holder, the Holder must deliver to the Paying Agent, at any time during the period beginning at 9:00 a.m., New York City time, on the date that is 20 Business Days prior to the applicable Optional Repurchase Date and ending at the Close of Business on the Business Day immediately preceding such Optional Repurchase Date, (i) a notice (the "**Optional Repurchase Notice**") in the form set forth on the reverse of the Notes duly completed (if the Notes are certificated) or comply with Applicable Procedures (if the Notes are represented by a Global Note) together with (ii) such Notes duly endorsed for transfer (if the Notes are certificated) or book-entry transfer of such Notes (if such Notes are represented by a Global Note). The delivery of such Notes to the Paying Agent with, or at any time after delivery of, the Optional Repurchase Notice (together with all necessary endorsements), at the office of the Paying Agent shall be a condition to the payment by the Company to the Holder of the Optional Repurchase Price, therefor; *provided* that such Optional Repurchase Price shall be so paid pursuant to this Section 3.02 only if the Notes so delivered to the Paying Agent shall conform in all respects to the description thereof in the Optional Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Notes for repurchase shall be determined in good faith by the Company, whose determination shall be final and binding absent manifest error. The Optional Repurchase Notice, shall state:



(i) the certificate numbers of the Notes to be repurchased, if they are Certificated Notes;

(ii) the portion of the principal amount of a Holder's Notes to be repurchased, which must be in integral multiples of $1,000 principal amount; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture.

(d) The Company shall repurchase from the Holder thereof, pursuant to this Section 3.02, a portion of a Note, if the principal amount of such portion is in integral multiples of $1,000 principal amount.

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

(f) Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.02 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the applicable Optional Repurchase Date and the time of the book-entry transfer or delivery of the Notes, as the case may be.

*Section 3.03. Effect of Repurchase Notice*. (a) Upon receipt by the Paying Agent of the Fundamental Change Repurchase Notice specified in Section 3.01(c) or the Optional Repurchase Notice specified in Section 3.02(c) (each of the foregoing, a "**Repurchase Notice**"), the Holder of the Note in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is withdrawn as specified in this Section 3.03) thereafter be entitled to receive solely the Fundamental Change Repurchase Price or Optional Repurchase Price (each of the foregoing, a "**Repurchase Price**"), as applicable, and any accrued and unpaid interest (including any Additional Interest) to but not including the Fundamental Change Repurchase Date or Optional Repurchase Date (each of the foregoing, a "**Repurchase Date**"), as applicable, with respect to such Note. Such Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on or prior to the later of (x) the Repurchase Date with respect to such Note (*provided* the conditions in Section 3.01(c) or Section 3.02(c), as applicable, have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01(c) or Section 3.02(c), as applicable. Notes in respect of which a Repurchase Notice has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Repurchase Notice unless such Repurchase Notice has first been validly withdrawn as specified in this Section 3.03.

(b) A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent at any time prior to the Close of Business on the Business Day immediately preceding the Repurchase Date. If a Repurchase Notice is withdrawn, the Company will not be obligated to repurchase such Notes listed in the Repurchase Notice. Such notice of withdrawal shall state:

(i) the principal amount being withdrawn;



(ii) if Certificated Notes are to be withdrawn, the certificate numbers of the Notes being withdrawn (or, if Global Notes or a portion thereof are to be withdrawn, such Holder's notice must comply with the Applicable Procedures);

(iii) the principal amount, if any, of the Notes that remain subject to a Repurchase Notice, which must be $1,000 or whole multiples thereof.

*Section 3.04. Deposit of Repurchase Price*. Prior to 12:00 p.m., New York City time, on or prior to the Repurchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary of the Company or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Trading Day) sufficient to pay the aggregate Repurchase Price of all the Notes or portions thereof which are to be repurchased as of the Repurchase Date.

If the Paying Agent holds money sufficient to pay the Repurchase Price with respect to the Notes to be repurchased on the Repurchase Date in accordance with the terms of this Indenture, then, immediately on and after the Repurchase Date, those Notes shall cease to be outstanding, interest (including any Additional Interest) on such Notes shall cease to accrue, whether or not the Notes are delivered to the Paying Agent, and all other rights of the Holders of such Notes shall terminate, other than the right to receive the Repurchase Price upon delivery of such Notes.

*Section 3.05. Notes Repurchased in Part*. Any Note which is to be repurchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Note, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not repurchased.

*Section 3.06. Covenant to Comply with Securities Laws upon Repurchase of Notes*. In connection with any repurchase upon the occurrence of a Change in Control or in connection with the Optional Repurchase Date to the extent required by applicable law, the Company shall:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable;

(b) file a Schedule TO or any other schedule required in connection with any offer by the Company to repurchase the Notes; and

(c) otherwise comply with all federal and state securities laws as necessary to effect a repurchase of Notes by the Company at the option of Holder.



## ARTICLE 4

## COVENANTS

*Section 4.01. Payment of Notes*. (a) The Company agrees to pay the principal of and interest (including any Additional Interest) on the Notes on the dates and in the manner provided in the Notes and this Indenture. Not later than 12:00 p.m. New York City time, on the due date of any principal of or interest (including any Additional Interest) on any Notes, or any Repurchase Date or Redemption Date, as the case may be, the Company will deposit with the Trustee (or Paying Agent) money in immediately available funds sufficient to pay the amounts then due; *provided* that if the Company or any Affiliate of the Company is acting as Paying Agent, it will, on or before each due date, segregate and hold in a separate trust fund for the benefit of the Holders a sum of money sufficient to pay such amounts until paid to such Holders or otherwise disposed of as provided in this Indenture. In each case the Company will promptly notify the Trustee of its compliance with this paragraph.

(b) An installment of principal or interest (including any Additional Interest) will be considered paid on the date due if the Trustee (or Paying Agent, other than the Company or any Affiliate of the Company) holds on that date money designated for and sufficient to pay the installment. If the Company or any Affiliate of the Company acts as Paying Agent, an installment of principal or interest (including any Additional Interest) will be considered paid on the due date only if paid to the Holders.

(c) The Company agrees to pay interest on overdue principal, and, to the extent lawful, overdue installments of interest at the rate per annum specified in the Notes.

(d) Payments in respect of the Notes represented by the Global Notes are to be made by wire transfer of same-day funds to the Depositary for the purpose of permitting such party to credit the payments received by it in respect of such Global Note to the accounts of the beneficial owners thereof. With respect to Certificated Notes, the Company will make all payments in same-day funds by transfer to an account maintained by the payee located inside the United States, if the Trustee shall have received proper wire transfer instructions from such payee not later than the related Regular Record Date or, if no such instructions have been received by check drawn on a bank in the United States mailed to the payee at its address set forth on the Registrar's books.

*Section 4.02. Maintenance of Office or Agency*. The Company will maintain in the United States, an office or agency where Notes may be surrendered for registration of transfer or exchange or for presentation for payment and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company hereby initially designates the Corporate Trust Office of the Trustee as such office of the Company. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served to the Trustee.



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

*Section 4.03. Existence*. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and the existence, rights and franchises of the Company; *provided* that the Company is not required to preserve any such right or franchise if the preservation thereof is no longer desirable in the conduct of the business of the Company; *provided*, *further*, that this Section does not prohibit any transaction otherwise permitted by Section 5.01.

*Section 4.04. Reports; 144A Information*. (a) The Company shall deliver to the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the Company's annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; *provided* that any such information, documents or reports filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system shall be deemed to be filed with the Trustee.

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

(c) If, at any time that any of the Notes are "restricted securities" within the meaning of Rule 144 under the Securities Act, the Company is not subject to the reporting requirements of the Exchange Act, the Company shall, upon the request of a Holder, beneficial owner or prospective purchaser of the Notes or any shares of Common Stock issuable upon conversion of the Notes, promptly furnish such Holder, beneficial owner or prospective purchaser the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of the Notes pursuant to Rule 144A.

*Section 4.05. Reports to Trustee*. The Company will deliver to the Trustee:

(a) within 120 days after the end of each fiscal year commencing August 31, 2012 a certificate from the principal executive, financial or accounting officer of the Company stating that the officer has conducted or supervised a review of the activities of the Company and its performance under this Indenture and that, based upon such review, no Default exists hereunder or, if there has been a Default, specifying the Default and its nature and status.

(b) promptly and in any event within 30 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of the Default, and the action which the Company proposes to take with respect thereto.



*Section 4.06. Stay, Extension and Usury Laws*. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture, and the Company (in each case, to the extent that it may lawfully do so) hereby covenants that it will not, by resort to any such law to the extent it would 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 5

## CONSOLIDATION, MERGER, SALE OR LEASE OF ASSETS

*Section 5.01. Consolidation, Merger, Sale or Lease of Assets by the Company*. (a) The Company may consolidate with or merge into any Person or convey, transfer or lease its properties and assets substantially as an entirety to another Person (other than a Subsidiary of the Company) only if:

(i) the resulting, surviving or transferee Person (if other than the Company) is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(ii) such corporation (if other than the Company) assumes all of the obligations of the Company under the Notes and this Indenture;

(iii) immediately after giving effect to the transaction, no Event of Default and no Default has occurred and is continuing; and

(iv) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and the supplemental indenture (if any) comply with this Indenture.

(b) Upon the consummation of any transaction effected in accordance with these provisions, if the Company is not the resulting, surviving or transferee Person, the resulting, surviving or transferee Person shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such successor Person had been named as the Company in this Indenture. Upon such substitution, except in the case of a lease, unless the successor is one or more of the Company's Subsidiaries, the Company will be released from its obligations under the Notes and this Indenture.

## ARTICLE 6

## DEFAULT AND REMEDIES

*Section 6.01. Events of Default*. An "**Event of Default**" occurs with respect to the Notes if:



(a) the Company defaults in payment of the principal or any Repurchase Price or Redemption Price with respect to any Note, when such becomes due and payable upon required purchase, upon declaration or otherwise;

(b) the Company defaults in payment of any interest (including any Additional Interest) due on any Note when the same becomes due and payable, and such default continues for a period of 30 days;

(c) the Company fails to issue any notice of a Termination of Trading or a Change in Control as required under Section 3.01(b) of this Indenture or a Make-Whole Change in Control that does not constitute a Change in Control as required under Section 10.10(a) of this Indenture, and such default continues for a period of three Business Days;

(d) the Company fails to comply with its obligation to convert the Notes into Cash up to the aggregate principal amount of the Notes to be converted and shares of Common Stock, Cash or a combination thereof in respect of the remainder, if any, as described in Section 10.03, upon exercise of a Holder's right to convert its Notes pursuant to Article 10;

(e) the Company fails to comply with any of its other covenants or agreements in the Notes or this Indenture and fails to cure (or obtain a waiver of) such default, within 60 days after the Company receives a notice of such default by the Trustee or by Holders of not less than 25% in aggregate principal amount of the Notes then outstanding;

(f) (1) the Company fails to make any payment at maturity (after giving effect to any applicable grace period) of any Debt of the Company in a principal amount in excess of $100,000,000 and continuance of such failure, or (2) the acceleration of Debt of the Company in an amount in excess of $100,000,000 because of a default with respect to such Debt without such Debt having been discharged or such acceleration having been cured, waived, rescinded or annulled within a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding; *provided* that if any such failure or acceleration referred to in (1) or (2) above shall cease or be cured, waived, rescinded or annulled, then the resulting Event of Default shall be deemed not to have occurred;

(g) the Company, pursuant to or under or within the meaning of any Bankruptcy Law, (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it; (iii) consents to the appointment of any receiver, trustee, assignee, liquidator, custodian or similar official of it or for any substantial part of its property; (iv) makes a general assignment for the benefit of its creditors; (v) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or (vi) consents to the filing of such petition or the appointment of or taking possession by any receiver, trustee, assignee, liquidator, custodian or similar official; or

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the Company in an involuntary case or proceeding, or adjudicates the Company insolvent or bankrupt; (ii) appoints any receiver, trustee, assignee,



liquidator, custodian or similar official of the Company or for any substantial part of its property; or (iii) orders the winding up or liquidation of the Company, and the order or decree remains unstayed and in effect for 30 days (an event of default specified in clause (g) or (h) a "**Bankruptcy Default**").

*Section 6.02. Acceleration*. If an Event of Default, other than a Bankruptcy Default and subject to Section 6.15 of this Indenture, occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in aggregate of the outstanding principal amount of the Notes, by written notice to the Company (and to the Trustee if the notice is given by the Holders), may, and the Trustee at the request of such Holders may, declare the principal of and accrued and unpaid interest (including any Additional Interest) on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal and interest (including any Additional Interest) will become immediately due and payable. If a Bankruptcy Default occurs, the principal of and

accrued and unpaid interest (including any Additional Interest) on the Notes then outstanding will become immediately due and payable automatically without any declaration or other act on the part of the Trustee or any Holder.

*Section 6.03. Other Remedies*. If an Event of Default occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of principal of and interest (including any Additional Interest) on the Notes or to enforce the performance of any provision of the Notes or this Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

*Section 6.04. Waiver of Past Defaults*. Except as otherwise provided in Section 6.07 and Section 9.02(b), Holders of a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may waive any existing or past Default or Event of Default and its consequences and rescind and annul a declaration of acceleration with respect to such Default or Event of Default and its consequences (other than an uncured default (a) in the payment of the principal amount with respect to any Note, accrued and unpaid interest (including any Additional Interest) with respect to any Note or the Repurchase Price or Redemption Price with respect to any Note, (b) in the payment or delivery of Cash and shares of Common Stock, if any, due upon conversion or the redemption of the Notes or (c) in respect of any provision that under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected) if:

(i) all existing Events of Default, other than the nonpayment of the principal of and interest (including any Additional Interest) on the Notes that have become due solely by the declaration of acceleration, have been cured or waived, and

(ii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

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



*Section 6.05. Control by Majority*. The Holders of a majority in aggregate principal amount of the outstanding Notes may 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. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction, and may take any other action it deems proper that is not inconsistent with any such direction received from Holders.

*Section 6.06. Limitation on Suits*. A Holder may not institute any proceeding, judicial or otherwise, with respect to this Indenture or the Notes, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture or the Notes, unless:

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

(ii) Holders of at least 25% in aggregate principal amount of outstanding Notes have made written request to the Trustee to institute proceedings in respect of the Event of Default in its own name as Trustee under this Indenture;

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

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

(v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction that is inconsistent with such written request.

*Section 6.07. Rights of Holders to Receive Payment*. Notwithstanding anything to the contrary, the right of a Holder of a Note to receive (w) payment of principal of or interest (including any Additional Interest) on its Note on the Maturity Date or the relevant Interest Payment Date, as the case may be, (x) payment of the Repurchase Price on the Repurchase Date, (y) payment of the Redemption Price on the Redemption Date and (z) delivery of Cash and shares of Common Stock, if any, upon conversion of such Note on the date specified in Section 10.02(b), or to bring suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates, may not be impaired or affected without the consent of that Holder.

*Section 6.08. Collection Suit by Trustee*. If an Event of Default in payment of principal or interest (including any Additional Interest) specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust for the whole amount of principal and accrued interest (including any Additional Interest) remaining unpaid, together with interest on overdue principal and, to the extent lawful, overdue installments of interest, in each case at the rate specified in the Notes, and such further amount as is sufficient to cover the costs and expenses of collection, including the reasonable



compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee hereunder.

*Section 6.09. Trustee May File Proofs of Claim*. The Trustee may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee hereunder) and the Holders allowed in any judicial proceedings relating to the Company or its creditors or property, and is entitled and empowered to collect, receive and distribute any money, securities or other property payable or deliverable upon conversion or exchange of the Notes or upon any such claims. Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the

Trustee, its agent and counsel, and any other amounts due the Trustee hereunder. Nothing in this Indenture will be deemed to empower the Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

*Section 6.10. Priorities*. If the Trustee collects any money or property pursuant to this Article, it shall pay out the money or property in the following order:

First: to the Trustee for all amounts due under Section 7.07 hereof;

Second: to Holders for amounts then due and unpaid for principal of and interest (including any Additional Interest) on the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest (including any Additional Interest);

Third: to Holders for other amounts then due and unpaid in respect of the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable in respect of the Notes; and

Fourth: to the Company or as a court of competent jurisdiction may direct.

The Trustee, upon written notice to the Company, may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Trustee shall send to each Holder and the Company a notice that states the record date, the payment date and the amount to be paid.

*Section 6.11. Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted a proceeding to enforce any right or remedy under this Indenture and the proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the proceeding, the Company, the Trustee and the Holders will be restored severally and respectively to their former positions



hereunder and thereafter all rights and remedies of the Company, the Trustee and the Holders will continue as though no such proceeding had been instituted.

*Section 6.12. Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by a Holder to enforce payment of (a) principal of or interest (including any Additional Interest) on any Note on the respective due dates, (b) the Change of Control Purchase Price on the Change of Control Repurchase Date, (c) the Redemption Price on the Redemption Date, (d) the Cash and shares of Common Stock, if any, due upon conversion of a Note or (e) a suit by Holders of more than 10% in principal amount of the outstanding Notes.

*Section 6.13. Rights and Remedies Cumulative*. No right or remedy conferred or reserved to the Trustee or to the Holders under this Indenture is intended to be exclusive of any other right or remedy, and all such rights and remedies are, to the extent permitted by law, cumulative and in addition to every other right and remedy hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or exercise of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or exercise of any other right or remedy.

*Section 6.14. Delay or Omission Not Waiver*. No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default will 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 6.15. Additional Interest; Failure to File*; *Delegending*. (a) Notwithstanding anything in this Article 6, the Company may, at its option, elect that the sole remedy for an Event of Default relating to its failure to comply with its obligations described under Section 4.04 or its failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act will for the first 180 days after the occurrence of such an Event of Default (which will be the 60th day after written notice is provided to the Company in accordance with Section 6.01(e)), consist exclusively of the right to receive additional interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes (the "**Additional Interest**"). If the Company elects to pay Additional Interest, such Additional Interest will be payable on all outstanding Notes from and including the date on which such Event of Default first occurs to but excluding the 181st day thereafter (or such earlier date on which the Event of Default relating to a failure to comply with such requirements has been cured or waived). On the 181st day after such Event of Default (if such violation is not cured or waived prior to such 181st day), the Notes will be subject to acceleration as provided in Section 6.02. In the event the Company does not elect to pay the Additional Interest upon any such Event of Default in accordance with this Section 6.15, the Notes will be subject to acceleration as provided in Section 6.02. This Section 6.15 shall not affect the rights of Holders if any other Event of Default occurs under this Indenture.



In order elect to pay the Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default relating to the failure to comply with the reporting obligations in accordance with the preceding paragraph, the Company shall notify all Holders and the Trustee and Paying Agent of such election in writing prior to the Close of Business on the date on which such Event of Default occurs. If the Company fails to timely give such notice, the Notes will be immediately subject to acceleration as provided in Section 6.02.

(b) If, at any time during the period beginning six months from the last date of original issuance of the Notes (including the last date of issuance of additional Notes pursuant to the exercise of the Initial Purchasers' option to purchase additional Notes) (such date, the "**Last Original Issuance Date**") and ending on the one-year anniversary of the Last Original Issuance Date (the "**Free Trade Date**"), the Company fails to make available adequate current public information in accordance with Rule 144(c) of the Securities Act, the Company shall pay Additional Interest on the Notes, accruing from and including the first day on which the Company fails to make available adequate current public information in accordance with Rule 144(c) and continuing until the earlier of (i) the Free Trade Date and (ii) the date on which the Company corrects such failure. During the first 90 days on which such

Additional Interest is payable, such Additional Interest shall accrue at a rate of 0.25% per annum; thereafter, such Additional Interest shall accrue at a rate of 0.50% per annum.

(c) In addition, if the Company fails to cause the Notes or any shares of Common Stock issuable upon conversion of the Notes to become Freely Tradable on and at all times after the Free Trade Date (or the next succeeding Business Day if the Free Trade Date is not a Business Day), the Company shall pay Additional Interest on the Notes accruing from and including the Free Trade Date and until the date on which the Notes and any shares of Common Stock issuable upon the conversion of the Notes become Freely Tradable. During the first 90 days on which such Additional Interest is payable, such Additional Interest will accrue at a rate of 0.25% per annum; thereafter, such Additional Interest will accrue at a rate of 0.50% per annum.

(d) Notwithstanding anything herein to the contrary, in no event will the combined rate of any Additional Interest payable under this Section 6.15 exceed 0.50% per annum.

(e) Additional Interest shall be payable at the same time, in the same manner and to the same Persons as ordinary interest.

(f) If the Company is required to pay Additional Interest to Holders, the Company shall provide a direction or order in the form of a written notice to the Trustee (and if the Trustee is not the Paying Agent, to the Paying Agent) of the Company's obligation to pay such Additional Interest no later than three Business Days prior to the date on which any such Additional Interest is scheduled to be paid. Such notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date and direct the Trustee (or, if the Trustee is not the Paying Agent, to the Paying Agent) to make payment to the extent it receives funds from the Company to do so. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine whether the Additional Interest is payable, or with



respect to the nature, extent or calculation of the amount of the Additional Interest owed, or with respect to the method employed in such calculation of the Additional Interest.

## ARTICLE 7

## THE TRUSTEE

*Section 7.01. General*. (a) The duties and responsibilities of the Trustee are as provided by the Trust Indenture Act and as set forth herein. Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to this Article.

(b) Except during the continuance of an Event of Default, the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee. In case an Event of Default has occurred and is continuing, the Trustee shall exercise those rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

*Section 7.02. Certain Rights of Trustee*. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) In the absence of bad faith on its part, the Trustee may rely, and will 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 Person. The Trustee need not investigate any fact or matter stated in the document, but, in the case of any document which is specifically required to be furnished to the Trustee pursuant to any provision hereof, the Trustee shall examine the document to determine whether it conforms to the form requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). The Trustee, in its discretion, may make further inquiry or investigation into such facts or matters as it sees fit.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel conforming to Section 13.05 and the Trustee will not be liable for any action it takes or omits to take in good faith in reliance on the certificate or opinion.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care.



(d) The Trustee will 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, unless such Holders have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(e) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the direction of the Holders in accordance with Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(f) The Trustee may consult with counsel, and the written advice of such counsel or any Opinion of Counsel will 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.

(g) No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, or in the exercise of its rights or powers, unless it receives indemnity satisfactory to it against any loss, liability or expense.

(h) Except with respect to Section 4.01, the Trustee shall have no duty to inquire as to performance of the Company with respect to the covenants contained in Article 4. In addition, the Trustee shall not be deemed to have knowledge of a Default or an Event of Default except (i) a Default or Event of Default occurring pursuant to Section 6.01(a) and 6.01(b), or (ii) any Default or Event of Default of which the Trustee shall have received written notification from the Company or the Holders of at least 25% in aggregate principal amount of Notes or obtained actual knowledge.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee including without limitation, its rights to be indemnified are extended to and shall be enforced by the Trustee in its capacities hereunder and each agent, custodian and other person employed to act hereunder.

(j) The permissive rights of the Trustee to take certain actions under this Indenture shall not be construed as a duty unless so specified herein.

*Section 7.03. Individual Rights of Trustee*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311.

*Section 7.04. Trustee's Disclaimer*. The Trustee (a) makes no representation as to the validity or adequacy of this Indenture or the Notes, (b) is not accountable for the Company's use or application of the proceeds from the Notes and (c) is not responsible for any statement in the Notes other than its certificate of authentication.



*Section 7.05. Notice of Default*. If any Default or Event of Default occurs and is continuing and is known to the Trustee, the Trustee will send notice of the Default or Event of Default to each Holder within 90 days after it occurs, unless the Default or Event of Default has been cured; *provided* that, except in the case of a default (w) in the payment of the principal of or interest (including any Additional Interest) on any Note (x) in the payment of the Repurchase Price on the Repurchase Date, (y) in the payment of the Redemption Price on the Redemption Date or (z) in the delivery of Common Stock upon conversion of such Note on the date specified in Section 10.02(b), the Trustee may withhold the notice if and so long as a Responsible Officer or a committee of Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of the Holders. Notice to Holders under this Section will be given in the manner and to the extent provided in Trust Indenture Act Section 313(c).

*Section 7.06. Reports by Trustee to Holders*. Within 60 days after each February 15, beginning with February 15, 2014, the Trustee will mail to each Holder, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such February 15, if required by Trust Indenture Act Section 313(a), and file such reports with each stock exchange upon which its Notes are listed and with the Commission as required by Trust Indenture Act Section 313(d).

*Section 7.07. Compensation and Indemnity*. (a) The Company will pay the Trustee compensation as agreed upon in writing for its services. The compensation of the Trustee is not limited by any law on compensation of a Trustee of an express trust. The Company will reimburse the Trustee upon request for all out-of-pocket expenses, disbursements and advances incurred or made by the Trustee, including the compensation and expenses of the Trustee's agents and counsel.

(b) The Company will indemnify the Trustee for, and hold it harmless against, any loss or liability or expense incurred by it without negligence or bad faith on its part arising out of or in connection with the acceptance or administration of this Indenture and its duties under this Indenture and the Notes, including the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers in connection with the exercise or performance of any of its powers or duties under this Indenture and the Notes.

(c) To secure the Company's payment obligations in this Section, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay principal of, and interest (including any Additional Interest) on particular Notes.

*Section 7.08. Replacement of Trustee*. (a) (i) The Trustee may resign at any time by written notice to the Company.

(ii) The Holders of a majority in principal amount of the outstanding Notes may remove the Trustee by written notice to the Trustee.

(iii) If the Trustee is no longer eligible under Section 7.10 or in the circumstances described in Trust Indenture Act Section 310(b), any Holder that satisfies the



requirements of Trust Indenture Act Section 310(b) may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(iv) The Company may remove the Trustee if (A) the Trustee is no longer eligible under Section 7.10; (B) the Trustee is adjudged a bankrupt or an insolvent; (C) a receiver or other public officer takes charge of the Trustee or its property; or (D) the Trustee becomes incapable of acting.

A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

(b) If the Trustee has been removed by the Holders, Holders of a majority in principal amount of the Notes may appoint a successor Trustee with the consent of the Company. Otherwise, if the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. If the successor Trustee does not deliver its written acceptance within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in principal amount of the outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) Upon delivery by the successor Trustee of a written acceptance of its appointment to the retiring Trustee and to the Company, (i) the retiring Trustee will transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07(c), (ii) the resignation or removal of the retiring Trustee will become effective, and (iii) the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. Upon request of any successor Trustee, the Company will execute any and all reasonable instruments for fully and vesting in and confirming to the successor Trustee all such rights, powers and trusts. The Company will give notice of any resignation and any removal of the Trustee and each appointment of a successor Trustee to all Holders, and include in the notice the name of the successor Trustee and the address of its Corporate Trust Office.

(d) Notwithstanding replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 will continue for the benefit of the retiring Trustee.

(e) The Trustee agrees to give the notices provided for in, and otherwise comply with, Trust Indenture Act Section 310(b).

*Section 7.09. Successor Trustee by Merger*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any further act will be the successor Trustee with the same effect as if the successor Trustee had been named as the Trustee in this Indenture.

*Section 7.10. Eligibility*. This Indenture must always have a Trustee that satisfies the requirements of Trust Indenture Act Section 310(a) and has a combined capital and surplus of at least $25,000,000 as set forth in its most recent published annual report of condition.



*Section 7.11. Money Held in Trust*. The Trustee will not be liable for interest on any money received by it except as it may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law and except for money held in trust under Article 8.

## ARTICLE 8

## DISCHARGE

*Section 8.01. Satisfaction and Discharge of this Indenture*. (a) This Indenture shall cease to be of further effect if either: (i) all outstanding Notes (other than Notes replaced pursuant to Section 2.07) have been delivered to the Trustee for cancellation, (ii) all outstanding Notes have become due and payable on the Maturity Date or on any Repurchase Date in connection with any repurchase upon the occurrence of a Change in Control or Termination of Trading or on any Redemption Date in connection with any redemption of all outstanding Notes or (iii) all outstanding Notes have been delivered for conversion pursuant to Article 10, and the Company irrevocably deposits or delivers, as the case may be, prior to the applicable date on which such payment is due and payable, or such conversion is to be settled, with the Trustee, the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) or the Conversion Agent, Cash in respect of such payment or Cash, Common Stock or a combination thereof in respect of any such conversion on the Maturity Date, the Repurchase Date, the Redemption Date or the date such conversion is to be settled, as the case may be; *provided* that, in all cases, the Company shall pay to the Trustee all other sums payable hereunder by the Company.

(b) The Company may exercise its satisfaction and discharge option with respect to the Notes only if:

(i) no Default or Event of Default with respect to the Notes shall exist on the date of such deposit;

(ii) such deposit or delivery, as the case may be, shall not result in a breach or violation of, or constitute a Default or Event of Default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound; and

(iii) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel (which may rely upon such Officers' Certificate as to the absence of Defaults and Events of Default and as to any factual matters), each stating that all conditions precedent provided for herein relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.07 shall survive and, if money shall have been deposited with or Common Stock shall have been delivered to the Trustee pursuant to clause (a) of this Section, the provisions of Section 2.03, Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.12, Section 3.01, Article 5, Article 10 and this Article 8, shall survive and the Company shall be required to make all payments and deliveries required by such Sections or



Articles, as the case may be, irrespective of any prior satisfaction and discharge until the Notes have been paid in full.

*Section 8.02. Application of Trust Money*. Subject to the provisions of Section 8.03, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money, Common Stock or other consideration paid or delivered to it, as the case may be, pursuant to Section 8.01 and shall apply such money, Common Stock or other consideration in accordance with this Indenture and the Notes to the payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) and interest (including any Additional Interest) on the Notes or delivery of Cash and shares of Common Stock, if any, issuable upon conversion of the Notes.

*Section 8.03.* *Repayment to Company*. The Trustee and each Paying Agent shall promptly pay or deliver, as the case may be, to the Company upon request any excess money, Common Stock or other consideration (x) paid or delivered to them pursuant to Section 8.01 and (y) held by them at any time.

Subject to applicable abandoned property law, the Trustee and each Paying Agent shall also pay or deliver, as the case may be, to the Company upon request any money, Common Stock or other consideration held by them for the payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) and interest on, or the amount due in connection with any conversion of, the Notes that remains unclaimed for two years after a right to such money, Common Stock or other consideration has matured (which maturity shall occur, for the avoidance of doubt, on the Maturity Date, the Repurchase Date, the Redemption Date or the date specified in Section 10.02(b), as the case may be); *provided* that the Trustee or such Paying Agent, before being required to make any such payment or delivery, may at the expense of the Company cause to be mailed to each Holder entitled to such money, Common Stock or other consideration or publish in a newspaper of general circulation in the City of New York notice that such money, Common Stock or other consideration remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing or publication, any unclaimed balance or portion of such money, Common Stock or other consideration then remaining will be repaid or re-delivered to the Company. After payment or delivery, as the case may be, to the Company, Holders entitled to such money, Common Stock or other consideration must look to the Company for payment or delivery as general creditors unless an applicable abandoned property law designates another Person.

*Section 8.04.* *Reinstatement*. If the Trustee or any Paying Agent is unable to apply any money, Common Stock or other consideration in accordance with Section 8.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no payment or delivery, as the case may be, had occurred pursuant to Section 8.01 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 8.02; *provided* that if the Company has made any payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) or interest (including any Additional Interest) on, or the amount due in connection with any conversion of, the Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of



such Notes to receive any such payment or delivery from the money, Common Stock or other consideration held by the Trustee or such Paying Agent.

## ARTICLE 9

## AMENDMENTS, SUPPLEMENTS AND WAIVERS

*Section 9.01.* *Amendments Without Consent of Holders*. The Company and the Trustee may amend or supplement this Indenture or the Notes without notice to or the consent of any Holder:

(a) to cure any ambiguity, omission, defect or inconsistency in this Indenture or the Notes or to conform this Indenture or the Notes to the section entitled "Description of Notes" contained in the Offering Memorandum;

(b) to evidence a successor to the Company and the assumption by that successor of the obligations of the Company under this Indenture in accordance with Article 5 or Section 10.09, including to provide for the adjustments to the Conversion Rate as set forth in Section 10.09;

(c) to secure the obligations of the Company in respect of the Notes and this Indenture;

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

(e) to make any change to comply with the Trust Indenture Act, or any amendment thereto; and

(f) to make any change that does not adversely affect the rights of any Holder of the Notes.

*Section 9.02.* *Amendments With Consent of Holders*. (a) Except as otherwise provided in Section 6.07 or paragraph (b), the Company and the Trustee may amend this Indenture and the Notes with the written consent of the Holders of at least a majority in principal amount of the outstanding Notes, and the Holders of a majority in principal amount of the outstanding Notes by written notice to the Trustee may, on behalf of the Holders of such Notes, waive any existing or past default under this Indenture and its consequences, except an uncured default (i) in the payment of the principal amount, or accrued and unpaid interest (including any Additional Interest), with respect to any Note, (ii) the Repurchase Price with respect to any Note (iii) the Redemption Price with respect to any Note, (iv) in the payment or delivery of the Cash and shares of Common Stock, if any, due upon conversion or redemption of the Notes or (v) in respect of any provision that under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

(b) Notwithstanding the provisions of paragraph (a), without the consent of each Holder affected, an amendment or waiver may not:



(i) reduce the principal amount of, or premium or interest payment on, any Note, or reduce the Repurchase Price or Redemption Price on any Note;

(ii) make any Note payable in any currency or securities other than that stated in the Note;

(iii) change the Maturity Date of any Note;

(iv) change the ranking of the Notes;

(v) make any change that adversely affects the right of a Holder to convert any Note;

(vi) make any change that adversely affects the right of a Holder to require the Company to repurchase a Note upon the occurrence of a Change in Control or Termination of Trading or on an Optional Repurchase Date;

(vii) impair the right to convert or receive payment with respect to the Notes or the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Notes; or

(viii) change the provisions in this Indenture that relate to modifying or amending the provisions of this Indenture.

(c) It is not necessary for Holders to approve the particular form of any proposed amendment, supplement or waiver, but is sufficient if their consent approves the substance thereof.

(d) An amendment, supplement or waiver delivered under this Section will become effective on receipt by the Trustee of written consents (including consents delivered in accordance with the Applicable Procedures with respect to Global Notes) from the Holders of the requisite percentage in principal amount of the outstanding Notes. After an amendment, supplement or waiver under this Section becomes effective, the Company will send to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Company will send supplemental indentures to Holders upon request. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

*Section 9.03. Effect of Consent*. (a) After an amendment, supplement or waiver becomes effective, it will bind every Holder unless it is of the type requiring the consent of each Holder affected. If the amendment, supplement or waiver is of the type requiring the consent of each Holder affected, the amendment, supplement or waiver shall bind each Holder that has consented to it and every subsequent Holder of a Note that evidences the same debt as the Note of the consenting Holder.

(b) If an amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder to deliver it to the Trustee so that the Trustee may place an appropriate notation of the changed terms on the Note and return it to the Holder, or exchange it



for a new Note that reflects the changed terms. The Trustee may also place an appropriate notation on any Note thereafter authenticated. However, the effectiveness of the amendment, supplement or waiver is not affected by any failure to annotate or exchange Notes in this fashion.

*Section 9.04. Trustee's Rights and Obligations*. The Trustee is entitled to receive, and will be fully protected in relying upon, an Officers' Certificate and/or an Opinion of Counsel stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article is authorized or permitted by this Indenture. If the Trustee has received such an Officers' Certificate and/or Opinion of Counsel, it shall sign the amendment, supplement or waiver so long as the same does not adversely affect the rights of the Trustee. The Trustee may, but is not obligated to, execute any amendment, supplement or waiver that affects the Trustee's own rights, duties or immunities under this Indenture.

*Section 9.05. Payments for Consents*. The Company shall not, and shall not permit or suffer any of its Subsidiaries or Affiliates to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid or agreed to be paid to all Holders of the Notes that consent, waive or agree to amend such term or provision within the time period set forth in the solicitation documents relating to the consent, waiver or amendment.

## ARTICLE 10

## CONVERSION

*Section 10.01. Conversion Privilege*. (a) Subject to and upon compliance with the provisions of this Article 10, a Holder shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Holder's Notes at any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date, upon the occurrence of any of the events set forth in clauses (i) through (ix) of Section 10.01(b), at a Conversion Rate (the "**Conversion Rate**") of 91.4808 shares of Common Stock per $1,000 principal amount of Notes. Upon conversion of any Notes, the Company shall deliver to the converting Holder Cash up to the aggregate principal amount of Notes to be converted and shares of Common Stock, Cash or a combination thereof in respect of the remainder, if any, of its conversion obligation in excess of the aggregate principal amount of the Notes being converted as described in Section 10.03 and subject to adjustment as set forth in this Article 10 (the Company's obligation to deliver such consideration being herein called the "**Conversion Obligation**").

(b) A Holder may convert its Notes prior to the Close of Business on the Business Day immediately preceding the Maturity Date, upon the occurrence of any of the events set forth below:

(i) during any calendar quarter commencing at any time after March 7, 2013, and only during such calendar quarter, if the Closing Price of Common Stock for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of



the preceding calendar quarter exceeds the Conversion Trigger Price (as defined in Section 10.01(c)) on the last Trading Day of such preceding calendar quarter;

(ii) during the five Business Day period immediately after any five consecutive Trading Day period in which the Trading Price per $1,000 principal amount of Notes for each Trading Day during that five-day period was less than 98% of the product of the Closing Price of

Common Stock on such Trading Day and the then Applicable Conversion Rate for the Notes on such Trading Day, subject to compliance with the procedures and conditions described in Section 10.01(d) concerning the Trustee's obligation to make a Trading Price determination (the "**Trading Price Condition**");

(iii) if the Company elects to distribute to all holders of Common Stock rights, options or warrants entitling all holders of Common Stock to subscribe for or purchase Common Stock, for a period expiring within 60 days after the record date for such distribution, at less than the average of the Closing Prices of Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of such distribution, during the period beginning on, and including, the date the Company provides notice to Holders of such distribution as set forth in Section 10.01(e) and ending on, and including, the earlier of (x) the Close of Business on the Business Day prior to the Ex-Date for such distribution and (y) the Company's announcement that such distribution will not take place;

(iv) if the Company elects to distribute to all holders of Common Stock Cash, debt securities (or other evidence of indebtedness) or other assets (excluding dividends or distributions described in Section 10.07(a)), which distribution, together with all other such distributions within the preceding twelve months, has a per share value, as determined by the Board of Directors, exceeding 15% of the average of the Closing Prices of Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of such distribution, during the period beginning on, and including, the date the Company provides notice to Holders of such distribution as set forth in Section 10.01(e) and ending on, and including, the earlier of (x) the Close of Business on the Business Day prior to the Ex-Date for such distribution and (y) the Company's announcement that such distribution will not take place;

(v) if a Termination of Trading occurs, during the period from, and including, the earlier of (i) the date the applicable securities exchange announces that a Termination of Trading will occur and (ii) the effective date of the Termination of Trading, to, and including, the related Repurchase Date;

(vi) if a Make-Whole Change in Control that does not constitute a Change in Control occurs or if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of the Company's assets, pursuant to which Common Stock would be converted into Cash, securities or other assets, during the period from, and including, the date that is 25 Business Days prior to the anticipated effective date of the transaction, to, and including, the date that is 35 Trading Days after the actual closing date of such transaction;



(vii) if a Change of Control occurs, during the period from, and including, the date that is 25 Business Days prior to the anticipated effective date of the transaction, to, and including, the related Repurchase Date;

(viii) for Notes that have been called for redemption, at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date, even if the Notes are not otherwise convertible at such time; or

(ix) at any time on or after November 15, 2032 until the Close of Business on the Business Day immediately preceding the Maturity Date.

(c) The "**Conversion Trigger Price**" shall equal 130% of the Conversion Price. The Conversion Trigger Price will initially equal $14.209 and shall be automatically adjusted whenever the Conversion Price is adjusted as a result of an adjustment in the Conversion Rate pursuant to this Article 10. The Company will determine at the beginning of each calendar quarter commencing at any time after March 7, 2013, whether the Notes are convertible as a result of the price of Common Stock exceeding the Conversion Trigger Price in accordance with Section 10.01(b)(i) and will notify the Conversion Agent and the Trustee.

(d) In connection with any conversion upon satisfaction of the Trading Price Condition as set forth in Section 10.01(b)(ii) above, the Trustee shall have no obligation to determine the Trading Price of the Notes unless the Company has requested such determination, and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of the Notes at such time would be less than 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate. At such time, the Company shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of the Notes is greater than or equal to 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate. If the Company does not, when it is obligated to, make a request to the Trustee to determine the Trading Price per $1,000 principal amount of Notes, or if the Company makes such request to the Trustee, but the Trustee does not or cannot make such determination, then the Trading Price per $1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate on each day the Company or the Trustee fails to do so. If the Trading Price Condition has been met, the Company shall so notify the Holders and the Trustee. If, at any point after the Trading Price Condition has been met, the Trading Price per $1,000 principal amount of Notes is greater than 98% of the product of the Closing Price of Common Stock and the then Applicable Conversion Rate, the Company shall so notify the Holders and the Trustee.

(e) Upon the first public announcement of any distribution described in Section 10.01(b)(iii) or Section 10.01(b)(iv), the Company shall notify the Holders at least 35 Business Days prior to the Ex-Date for such distribution by (i) issuing a press release and using its reasonable efforts to post such information on its website or otherwise publicly disclose this information or (ii) providing written notice to Holders by mailing such notice to Holders at their address in the Register (in the case of a Certificated Note), or through the facilities of the Depositary (in the case of a Global Note).



(f) In connection with the transactions described in Section 10.01(b)(v), (vi) or (vii), the Company shall notify the Holders and the Trustee (i) in the case of a Change in Control or a Make-Whole Change in Control, as promptly as practicable following the date the Company publicly announces such transaction, which shall be at least 25 Business Days prior to the anticipated effective date in the case of transactions to which the Company is a party, and (ii) in the case of a Termination of Trading, the earlier of (x) the day immediately following the date the applicable securities exchange announces that a termination of trading will occur and (y) the effective date of a Termination of Trading by (A) issuing a press release and using its reasonable efforts to post such information on its website or otherwise publicly disclose this information or (B) providing written notice to Holders by mailing such notice to Holders at their address in the Register (in the case of a Certificated Note), or through the facilities of the Depositary (in the case of a Global Note).

(g) Upon determining that Holders are entitled to convert their Notes in accordance with the provisions set forth in Section 10.01(b), the Company shall promptly (i) issue a press release and use its reasonable efforts to post such information on its website or otherwise publicly disclose such information or (ii) provide written notice to Holders by mailing such notice to Holders at their address in the Register (in the case of a Certificated Note), or through the facilities of the Depositary (in the case of a Global Note).

(h) Holders shall not have the right to convert their Notes pursuant to Section 10.01(b)(iii) or Section 10.01(b)(iv) if in connection with the distribution described in Section 10.01(b)(iii) or Section 10.01(b)(iv) that gives rise to a right to convert their Notes, such Holders are entitled to participate (as a result of holding the Notes, and at the same time as holders of Common Stock participate) in the distribution described in such Section as if such Holders held a number of shares of Common Stock equal to the Applicable Conversion Rate on the Ex-Date for such distribution, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holder, without having to convert their Notes.

*Section 10.02. Conversion Procedures; Conversion Settlement*. (a) To convert a Note that is represented by a Certificated Note, a Holder must (1) complete and manually sign a Conversion Notice, a form of which is on the back of the Note, and deliver such Conversion Notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) if required, furnish appropriate endorsement and transfer documents, (4) if required, pay all transfer or similar taxes and (5) if required, pay Cash equal to amount of interest due on the next Interest Payment Date for such Note. If a Holder holds a beneficial interest in a Global Note, to convert such beneficial interest, such Holder must comply with requirements (4) and (5) as set forth in the immediately preceding sentence and comply with the Applicable Procedures of the Depositary for converting a beneficial interest in a Global Note. The first date on which all of the requirements set forth in the first sentence of this Section 10.02 (in the case of a Certificated Note) or the second sentence of this Section 10.02 (in the case of a Global Note or a beneficial interest therein) have been satisfied is referred to in this Indenture as the "**Conversion Date**." The Conversion Agent shall, within one (1) Business Day of any Conversion Date, provide notice to the Company, as set forth in Section 13.02, of the occurrence of such Conversion Date.



(b) Subject to Section 10.09 and Section 10.10, the Company will deliver the consideration due in respect of conversion on the third Business Day immediately following the last Trading Day of the relevant Observation Period.

(c) A Holder receiving Common Stock upon conversion shall not be entitled to any rights as a holder of Common Stock, including, among other things, the right to vote and receive dividends and notices of stockholder meetings, until the Close of Business on the last Trading Day of the Observation Period.

(d) No payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 10. Upon conversion of a Note, a Holder will not receive, except as described below, any Cash payment representing accrued interest (including any Additional Interest). Instead, accrued interest (including any Additional Interest) will be deemed paid by the Cash and shares of Common Stock, if any, received by the Holder upon conversion. Delivery to the Holder of such Cash and shares of Common Stock, if any, shall thus be deemed to satisfy (1) the Company's obligation to pay the principal amount of a Note, and (2) the Company's obligation to pay any accrued and unpaid interest (including any Additional Interest) on the Note from the last Interest Payment Date to the Conversion Date. As a result, upon conversion of a Note, accrued and unpaid interest (including any Additional Interest) on such Note to, but not including, the Conversion Date is deemed paid in full rather than cancelled, extinguished or forfeited.

(e) Notwithstanding Section 10.02(d), if Notes are converted after a Regular Record Date but prior to the next succeeding Interest Payment Date, Holders of such Notes at the Close of Business on such Regular Record Date will receive the interest payable (including Additional Interest) on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Such Notes, upon surrender for conversion, must be accompanied by Cash equal to the amount of interest (including any Additional Interest) payable on such Interest Payment Date on the Notes so converted; *provided* that no such payment need be made (1) if the Company has specified a Redemption Date that is after a Regular Record Date but on or prior to the next succeeding Interest Payment Date, (2) if the Company has specified a Repurchase Date that is after a Regular Record Date but on or prior to the next succeeding Interest Payment Date, (3) with respect to any Notes converted after the Regular Record Date immediately preceding February 15, 2020 or February 15, 2023, or (4) to the extent of any Defaulted Interest that exists at the time of conversion with respect to such Note.

(f) If a Holder converts more than one Note at the same time, the number of shares of Common Stock and the amount of Cash delivered in lieu of fractional shares, if any, due upon conversion shall be determined based on the total principal amount of the Notes converted.

(g) Upon surrender of a Note that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Note in an authorized denomination equal in principal amount to the unconverted portion of the Note surrendered.

*Section 10.03. Settlement Upon Conversion*. (a) Subject to Section 10.09, upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting



Holder, in respect of each $1,000 principal amount of Notes being converted, a "**Settlement Amount**" equal to the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the relevant Observation Period for such Note, together with Cash, if applicable, in lieu of any fractional share of Common Stock in accordance with Section 10.04.

(b) "**Daily Settlement Amount**," for each of the 20 consecutive Trading Days during the applicable Observation Period, shall consist of (i) Cash in an amount equal to the lesser of (x) $50.00 and (y) the Daily Conversion Value on such Trading Day; and (ii) if the Daily Conversion Value on such Trading Day exceeds $50.00, the Daily Net Settlement Amount.

(c) All conversions occurring on or after the 24th Scheduled Trading Day immediately preceding the Maturity Date shall be settled using the same forms and amounts of consideration. Before the 24th Scheduled Trading Day immediately preceding the Maturity Date, the Company shall

use the same forms and amounts of consideration for all conversions based on a single Observation Period, but the Company shall not have any obligation to use the same forms and amounts of consideration with respect to conversions that occur based on different Observation Periods.

(d) With respect to any conversion of Notes, subject to subsection (c) of this Section 10.03, the Company may irrevocably elect to settle all or a portion of the remainder, if any, of its Conversion Obligation in excess of the aggregate principal portion of the Notes being converted in Cash by informing the Trustee, the converting Holders, through the Trustee, and the Depositary no later than the Close of Business on the Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions occurring on or after the 24th Scheduled Trading Day immediately preceding the Maturity Date, no later than the 24th Scheduled Trading Day immediately preceding the Maturity Date), and the Company shall indicate in such notice the percentage of the remainder, if any, of the Company's Conversion Obligation in excess of the aggregate principal portion of the Notes being converted that will be paid in Cash (the "**Cash Percentage**").

(e) The Daily Settlement Amounts (if applicable), the Daily Net Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts, the Daily Net Settlement Amounts (if applicable) or the Daily Conversion Values, as the case may be, and the amount of Cash, if any, deliverable in lieu of any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts, the Daily Net Settlement Amounts (if applicable) or the Daily Conversion Values, as the case may be, and the amount of Cash, if any, deliverable in lieu of fractional shares of Common Stock. In calculating the Daily Settlement Amounts (if applicable) and the Daily Net Settlement Amounts (if applicable), the Conversion Rate on any day shall be appropriately adjusted to take into account the occurrence on or before such Trading Day of any event that would require an adjustment to the Conversion Rate as set forth in Section 10.07. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

*Section 10.04. Fractional Share*. The Company will not issue a fractional share of Common Stock upon conversion of a Note. Instead, the Company shall pay Cash in lieu of



fractional shares based on the Closing Price of Common Stock on the last Trading Day of the relevant Observation Period.

*Section 10.05. Taxes on Conversion*. If a Holder converts a Note, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon the 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 may refuse to deliver the certificates representing 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 Common Stock is to be delivered in a name other than the Holder's name.

*Section 10.06. Company to Provide Common Stock*. The Company shall, from time to time as may be necessary, reserve out of its authorized but unissued shares of Common Stock a sufficient number of shares of Common Stock to permit the delivery in respect of all outstanding Notes of the number of shares of Common Stock due upon conversion.

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

The Company will comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Notes, if any, and shall list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which Common Stock is then listed or quoted.

In addition, if any shares of Common Stock that would be issuable upon conversion of Notes hereunder require registration with or approval of any governmental authority before such shares of Common Stock may be issued upon such conversion, the Company will cause such shares of Common Stock to be duly registered or approved, as the case may be.

*Section 10.07. Adjustment to Conversion Rate*. The Conversion Rate shall be adjusted, at any time and from time to time while any of the Notes are outstanding, by the Company if any of the following events occur.

(a) If the Company issues dividends or makes distributions on Common Stock payable in shares of Common Stock, or if the Company subdivides, combines or reclassifies shares of Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such dividend or distribution, or immediately prior to the



opening of business on the effective date for such subdivision, combination or reclassification, as applicable;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date or effective date, as applicable;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to such dividend, distribution, subdivision, combination or reclassification; and

$OS_1$ = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, subdivision, combination or reclassification.

Any adjustment made under this Section 10.07(a) shall become effective immediately after the opening of business on the Ex-Date for such dividend or distribution, or immediately after the opening of business on the effective date for such subdivision, combination or reclassification, as applicable. If any dividend or distribution of the type described in this Section 10.07(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not subdivided, combined or reclassified, as the case may be, effective as of the date the Board of Directors or a committee thereof determines not to pay such dividend or distribution or to effect such subdivision, combination or reclassification, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution or subdivision, combination or reclassification had not been declared.

(b) If the Company distributes to all holders of shares of Common Stock rights, options or warrants (other than pursuant to a stockholder rights plan, *provided* that such rights plan provides for the issuance of such rights with respect to the Common Stock issued upon conversion of the Notes) to purchase shares of Common Stock for a period expiring within 60 days after the record date for such distribution at less than the average of the Closing Prices of Common Stock for the five consecutive Trading Days immediately preceding the public announcement of such distribution, the Conversion Rate shall be increased based on the following formula:

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

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such distribution;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date;

$OS_0$ = the number of shares of Common Stock outstanding at the Close of Business



on the Business Day immediately preceding the Ex-Date for such distribution;

X = the total number of additional shares of Common Stock so offered for purchase pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock that the aggregate offering price of the total number of shares of Common Stock so offered would purchase at the Current Market Price of Common Stock on the first public announcement date for such distribution (determined by multiplying such total number of shares of Common Stock so offered by the exercise price of such rights, options or warrants and dividing the product so obtained by such Current Market Price).

Any increase made under this Section 10.07(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the opening of business on the Ex-Date for such distribution. However, to the extent that shares of Common Stock are not delivered pursuant to such rights or upon the expiration or termination of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In the event that such rights, options or warrants are not so distributed, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if the Ex-Date for such distribution had not occurred. In determining whether any rights, options or warrants entitle the holders to purchase shares of Common Stock at less than the average of the Closing Prices for the five consecutive Trading Days immediately preceding the first public announcement of the relevant distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights, options or warrants and the value of such consideration if other than Cash, to be determined in good faith by the Board of Directors. Except in connection with any readjustment expressly provided for in this clause, in no event shall the Conversion Rate be decreased pursuant to this Section 10.07(b).

(c) If the Company distributes to all holders of shares of Common Stock, any of its Capital Stock, assets (including shares of any Subsidiary of the Company or business unit of the Company) or debt securities or certain rights to purchase securities of the Company (excluding (i) any dividends or distributions described in Section 10.07(a), (ii) any rights, options or warrants described in Section 10.07(b), (iii) any dividends or other distributions described in Section 10.07(d) and (iv) the initial distribution of rights issued pursuant to a stockholder rights plan; *provided* that such rights plan provides for the issuance of such rights with respect to the Common Stock issued upon conversion of the Notes) (such Capital Stock, assets, debt securities or rights to purchase securities of the Company hereinafter in this Section 10.07(c) called the "**Distributed Assets**"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{CMP_0}{CMP_0 - FMV}$$



where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such distribution;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date;

$CMP_0$ = the Current Market Price of Common Stock on the business day immediately preceding the Ex-Date for such distribution; and

FMV = the fair market value, as determined by the Board of Directors, of the portion of Distributed Assets applicable to one share of Common Stock.

Such increase shall become effective immediately after the opening of business on the Ex-Date for such distribution; *provided* that if "FMV" (as defined in this Section 10.07(c)) is equal to or greater than "$CMP_0$" (as defined in this Section 10.07(c)), in lieu of the foregoing increase, adequate provision shall be made so that each Holder shall receive on the date on which the Distributed Assets are distributed to holders of Common Stock, for each $1,000 principal amount of Notes, the amount of Distributed Assets such Holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the record date for such distribution. In the event that such distribution is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10.07(c) by reference to the actual or when issued trading market for any Distributed Assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "**Reference Period**") used in computing the Current Market Price for purposes of the definition of "$CMP_0$" in this Section 10.07(c), unless the Board of Directors determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holders.

Notwithstanding anything to the contrary in this Section 10.07(c), if the Company distributes Capital Stock of, or similar equity interests in, any Subsidiary of the Company or business unit of the Company (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

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

where,



$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the 15th Trading Day immediately following the Ex-Date for such Spin-Off;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on the Ex-Date for such Spin-Off;

$FMV_0$ = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the ten consecutive Trading Day period immediately following, and including, the fifth Trading Day after the Ex-Date for such Spin-Off; and

$MP_0$ = the average of the Closing Prices of Common Stock over the ten consecutive Trading Day period immediately following, and including, the fifth Trading Day after the Ex-Date for such Spin-Off.

Any adjustment pursuant to the preceding paragraph shall be determined on the last Trading Day of such ten consecutive Trading Day period but shall be given effect immediately after the opening of business on the Ex-Date for the Spin-Off. In no event shall the Conversion Rate be decreased pursuant to this Section 10.07(c).

(d) If the Company distributes dividends or makes other distributions paid entirely in Cash to all or substantially all holders of Common Stock, other than (i) distributions described in Section 10.07(e) or (ii) any dividend or distribution in connection with the Company's liquidation, dissolution or winding up, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{CMP_0}{CMP_0 - C}$$

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Ex-Date for such dividend or distribution;

$CR_1$ = the Conversion Rate in effect immediately after the opening of business on such Ex-Date;

$CMP_0$ = the Current Market Price of Common Stock on the Business Day immediately preceding the Ex-Date for such dividend or distribution; and

C = the amount in Cash per share of such dividend or distribution.

Such increase shall become effective immediately after the opening of business on the Ex-Date for such distribution or dividend; *provided* that if "C" (as defined in this Section 10.07(d)) is equal to or greater than "$CMP_0$" (as defined in this Section 10.07(d)), in lieu of the foregoing increase, adequate provision shall be made so that each Holder shall have the right to receive on the date on which the relevant Cash dividend or

distribution is distributed to holders of Common Stock, for each $1,000 principal amount of Notes upon conversion, at the same time and upon the same terms as holders of shares of Common Stock, the amount of Cash such Holder would have received had such Holder owned a number of shares equal to the Conversion Rate on the record date for such dividend or distribution. In the event that such distribution or dividend is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Except in connection with any readjustment expressly provided for in the immediately preceding sentence, in no event shall the Conversion Rate be decreased pursuant to this Section 10.07(d).

(e) If the Company or any of its Subsidiaries distribute Cash or other consideration in respect of a tender offer or exchange offer for Common Stock, where such Cash and the value of any such other consideration per share of Common Stock validly tendered or exchanged exceeds the Closing Price of Common Stock on the Trading Day immediately following the last date (such last date, the "**Expiration Date**") on which tenders or exchanges may be made pursuant to the tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + (OS_1 \text{ x } CP_1)}{OS_0 \text{ x } CP_1}$$

where,

$CR_0$ = the Conversion Rate in effect immediately prior to the opening of business on the Business Day immediately following the Trading Day immediately following the Expiration Date;

$CR_1$ = the Conversion Rate in effect immediately prior to the opening of business on the second Trading Day immediately following the Expiration Date;

FMV = the fair market value, as determined by the Board of Directors, of the aggregate consideration payable for all shares of Common Stock that the Company purchases in such tender or exchange offer;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer;

$OS_1$ = the number of shares of Common Stock outstanding immediately after giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer; and

$CP_1$ = the Closing Price of Common Stock on the Trading Day immediately following the Expiration Date.



An adjustment, if any, to the Conversion Rate pursuant to this Section 10.07(e) shall become effective immediately prior to the opening of business on the second Trading Day immediately following the Expiration Date. In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. Except as provided in the immediately preceding sentence, if the application of this Section 10.07(e) to any tender offer or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section 10.07(e).

*Section 10.08. Provisions Governing Adjustment to Conversion Rate*. Rights, options 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, options 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 Section 10.07 (and no adjustment to the Conversion Rate under Section 10.07 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under Section 10.07(c), and, if applicable, Section 10.20. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof), except as set forth in Section 10.20. In addition, except as set forth in Section 10.20, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under Section 10.07 was made (including any adjustment contemplated in Section 10.20), (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

*Section 10.09. Disposition Events*. If any of the following events (a "**Disposition Event**") occurs:



(a) any reclassification of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination);

(b) consolidation, merger, or other combination involving the Company; or

(c) sale or conveyance to another Person of all or substantially all of the assets of the Company;

in each case as a result of which Common Stock would be converted into, or exchanged for, or would constitute solely the right to receive, stock, other securities or other property or assets (including Cash or any combination thereof) (any such event, a "**Merger Event**"), then, at the effective time of such Merger Event, the Company, or such successor, purchaser or transferee Person, as the case may be, shall execute and deliver to the Trustee a supplemental indenture permitted under Section 9.01(b) to provide that the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including Cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately before such Merger Event would have owned or been entitled to receive (the **"Reference Property"**) upon such Merger Event; *provided*, *however*, that at and after the effective time of the Merger Event, (i) the amount otherwise payable in Cash upon conversion of the Notes as set forth under Section 10.03 above shall continue to be payable in Cash, (ii) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, in respect of the remainder, if any, of its Conversion Obligation in excess of the aggregate principal portion of the Notes being converted as set forth under Section 10.03, (iii) each share of Common Stock that would otherwise have been required to be delivered upon a conversion of the Notes as set forth under Section 10.03 shall instead be deliverable in the amount and type of Reference Property that a holder of one share of Common Stock would have been entitled to receive in such Merger Event (a "**unit of Reference Property**") and (iv) the Daily VWAP shall be calculated based on the value of one unit of Reference Property.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, or constitute solely the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (x) the Reference Property into which the Notes will be convertible or used to calculate the Daily VWAP, as the case may be, shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election and (y) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (x) attributable to one share of Common Stock. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

If, in the case of any Disposition Event, the Reference Property includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such reclassification, 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 as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent required by the Board of Directors and practicable the provisions providing for the repurchase rights set forth in Article 3 herein.

In the event the Company shall execute a supplemental indenture pursuant to this Section 10.09, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefore, the kind or amount of Cash, securities or property or asset that will comprise the Reference Property after any such Disposition Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at its address appearing on the Register provided for in this Indenture, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The Company shall not become a party to any such Merger Event unless its terms are consistent with this Section 10.09.

*Section 10.10. Adjustment to Conversion Rate Upon a Make-Whole Change in Control; Discretionary Adjustment*. (a) If, after the date hereof, a Change in Control (determined after giving effect to any exceptions or exclusions to such definition, but without regard to the *proviso* in clause (ii) of the definition thereof, a "**Make-Whole Change in Control**") occurs and a Holder elects to convert its Notes in connection with such Make-Whole Change in Control, the Company will, under certain circumstances, increase the Applicable Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Make-Whole Shares**"), as described in this Section 10.10. A conversion of Notes will be deemed for these purposes to be "in connection with" a Make-Whole Change in Control if the notice of conversion of the Notes is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Change in Control up to, and including, the Business Day immediately prior to the related Repurchase Date (or, in the case of an event that would have been a Change in Control but for the *proviso* in clause (ii) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Change in Control).

On or before the 15th day after the occurrence of a Make-Whole Change in Control that does not also constitute a Change in Control, the Company will deliver to the Trustee and to all Holders at their addresses shown in the Register of the Registrar, and to beneficial owners as required by applicable law, written notice indicating that a Make-Whole Change in Control has occurred.

(b) The number of Make-Whole Shares will be determined by reference to the table below and is based on the date that such Make-Whole Change in Control transaction becomes effective (the "**Effective Date**") and the price paid per share of Common Stock in the Make-Whole Change in Control (in the case of a Make-Whole Change in Control described in clause (ii) of the definition of Change in Control in which holders of Common Stock receive only Cash), or in the case of any other Make-Whole Change in Control, the average of the Closing Prices per share of Common Stock over the five Trading-Day period ending on the Trading Day immediately preceding the Effective Date of such Make-Whole Change in Control (the "**Stock Price**").



(c) The Stock Prices set forth in the first row of the table below will be adjusted as of any date on which the Applicable Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the Applicable Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment, and the denominator of which is the Applicable Conversion Rate as so adjusted. In addition, the number of Make-Whole Shares will be subject to adjustment in the same manner as the Applicable Conversion Rate as set forth in Section 10.07.

The following table sets forth the Stock Price, Effective Date and number of Make-Whole Shares to be added to the Conversion Rate per $1,000 principal amount of the Notes:

| Effective Date | Stock Price | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 7.95 | 10.00 | 12.00 | 14.00 | 16.00 | 18.00 | 20.00 | 25.00 | 30.00 | 35.00 | 40.00 | 50.00 |
| 2/12/2013 | 4.3054 | 2.4128 | 5.8803 | 1.8701 | .2487 | .4447 | .1499 | .1394 | .0140 | .3038 | .8178 | .2017 |
| 2/15/2014 | 4.3054 | 2.1799 | 5.3582 | 1.2558 | .6307 | .8612 | .6156 | .7317 | .7075 | .0708 | .6386 | .0905 |
| 2/15/2015 | 4.3054 | 1.7275 | 4.6066 | 0.4323 | .8339 | .1297 | .9600 | .2506 | .3546 | .8078 | .4380 | .9682 |
| 2/15/2016 | 4.3054 | 0.9084 | 3.5056 | .3119 | .7967 | .2098 | .1582 | .6913 | .9575 | .5168 | .2186 | .8352 |
| 2/15/2017 | 4.3054 | 9.5605 | 1.9156 | .7958 | .4640 | .0750 | .2035 | .0663 | .5277 | .2059 | .9848 | .6934 |
| 2/15/2018 | 4.3054 | 7.4959 | .6545 | .7754 | .7946 | .7332 | .1279 | .4121 | .0864 | .8842 | .7394 | .5413 |
| 2/15/2019 | 4.3054 | 4.3398 | .3239 | .0846 | .8144 | .2960 | .0549 | .7888 | .6486 | .5510 | .4780 | .3759 |
| 2/15/2020 | 4.3054 | .5192 | | | | | | | | | | |

(d) If the exact Stock Price and Effective Date is not set forth in the table, then (i) if the Stock Price is between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the Make-Whole Shares issued upon conversion of the Notes will be determined by a straight-line interpolation between the number of Make-Whole Shares set forth for the higher and lower Stock Prices and/or the earlier and later Effective Dates in the table, as applicable, based on a 365-day year, (ii) if the Stock Price is in excess of $50.00 per share of Common Stock (subject to adjustment as set forth in Section 10.10(c)), no Make-Whole Shares will be issued upon conversion of the Notes; and (iii) if the Stock Price is less than $7.95 per share of Common Stock (subject to adjustment as set forth in Section 10.10(c)), no Make-Whole Shares will be issued upon conversion of the Notes.

(e) To the extent permitted by applicable law and the listing rules of The NASDAQ Global Select Market, the Company may make such increases in the Conversion Rate, in addition to those required by Section 10.07, as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.



(f) To the extent permitted by applicable law and the listing rules of The NASDAQ Global Select Market, 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 twenty (20) Business Days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall file with the Conversion Agent and provide written notice to the Holders of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(g) Notwithstanding anything in this Article 10 to the contrary, in the event of any increase in the Conversion Rate that would result in the Notes, in the aggregate and taken together with the 2033E Notes (as defined in the Offering Memorandum), becoming convertible into shares of Common Stock in excess of the share issuance limitations of the listing standards of The NASDAQ Global Select Market or the principal U.S. securities exchange on which the Common Stock is then listed, the Company shall, at its option, either obtain stockholder approval of such issuances or deliver Cash in lieu of any shares otherwise deliverable upon conversions in excess of such limitations (calculated based on the Daily VWAP on the last Trading Day of the applicable Observation Period).

*Section 10.11. When Adjustment May Be Deferred*. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. Any adjustments that are less than 1% of the Conversion Rate will be carried forward and taken into account in determining any subsequent adjustment. In addition, the Company shall make any carry forward adjustments not otherwise effected on each anniversary of the date hereof, upon conversion of any Note (but only with respect to such converted Note), upon required repurchases of the Notes pursuant to Section 3.01, and on the Scheduled Trading Day prior to the Maturity Date.

*Section 10.12. When No Adjustment Required*. (a) No adjustment need be made for a transaction referred to in Section 10.07 if Holders participate, without conversion, in the transaction or event that would otherwise give rise to an adjustment pursuant to such Section at the same time as holders of Common Stock participate with respect to such transaction or event and on the same terms as holders of Common Stock participate with respect to such transaction or event as if Holders, at such time, held a number of shares of Common Stock equal to the Applicable Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder, without having to convert their Notes.

(b) No adjustment need be made for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase Common Stock or any such security.

(c) No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest.



(d) No adjustment need be made for a change in the par value or no par value of Common Stock.

(e) To the extent the Notes become convertible pursuant to this Article 10 solely into Cash, no adjustment need be made thereafter as to the Cash. Interest will not accrue on the Cash.

*Section 10.13. Notice of Adjustment*. Whenever the Conversion Rate is adjusted, the Company shall promptly send to Holders a written notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

*Section 10.14. Notice of Certain Transactions*. If (a) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 10.07 (unless no adjustment is to occur pursuant to Section 10.11 or Section 10.12), (b) the Company takes any action that would require a supplemental indenture pursuant to Section 10.09, (c) there is a liquidation or dissolution of the Company or (d) the Company makes any distribution described in Section 10.07(b), Section 10.07(c) or Section 10.07(d) that has a per share value equal to more than 15% of the Closing Price of shares of Common Stock on the Trading Day preceding the declaration date for such issuance, dividend or distribution, then the Company shall send to Holders and file with the Trustee and the Conversion Agent a written notice stating the proposed Ex-Date for a issuance, dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, combination, sale or conveyance. The Company shall file and send the notice at least 15 days before such date. Failure to file or send the notice or any defect in it shall not affect the validity of the transaction.

*Section 10.15. Right of Holders to Convert*. Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right to convert its Note in accordance with this Article 10 and to bring an action for the enforcement of any such right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

*Section 10.16. Company Determination Final*. The Company shall be responsible for making all calculations called for hereunder and under the Notes. The Company shall make all these calculations using commercially reasonable means and, absent manifest error, the Company's calculations will be final and binding on Holders. The Company shall provide a schedule of the Company's calculations to the Trustee, and the Trustee is entitled to rely upon the accuracy of the Company's calculations without independent verification.

*Section 10.17. Trustee's Adjustment Disclaimer*. The Trustee has no duty to determine when an adjustment under this Article 10 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under Section 10.12 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity



or value of any securities or assets issued upon conversion of Notes. The Trustee shall not be responsible for the Company's failure to comply with this Article 10. Each Conversion Agent shall have the same protection under this Section 10.17 as the Trustee.

*Section 10.18. Simultaneous Adjustments*. For purposes of Section 10.07(a), 10.07(b) and 10.07(c), any dividend or distribution to which Section 10.07(c) is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the debt securities, assets or shares of Capital Stock other than such shares of Common Stock or rights (and any Conversion Rate adjustment required by Section 10.07(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights (and any further Conversion Rate adjustment required by Section 10.07(a) and 10.07(b) with respect to such dividend or distribution shall then be made), except any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the Close of Business on the Business Day immediately preceding such Ex-Date" within the meaning of Section 10.07(a).

*Section 10.19. Successive Adjustments*. After an adjustment to the Conversion Rate under this Article 10, any subsequent event requiring an adjustment under this Article 10 shall cause an adjustment to the Conversion Rate as so adjusted.

*Section 10.20. Rights Issued in Respect of Common Stock Issued Upon Conversion*. Each share of Common Stock issued upon conversion of Notes pursuant to this Article 10 shall be entitled to receive the appropriate number of rights ("**Rights**"), if any, and the certificates representing 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 plan (i.e., a poison pill) adopted by the Company, as the same may be amended from time to time, is in effect, (in each case, a "**Shareholders Rights Plan**"). Upon conversion of the Notes a Holder will receive, in addition to any Common Stock received in connection with such conversion, the Rights under the Shareholders Rights Plan, unless prior to any conversion, the Rights have separated from Common Stock, in which case the Applicable Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of Common Stock, shares of Company Capital Stock, assets, debt securities or certain rights to purchase securities of the Company as described in Section 10.07(c), and further adjusted in the event of certain events affecting such Rights following any separation from the Common Stock and subject to readjustment in the event of the expiration, termination or redemption of such Rights. Any distribution of Rights pursuant to the Shareholders Rights Plan that would allow a Holder to receive upon conversion, in addition to shares of Common Stock, the Rights described therein (unless such Rights have separated from Common Stock) shall not constitute a distribution of Rights that would entitle the Holder to an adjustment to the Conversion Rate.

*Section 10.21. Withholding Taxes for Adjustments in Conversion Rate*. The Company may, at its option, set-off withholding taxes due with respect to Notes against delivery of Common Stock upon conversion of the Notes. In the case of any such set-off against Common Stock delivered upon conversion of the Notes, such Common Stock shall be valued based on the Closing Price of the Common Stock on the Trading Day immediately following the Conversion Date.



## ARTICLE 11

## REDEMPTION

*Section 11.01. Right to Redeem; Notices to Trustee*.

(a) The Notes are not redeemable by the Company prior to February 20, 2020. On or after February 20, 2020, the Notes may be redeemed for Cash in whole or in part at the option of the Company.

(b) On or after February 20, 2020, the redemption price at which the Notes are redeemable (the "**Redemption Price**") shall be equal to the sum of 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, including Additional Interest, if any, to, but excluding, the Redemption Date; *provided*, *however*, that if the Redemption Date is after a Regular Record Date and prior to the Interest Payment Date to which it relates, then the accrued and unpaid interest, if any, to, but excluding, the Redemption Date, shall be paid on such Interest Payment Date to the

holders of record of such Notes on the applicable Regular Record Date instead of the holders surrendering such Notes for redemption on the Redemption Date.

(c) The Company may not redeem any Notes unless all accrued and unpaid interest (including any Additional Interest) thereon has been or is simultaneously paid for all semi-annual periods or portions thereof terminating prior to the Redemption Date. In addition, the Company shall not redeem any Notes or deliver to any Holder a notice of redemption pursuant to Section 11.03 at any time when there exists any accrued and unpaid Defaulted Interest.

*Section 11.02. Selection of Notes to be Redeemed*. If less than all the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed pro rata or by lot or by any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of The NASDAQ Global Select Market or any other stock exchange on which the Notes are then listed, as applicable). The Trustee shall make the selection within seven days from its receipt of the notice from the Company delivered pursuant to Section 11.03 from outstanding Notes not previously called for redemption.

Notes and portions of them the Trustee selects shall be in principal amounts of $1,000 or integral multiples of $1,000. Provisions of this Indenture that apply to Notes called for redemption in whole also apply to Notes called for redemption in part. The Trustee shall notify the Company promptly of the Notes or portions of Notes to be redeemed.

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



*Section 11.03. Notice of Redemption*. At least 25 Scheduled Trading Days but not more than 50 Scheduled Trading Days before a Redemption Date, the Company shall delivery a notice of redemption to the Trustee, the Paying Agent and each Holder of Notes to be redeemed; *provided*, *however*, that the Company shall not deliver any such notice to any Holder at any time when there exists any accrued and unpaid Defaulted Interest.

The notice shall specify the Notes to be redeemed and shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) the Applicable Conversion Rate and any adjustments thereto;

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

(v) that Notes called for redemption may be converted at any time before the Close of Business on the Business Day immediately preceding the Redemption Date; and

(vi) the procedures a Holder must follow to exercise rights under Section 3.01.

At the Company's written request delivered at least 30 days prior to the date such notice is to be given to the Holders (unless a shorter time period shall be acceptable to the Trustee), the Trustee shall give the notice of redemption to each Holder of Notes to be redeemed in the Company's name and at the Company's expense.

*Section 11.04. Effect of Notice of Redemption*. Once notice of redemption is given, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Notes that are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Notes shall be paid at the Redemption Price stated in the notice.

*Section 11.05. Deposit of Redemption Price*. Prior to 12:00 p.m., New York City time, on or prior to the Redemption Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary of the Company or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Trading Day) sufficient to pay the aggregate Redemption Price of all the Notes or portions thereof which are to be redeemed as of the Redemption Date.

If the Paying Agent holds money sufficient to pay the Redemption Price with respect to the Notes to be redeemed on the Redemption Date in accordance with the terms of this Indenture, then, immediately on and after the Redemption Date, interest on such Notes shall cease to accrue, whether or not the Notes are delivered to the Paying Agent, and all other rights of the Holders of such Notes shall terminate, other than the right to receive the Redemption Price upon delivery of such Notes.



*Section 11.06. Notes Redeemed in Part*. Any Note which is to be redeemed only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Note, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not redeemed; *provided* that the Company shall not be required to (i) issue, register the transfer of or exchange any Notes during a period beginning immediately prior to the opening of business 15 days before any selection for redemption of Notes and ending at the Close of Business on the earliest date on which the relevant notice of redemption is deemed to have been given to all Holders of Notes to be redeemed or (ii) register the transfer of or exchange any Notes so selected for redemption, in whole or in part, except the unredeemed portion of any Notes being redeemed in part.

**ARTICLE 12**

**PAYMENT OF INTEREST**

*Section 12.01. Interest Payments*. Interest (including any Additional Interest) on any Note that is payable, and is punctually paid or duly provided for, on any applicable Interest Payment Date shall be paid to the Person in whose name that Note is registered at the Close of Business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose. Each installment of interest payable in Cash on any Note shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States, if the Trustee shall have received proper wire transfer instructions from such payee not later than the related Regular Record Date or, if no such instructions have been received by check drawn on a bank in the United States mailed to the payee at its address set forth on the Registrar's books. In the case of a Global Note, interest payable on any applicable payment date will be paid by wire transfer of same-day funds to the Depositary for the purpose of permitting such party to credit the interest received by it in respect of such Global Note to the accounts of the beneficial owners thereof.

*Section 12.02. Defaulted Interest*. Any interest (including any Additional Interest) on any Note that is payable, but is not punctually paid or duly provided for, within 30 days following any applicable payment date (herein called "**Defaulted Interest**," which term shall include any accrued and unpaid interest (including any Additional Interest) that has accrued on such defaulted amount in accordance with paragraph 1 of the Notes), shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below.

(a) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Notes are registered at the Close of Business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner.



The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), 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 on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 20 days and not less than 15 days prior to the date of the proposed payment and not less than 10 days (or such shorter period as is acceptable to the Trustee) after the receipt by the Trustee of the notice of the proposed payment (the "**Special Record Date**"). The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at its address as it appears on the list of Holders maintained pursuant to Section 2.05 not less than 25 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Notes are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

*Section 12.03. Interest Rights Preserved*. Subject to the foregoing provisions of this Article 12 and Section 2.06, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, including any Additional Interest, and to accrue, which were carried by such other Notes.

**ARTICLE 13**

**MISCELLANEOUS**

*Section 13.01. Holder Communications; Holder Actions*. (a) The rights of Holders to communicate with other Holders with respect to this Indenture or the Notes are as provided by the Trust Indenture Act, and the Company and the Trustee shall comply with the requirements of Trust Indenture Act Sections 312(a) and 312(b). Neither the Company nor the Trustee will be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

(b) (i) Any request, demand, authorization, direction, notice, consent to amendment, supplement or waiver or other action provided by this Indenture to be given or taken by a Holder 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 the Applicable Procedures or customary procedures of the Trustee) of substantially similar tenor signed by such Holders in person or by 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 Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent (either of which may be in electronic form) shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(ii) The Trustee may make reasonable rules for action by or at a meeting of Holders, which will be binding on all the Holders.

(c) Any act by the Holder of any Note binds that Holder and every subsequent Holder of a Note that evidences the same debt as the Note of the acting Holder, even if no notation thereof appears on the Note. Subject to paragraph (d), a Holder may revoke an act as to its Notes, but only if

the Trustee receives the notice of revocation before the date the amendment or waiver or other consequence of the act becomes effective.

(d) The Company may, but is not obligated to, fix a record date (which need not be within the time limits otherwise prescribed by Trust Indenture Act Section 316(c)) for the purpose of determining the Holders entitled to act with respect to any amendment or waiver or in any other regard, except that during the continuance of an Event of Default, only the Trustee may set a record date as to notices of Default, any declaration or acceleration or any other remedies or other consequences of the Event of Default. If a record date is fixed, those Persons that were Holders at such record date and only those Persons will be entitled to act, or to revoke any previous act, whether or not those Persons continue to be Holders after the record date. No act will be valid or effective for more than 90 days after the record date.

*Section 13.02. Notices*. (a) Any notice or communication to the Company will be deemed given if in writing (i) when delivered in person or (ii) five days after mailing when mailed by first class mail, or (iii) when sent by facsimile transmission, with transmission confirmed. Any notice to the Trustee will be effective only upon receipt. In each case the notice or communication should be addressed as follows:

*if to the Company*:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716
Attention: General Counsel
Tel: (208) 368-4000
Fax: (208) 368-4540



*with a copy to*:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: John A. Fore
Tel: (650) 493-9300
Fax: (650) 493-6811

*if to the Trustee*:

U.S. Bank National Association
Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, CA 9007
Attention: Paula Oswald (Micron 2033F Indenture)
Tel: 213.615.6043
Fax: 213.615.6197

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

(b) Except as otherwise expressly provided with respect to published notices, any notice or communication to a Holder will be deemed given when sent to the Holder at its address as it appears on the Register by first class mail or, as to any Global Note registered in the name of the Depository or its nominee, as agreed by the Company, the Trustee and the Depository. Copies of any notice or communication to a Holder, if given by the Company, will be sent to the Trustee at the same time. Any defect in sending a notice or communication to any particular Holder will not affect its sufficiency with respect to other Holders.

(c) Where this Indenture provides for notice, the notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and the waiver will be the equivalent of the notice. Waivers of notice by Holders must be filed with the Trustee, but such filing is not a condition precedent to the validity of any action taken in reliance upon such waivers.

*Section 13.03. Communication by Holders with Other Holders*. Holders may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act.

*Section 13.04. Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:



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

(2) an Opinion of Counsel stating that all such conditions precedent have been complied with.

Notwithstanding the foregoing, no such Opinion of Counsel shall be required with respect to the authentication and delivery of any Notes.

*Section 13.05. Statements Required in Certificate or Opinion*. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

(1) a statement that each person signing the certificate or opinion has read the covenant or condition and the related definitions;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in the certificate or opinion is based;

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

(4) a statement as to whether or not, in the opinion of each such person, such condition or covenant has been complied with, *provided* that an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials with respect to matters of fact.

*Section 13.06. Legal Holiday*. A "**Legal Holiday**" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, with the same force and effect as if made on the Interest Payment Date or Redemption Date, at the Stated Maturity or the last date of conversion, as the case may be.

*Section 13.07. Rules by Trustee, Paying Agent, Conversion Agent and Registrar*. The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

*Section 13.08. Governing Law*. THIS INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

*Section 13.09. No Adverse Interpretation of Other Agreements*. This Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any



Subsidiary of the Company, and no such indenture or loan or debt agreement may be used to interpret this Indenture.

*Section 13.10. Successors*. All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successor.

*Section 13.11. Counterparts*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

*Section 13.12. Severability*. In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

*Section 13.13. Table of Contents and Headings*. The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and in no way modify or restrict any of the terms and provisions of this Indenture.

*Section 13.14. No Liability of Directors, Officers, Employees, Incorporators, Members and Stockholders*. No director, officer, employee, incorporator, member or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of, or by reason of, such obligations. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

*[Signature Page Follows]*



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

MICRON TECHNOLOGY, INC., as Issuer

By: /s/ Ronald C. Foster
Name: Ronald C. Foster
Title: Vice President of Finance and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Paula Oswald
Name: Paula Oswald
Title: Vice President

**EXHIBIT A**

[FACE OF NOTE]

[INSERT DTC LEGEND, IF APPLICABLE]

[INSERT TRANSFER RESTRICTED NOTE LEGEND, IF APPLICABLE]

Micron Technology, Inc.

2.125% Convertible Senior Note due 2033

No. [F- ]

CUSIP: 595112 AT0

ISIN: US595112AT01

Micron Technology, Inc., a Delaware corporation (the "**Company**," which term includes any successor under the Indenture hereinafter referred to), for value received, promises to pay to Cede & Co. or its registered assigns, the principal sum of [ ] Dollars ($[ ]) [(which principal amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other outstanding Notes, shall not exceed $[ ]) by adjustments made by the Trustee as set forth on Schedule I hereto)]* on February 15, 2033.

Initial Interest Rate: 2.125% per annum.

Interest Payment Dates: February 15 and August 15, commencing August 15, 2013.

Regular Record Dates: February 1 and August 1.

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

* This schedule should be included only if the Note is a Global Note.



IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

Date:

MICRON TECHNOLOGY, INC.

By: _____
Name:
Title:

(Form of Trustee's Certificate of Authentication)

This is one of the 2.125% Convertible Senior Notes due 2033 described in the Indenture referred to in this Note.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory



[REVERSE SIDE OF NOTE]

Micron Technology, Inc.

2.125% Convertible Senior Note due 2033

1. *Principal and Interest*.

The Company promises to pay the principal of this Note on February 15, 2033.

The Company promises to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth on the face of this Note, at the rate of 2.125% per annum.

Interest will be payable semiannually in arrears (to the holders of record of the Notes at the Close of Business on the Regular Record Date immediately preceding the Interest Payment Date) on each Interest Payment Date, commencing August 15, 2013.

Interest on this Note will accrue from the most recent date to which interest has been paid or provided for on this Note or the Note surrendered in exchange for this Note or, if no interest has been paid, from February 12, 2013, through the day before each Interest Payment Date. Interest will be computed in the basis of a 360-day year of twelve 30-day months. Interest will cease to accrue on this Note upon its maturity, conversion, redemption or repurchase by the Company, including repurchase by the Company at the option of a holder upon a Change in Control or Termination of Trading.

If the Company elects or is required to pay Additional Interest pursuant to Section 6.15 of the Indenture referred to below, the Company will pay any such Additional Interest on the date or dates described in such Indenture.

The Company will pay interest on overdue principal, premium, if any, and, to the extent lawful, interest at a rate per annum that is 1% in excess of 2.125%. Defaulted Interest shall be paid to the Persons that are Holders on a Special Record Date, which will established as set forth in the Indenture.

2. *Method of Payment*.

Subject to the terms and conditions of the Indenture, the Company shall pay interest (including any Additional Interest) on this Note to the person who is the Holder of this Note at the Close of Business on the Regular Record Date next preceding the related Interest Payment Date. The Company will pay any Cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

3. *Paying Agent, Conversion Agent and Registrar*.

Initially, the Trustee will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-



registrar without notice, other than notice to the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar. The Company may maintain deposit accounts and conduct other banking transactions with the Trustee in the normal course of business.

4. *Indenture*.

This is one of the Notes issued under an Indenture dated as of February 12, 2013 (as amended from time to time, the "**Indenture**"), between the Company and U.S. Bank National Association, as Trustee. Capitalized terms used herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture will control. The Notes are general unsecured obligations of the Company.

5. *Repurchase at the Option of the Holders*.

On February 15, 2020 and February 15, 2023 and upon the occurrence of a Change in Control or Termination of Trading, a Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Repurchase Date at a price equal to the Repurchase Price.

6. *Redemption at the Option of the Company.*

No sinking fund is provided for the Notes. The Notes are redeemable as a whole, or from time to time in part, at any time commencing on February 20, 2020 at the option of the Company. The redemption price (the "**Redemption Price**") for any such redemption is equal to (i) 100% of the Principal Amount of Notes to be redeemed, plus (ii) accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the Redemption Date.

7. *Conversion*.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert this Note or portion thereof that is $1,000 or an integral multiple thereof, into the consideration specified in the Indenture, as adjusted from time to time as provided in the Indenture.

8. *Defaults and Remedies*.

Subject to certain exceptions, if an Event of Default, other than a Bankruptcy Default, occurs and is continuing under the Indenture, the Trustee or the Holders of at least 25% in aggregate of the outstanding principal amount of the Notes, by written notice to the Company (and to the Trustee if the notice is given by the Holders), may, and the Trustee at the request of



such Holders may, declare the principal of and accrued interest (including any Additional Interest) on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal and interest (including any Additional Interest) will become immediately due and payable. If a Bankruptcy Default

occurs, the principal of and accrued interest (including any Additional Interest) on the Notes then outstanding will become immediately due and payable automatically without any declaration or other act on the part of the Trustee or any Holder.

9. *Amendment and Waiver*.

Subject to certain exceptions set forth in the Indenture, the Indenture and the Notes may be amended, or default may be waived, with the consent of the Holders of a majority in principal amount of the outstanding Notes. Without notice to or the consent of any Holder, the Company and the Trustee may amend or supplement the Indenture or this Note to, among other things, cure any ambiguity, omission, defect or inconsistency in the Indenture or this Note that does not adversely affect the rights of any Holder of the Notes.

10. *Registered Form; Denominations; Transfer; Exchange*.

The Notes are in registered form without coupons in denominations of $1,000 principal amount and integral multiples of $1,000. A Holder may register the transfer or exchange of Notes in accordance with the Indenture. The Trustee may require a Holder to furnish appropriate endorsements and transfer documents and to pay any taxes and fees as set forth in the Indenture. Pursuant to the Indenture, there are certain periods during which the Trustee will not be required to issue, register the transfer of or exchange any Note or certain portions of a Note.

11. *Persons Deemed Owners*.

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

12. *Unclaimed Money or Notes*.

Subject to applicable abandoned property law, the Trustee and each Paying Agent shall pay or deliver, as the case may be, to the Company upon request any money, Common Stock or other consideration held by them for the payment of the principal amount of (including the relevant Repurchase Price or Redemption Price) and interest (including any Additional Interest) on, or the Common Stock due in connection with any conversion of, this Note that remains unclaimed for two years after a right to such money, Common Stock or other consideration has matured.

13. *Trustee Dealings with the Company*.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of this Note and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311.



14. *No Recourse Against Others*.

No director, officer, employee, incorporator, member or stockholder of the Company, as such, will have any liability for any obligations of the Company under this Note or the Indenture or for any claim based on, in respect of, or by reason of, such obligations. Each Holder of this Note by accepting this Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of this Note.

15. *Authentication*.

This Note shall not be valid until an authorized officer of the Trustee signs manually the Trustee's Certificate of Authentication on the other side of this Note.

16. *Governing Law*.

THE INDENTURE AND THE NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. *Abbreviations*.

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

The Company will furnish a copy of the Indenture to any Holder upon written request and without charge.



[FORM OF TRANSFER NOTICE]

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

_____

_____

Please print or typewrite name and address, including zip code of assignee

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

attorney to transfer said Note on the books of the Company with full power of substitution in the premises.

Your Signature:

Date:

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

*Signature guaranteed by:

By:

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716
Attention: General Counsel
Fax: (208) 368-4540

U.S. Bank National Association
Corporate Trust Services
633 West Fifth Street, 24th Floor
Attention: Paula Oswald (Micron 2033F Indenture)
Fax: (213) 615-6197

**CONVERSION NOTICE**

To convert this Note, check the box: o

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

If you want the Cash paid to another person or the stock certificate, if any, made out in another person's name, fill in the form below:

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

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

and irrevocably appoint

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Your Signature:

Date:

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

*Signature guaranteed by:

By:



* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion

Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.



**Schedule I***

No. [F- ]

The initial principal amount of this Global Note is $[ ].

| Date | Principal Amount of this Global Note | Notation Explaining Change in Principal Amount | Authorized Signature of Trustee |
|---|---|---|---|
| | | | |
| | | | |

* This schedule should be included only if the Note is a Global Note.



**EXHIBIT B**

DTC LEGEND

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

TRANSFERS OF THIS GLOBAL NOTE ARE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE ARE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE TRANSFER PROVISIONS OF THE INDENTURE.



**EXHIBIT C**

TRANSFER RESTRICTED NOTE LEGEND

THE SALE OF THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, THIS SECURITY MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT WITHIN THE LATER OF (X) ONE YEAR AFTER THE LATEST ISSUE DATE OF THIS SECURITY AND (Y) THREE MONTHS AFTER IT CEASES TO BE AN AFFILIATE (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE ISSUER, OFFER, RESELL, PLEDGE OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY, EXCEPT (A) TO THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY WITHIN THE LATER OF (X) SIX MONTHS (OR, IF THE ISSUER HAS NOT SATISFIED THE CURRENT PUBLIC INFORMATION REQUIREMENTS OF RULE 144, ONE YEAR) AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF NOTES (INCLUDING THROUGH THE EXERCISE OF THE OPTION TO PURCHASE ADDITIONAL NOTES) AND (Y) THREE MONTHS AFTER IT CEASES TO BE AN AFFILIATE (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE ISSUER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED PURSUANT TO THE INDENTURE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.



**EXHIBIT D**

**CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER OF TRANSFER RESTRICTED NOTES**

Re: 2.125% Convertible Senior Notes due 2033 (the "**Notes**") of Micron Technology, Inc.

This certificate relates to $ principal amount of Notes owned in (check applicable box)

o book-entry or o definitive form by (the "**Transferor**").

The Transferor has requested a Registrar or the Trustee to exchange or register the transfer of such Notes.

In connection with such request and in respect of each such Note, the Transferor does hereby certify that the Transferor is familiar with transfer restrictions relating to the Notes as provided in Section 2.13 of the Indenture dated as of February 12, 2013 between Micron Technology, Inc. and U.S. Bank National Association, as trustee (the "**Indenture**"), and the transfer of such Note is being made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "**Securities Act**") (check applicable box) or the transfer or exchange, as the case may be, of such Note does not require registration under the Securities Act because (check applicable box):

o Such Note is being transferred pursuant to an effective registration statement under the Securities Act.

o Such Note is being acquired for the Transferor's own account, without transfer.

o Such Note is being transferred to the Company or a Subsidiary (as defined in the Indenture) of the Company.

o Such Note is being transferred to a person the Transferor reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A or any successor provision thereto ("**Rule 144A**") under the Securities Act) that is purchasing for its own account or for the account of a "qualified institutional buyer", in each case to whom notice has been given that the transfer is being made in reliance on such Rule 144A, and in each case in reliance on Rule 144A.



o Such Note is being transferred pursuant to and in compliance with an exemption from the registration requirements under the Securities Act in accordance with Rule 144 (or any successor thereto) ("**Rule 144**") under the Securities Act.

o Such Note is being transferred pursuant to and in compliance with an exemption from the registration requirements of the Securities Act (other than an exemption referred to above) and as a result of which such Note will, upon such transfer, cease to be a "restricted security" within the meaning of Rule 144 under the Securities Act.

Date: _____ _____

(Insert Name of Transferor)

**Exhibit 10.1**

**[DEALER NAME, ADDRESS AND PHONE NUMBER]**

Opening Transaction

**To:** Micron Technology, Inc.
8000 S. Federal Way
Boise, Idaho 83716-9632

**A/C:**

**From:**

**Re:** Issuer Capped Share Call Option Transaction

**Ref. No:**

**Date:** [ ], 2013

Dear Sir(s):

The purpose of this communication (this "**Confirmation**") is to set forth the terms and conditions of the above-referenced transaction entered into on the Trade Date specified below (the "**Transaction**") between ("**Dealer**") and Micron Technology, Inc. ("**Issuer**" or "**Counterparty**"). Dealer is acting as principal and ("**Agent**"), its affiliate, is acting as agent for Dealer for the Transaction under this Confirmation. This communication constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the "**2000 Definitions**") and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**", and together with the 2000 Definitions, the "**Definitions**"), in each case as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern.

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

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) New York law (without regard to the conflicts of law principles) as the governing law and (ii) US Dollars ("**USD**") as the Termination Currency). The parties hereby agree that the Transaction to which this Confirmation relates and any other "Issuer Capped Share Call Option Transactions" referencing the Shares (as defined below) ("**Capped Call Transactions**") entered into by the parties on even date herewith shall be governed by the Agreement.

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

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

General Terms:

| | |
|---|---|
| Trade Date: | [ ], 2013 |
| Components: | The Transaction will be divided into individual Components, each with the terms set forth in this Confirmation, and, in particular, with the Number of Options and Expiration Date set forth in Annex A to this Confirmation. The exercise, valuation and settlement of the Transaction will be effected separately for each Component as if each Component were a separate Transaction under the Agreement. |
| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | Common Stock (par value $0.10 per Share) of Counterparty (Ticker: "MU") |
| Number of Options: | For each Component, as provided in Annex A to this Confirmation. |
| Option Entitlement: | One Share per Option |

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| Strike Price: | USD |
| Cap Price: | USD |
| Premium: | The premium for each Component shall be as provided in Annex A to this Confirmation and the aggregate Premium for the Transaction is USD . Dealer and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following the payment of the Premium, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to any Transaction and, as a result, Counterparty owes to Dealer the amount calculated under Section 6(d) and Section 6(e) of the Agreement (calculated as if the Transactions were terminated on such Early Termination Date were the sole Transactions under the Agreement) or (b) Counterparty owes to Dealer, pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or otherwise under the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero. |
| Premium Payment Date: | [ ], 2013 |
| Effective Date: | [ ], 2013 or such other date as agreed by the parties. |



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| Exchange: | The NASDAQ Global Select Market |
| Related Exchange: | All Exchanges located in the United States on which the equity securities or equity-linked securities of Counterparty are traded. |

Procedures for Exercise:

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| Expiration Time: | Valuation Time |
| Expiration Date: | As provided in Annex A to this Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Component); *provided* that, notwithstanding anything to the contrary in the Equity Definitions, if that date is a Disrupted Day, the Calculation Agent may determine that the Expiration Date for such Component is a Disrupted Day in whole or in part, in which case the Calculation Agent shall, in its reasonable discretion, determine the number of Options for which such day shall be the Expiration Date and (i) allocate the remaining Options for such Expiration Date to one or more of the remaining Expiration Dates, (ii) designate the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Component of the Transaction hereunder or any other Capped Call Transactions between the parties as the Expiration Date for such remaining Options, or (iii) a combination thereof; *provided further* that if the Expiration Date for a Component (including any portion of a Component whose Expiration Date was postponed as a result of clause (ii) or (iii) above) has not occurred as of the Final Disruption Date, (a) such Final Disruption Date shall be deemed to be the Expiration Date and Valuation Date for such Component, and (b) the Calculation Agent shall determine the VWAP Price for such Component on the basis of its good faith estimate of the trading value for the relevant Shares. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date occurring on an Expiration Date. |
| Final Disruption Date: | , |
| Market Disruption Event: | Section 6.3(a) of the Equity Definitions is hereby amended by replacing clause (ii) thereof in its entirety with the following: "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) thereof the following: "; in each case that the Calculation Agent determines is material."<br><br>Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

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| Exchange Business Day; Disrupted Day: | Sections 1.29 and 6.4 of the Equity Definitions are hereby amended by adding ", unless the Calculation Agent reasonably determines that any failure of such Exchange or Related Exchange to open does not have a material effect on the trading market for the Shares" following the words "regular trading sessions" in the third line thereof and the words "regular trading session" in the second line thereof, respectively. |
| Automatic Exercise: | Applicable; and means that the Number of Options for the relevant Component will be deemed to be automatically exercised at the Expiration Time on the Expiration Date for such Component if at such time such Component is In-the-Money, as determined by the Calculation Agent, unless Buyer notifies Seller (by telephone or in writing) prior to the Expiration Time on such Expiration Date that it does not wish Automatic Exercise to occur with respect to such Component, in which case Automatic Exercise will not apply with respect to such Component. "**In-the-Money**" means, in respect of any Component, that the VWAP Price on the Expiration Date for such Component is greater than the Strike Price for such Component. |
| Seller's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice: | To:<br><br>Attn:<br><br>Telephone:<br>Facsimile:<br><br>With a copy to:<br><br>Attn:<br><br>Telephone:<br>Facsimile: |

Settlement Terms:

| | |
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| Settlement Method Election: | Applicable; *provided* that (a) Section 7.1 of the Equity Definitions is hereby amended by replacing the term "Physical Settlement" with the term "Net Share Settlement", (b) Counterparty must make a single irrevocable election for all Components and (c) such Settlement Method Election would be effective only if Counterparty represents and warrants to Dealer in writing on the date of such Settlement Method Election that none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares as of such date. |



| | |
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| Electing Party: | Counterparty |
| Settlement Method Election Date: | The fifth Scheduled Trading Day prior to the scheduled Expiration Date for the first Component. |
| Default Settlement Method: | Net Share Settlement |
| Settlement Currency: | USD |
| VWAP Price: | For any Expiration Date or other Exchange Business Day, as displayed on Bloomberg Page "MU <Equity> AQR" (or any successor thereto) for the Counterparty with respect to the period between 9:30 a.m. to 4:00 p.m. (New York City time) on such day, as determined by Calculation Agent. If no price is available, or there is a Market Disruption Event on such Expiration Date or other Exchange Business Day, the Calculation Agent shall determine the VWAP Price in a commercially reasonable manner. |

Net Share Settlement:

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| Settlement Date: | The Settlement Date shall be one Settlement Cycle after the Expiration Date for the Component (or, in respect of all or part of its obligation to deliver the Number of Shares to be Delivered, such other earlier date or dates Dealer shall determine in its sole discretion). |

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| Net Share Settlement: | If Net Share Settlement applies, on the Settlement Date for each Component, Dealer shall deliver to Counterparty a number of Shares equal to the Number of Shares to be Delivered for such Component to the account specified by Counterparty and cash in lieu of any fractional shares for such Component valued at the VWAP Price on the Expiration Date for such Component. |
| Number of Shares to be Delivered: | For any Component, subject to the last sentence of Section 9.5 of the Equity Definitions:<br><br>(i) if the VWAP Price on the Expiration Date for such Component exceeds the Strike Price for such Component but is less than the Cap Price for such Component, a number of Shares equal to (i) the product of (A) the excess of such VWAP Price over such Strike Price, (B) the Number of Options for such Component and (C) the Option Entitlement, *divided by* (ii) such VWAP Price;<br><br>(ii) if the VWAP Price on the Expiration Date for such Component equals or exceeds the Cap Price for such Component, a number of Shares equal to (i) the product of (A) the excess of such Cap Price over the Strike Price for such Component, (B) the Number of Options for such Component and (C) the Option Entitlement, *divided by* (ii) such VWAP Price; or<br><br>(iii) if the VWAP Price on the Expiration Date for such Component is less than or equal to the Strike Price for such Component, a number of Shares equal to zero. |



| | |
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| Other Applicable Provisions: | The provisions of Sections 9.1(c), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable, as if Physical Settlement applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of any Shares. |
| Cash Settlement: | |
| Cash Settlement Payment Date: | The Cash Settlement Payment Date shall be the third Scheduled Trading Day after the Expiration Date for each Component. |
| Cash Settlement: | If Cash Settlement applies, on the relevant Cash Settlement Payment Date for such Component, Dealer shall pay to Counterparty an amount equal to the sum of the Option Cash Settlement Amount for each Component to the account specified by Counterparty. |
| Strike Price Differential: | For any Component:<br><br>(i) if the VWAP Price on the Expiration Date for such Component exceeds the Strike Price for such Component but is less than the Cap Price for such Component, an amount equal to the excess of such VWAP Price over such Strike Price.<br><br>(ii) if the VWAP Price on the Expiration Date for such Component equals or exceeds the Cap Price for such Component, an amount equal to the excess of such Cap Price over the Strike Price for such Component; or<br><br>(iii) if the VWAP Price on the Expiration Date for such Component is less than or equal to the Strike Price for such Component, zero. |
| Share Adjustments: | |
| Method of Adjustment: | Calculation Agent Adjustment; provided that under Section 11.2(e)(v) of the definition of Potential Adjustment Event, the word “repurchase” shall be replaced with the word “tender offer.” |



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| Extraordinary Events: | |
| New Shares: | In the definition of “New Shares” in Section 12.1(i) of the Equity Definitions, the text in subsection (i) shall be deleted in its entirety and replaced with: “publicly quoted, traded or listed on any of the New York Stock Exchange, |

| | |
|---|---|
| | the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors)." |
| Consequences of Merger Events: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment and, for the avoidance of doubt, if the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person not organized under the laws of the United States, any State thereof or the District of Columbia ("**Foreign Issuer Shares**"), then the Calculation Agent may choose to apply Cancellation and Payment (Calculation Agent Determination) to that portion of the consideration comprising Foreign Issuer Shares. |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) on that portion of the Other Consideration that consists of cash; Modified Calculation Agent Adjustment on the remainder of the Other Consideration and, for the avoidance of doubt, if the Other Consideration includes (or, at the option of a holder of Shares, may include) Foreign Issuer Shares, then the Calculation Agent may choose to apply Cancellation and Payment (Calculation Agent Determination) to that portion of the Other Consideration comprising Foreign Issuer Shares. |
| (c) Share-for-Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Section 12.1(d) of the Equity Definitions is hereby amended by replacing the words "10%" in the third line with "50%". |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) on that portion of the Other Consideration that consists of cash; Modified Calculation Agent Adjustment on the remainder of the Other Consideration and, for the avoidance of doubt, if the Other Consideration includes (or, at the option of a holder of Shares, may include) Foreign Issuer Shares, then the Calculation Agent may choose to apply Cancellation and Payment (Calculation Agent Determination) to that portion of the Other Consideration comprising Foreign Issuer Shares. |
| (c) Share-for-Combined: | Component Adjustment |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that in addition to the |



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| | provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange. |
| Additional Disruption Events: | |
| (a) Change in Law: | Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement or statement of the formal or informal interpretation", and (ii) immediately following the word "that" in the sixth line thereof, adding the phrase "as a result of one or more of the circumstances listed in (A) and (B) above"; *provided further* that the parties agree that, for the avoidance of doubt, for purposes of Section 12.9(a)(ii) of the Equity Definitions, "any applicable law or regulation" shall include the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, any rules and regulations promulgated thereunder and any similar law or regulation (such rules and regulations referred to herein as "**Dodd-Frank**") without regard to Section 739 of Dodd-Frank or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated and the consequences specified in Section 12.9(b)(i) of the Equity Definitions shall apply to any Change in Law arising from any such act, rule or regulation. |
| (b) Failure to Deliver: | Not Applicable |

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| (c) Insolvency Filing: | Applicable |
| (d) Hedging Disruption: | Applicable |
| (e) Increased Cost of Hedging: | Not Applicable |
| Hedging Party: | Dealer |
| Determining Party: | Dealer |
| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |
| Dealer Payment Instructions: | |



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| Counterparty Payment and Delivery Instructions: | To be provided by Counterparty |

3. Calculation Agent: Dealer; *provided* that all determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any calculation by the Calculation Agent hereunder, upon a prior written request by Issuer, the Calculation Agent will provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such a prior written request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such calculation; and *provided further* that no transferee of the Transaction in accordance with the terms of this Confirmation shall act as Calculation Agent with respect to such transferred Transaction without the prior consent of Counterparty, such consent not to be unreasonably withheld.

4. Offices:

(a) The Office of Dealer for the Transaction is:

(b) The Office of Counterparty for the Transaction is: 8000 S. Federal Way, Boise, Idaho 83716-9632.

5. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

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| To: | Micron Technology, Inc.<br>8000 South Federal Way<br>Boise, Idaho 83716 |
| Attn: | Treasurer |
| Telephone: | (208) 368-4000 |
| Facsimile: | (208) 368-4540 |

With a copy to:

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| To: | Micron Technology, Inc.<br>8000 South Federal Way<br>Boise, Idaho 83716 |
| Attn: | General Counsel |
| Telephone: | (208) 368-4000 |
| Facsimile: | (208) 368-4540 |

and

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| To: | Wilson Sonsini Goodrich & Rosati<br>Professional Corporation<br>650 Page Mill Road<br>Palo Alto, CA 94304 |
| Attn: | John A. Fore, Esq. |
| Telephone: | (650) 493-9300 |
| Facsimile: | (650) 493-6811 |

(b) Address for notices or communications to Dealer:

To:

Attn:

Telephone:



Facsimile:
Email:

With a copy to:

Attn:

Telephone:
Facsimile:
Email:

And email
notification to
the following
address:

6. Representations, Warranties and Agreements:

(a) In addition to the representations, warranties and agreements in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) Counterparty intends the Transaction to qualify as an equity instrument for purposes of EITF Issue No. 00-19 and for purposes of U.S. Generally Accepted Accounting Principles ("**GAAP**"). Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties with respect to the treatment of the Transaction under any accounting standards including, without limitation, ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging — Contracts in Entity's Own Equity* (or any successor issue statements) or under FASB's Liabilities & Equity Project.

(iii) Prior to the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors (or an authorized committee thereof) authorizing the Transaction and such other certificate or certificates as Dealer shall reasonably request.

(iv) On the Trade Date, without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.

(v) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

(vi) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.



(vii) On the Trade Date and on the Premium Payment Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature.

(viii) (A) During each period starting on the first Expiration Date and ending on the last Expiration Date, in each case sharing a common Final Disruption Date (each a "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares shall not be, subject to a "restricted period," as such term is defined in Regulation M under the Exchange Act ("**Regulation M**") and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the relevant Settlement Period.

(ix) During each Settlement Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

(b) Each of Dealer and Counterparty agrees and represents that it is an "eligible contract participant" as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"), by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer and Dealer represents to Counterparty that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

(d) Each of Dealer and Counterparty agrees and acknowledges that Dealer is a "financial institution," "swap participant" and/or "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder is a "settlement payment," as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder is a "transfer," as such term is defined in Section 101(54) of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code.

(e) Counterparty hereby agrees and acknowledges that the Transaction has not been registered with the Securities and Exchange Commission or any state securities commission and that the Options are being written by Dealer to Counterparty in reliance upon exemptions from any such



registration requirements. Counterparty acknowledges that all Options acquired from Dealer will be acquired for investment purposes only and not for the purpose of resale or other transfer except in compliance with the requirements of the Securities Act. Counterparty will not sell or otherwise transfer any Option or any interest therein except in compliance with the requirements of the Securities Act and any subsequent offer or sale of the Options will be solely for Counterparty's account and not as part of a distribution that would be in violation of the Securities Act.

(f) Counterparty represents and warrants that it (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least $50 million.

7. Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase, the Notice Percentage as determined on such day is greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice or the first such Repurchase Notice after the initial Expiration Date, greater than 4.5%). The "**Notice Percentage**" as of any day is the fraction (A) the numerator of which is the aggregate of the Number of Shares for all Components under the Transaction and under any other Capped Call Transactions between Dealer and Counterparty and (B) the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 7, then Counterparty to the extent permitted by law agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Person**") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider," including without limitation any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Person is subject, including without limitation, Section 16 of the Exchange Act), relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Person or insufficient to hold harmless any Indemnified Person, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Person as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Person for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding (including any governmental or regulatory investigation) arising therefrom, whether or not such Indemnified Person is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer. Issuer will not be liable under this indemnity provision to the extent any loss, claim, damage, liability or expense is found in a final judgment by a court to have resulted from Dealer's gross negligence or willful misconduct.

8. Transfer or Assignment. Neither party may transfer any of its rights or obligations under the Transaction without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); provided that if at any time the Equity Percentage exceeds 9%, Dealer may immediately, in its sole discretion, transfer or assign a number of Options sufficient to reduce the Equity Percentage to 8.5% to any affiliate of Dealer whose obligations are guaranteed by or any third party with (or with a guarantor (a "**Third Party Guarantor**") that has) a rating for its long-term, unsecured and unsubordinated indebtedness of A- or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute agency rating mutually agreed by Counterparty and Dealer; provided however such Third Party Guarantor shall provide a

guarantee in a form reasonably satisfactory to the Counterparty in connection with such transfer or assignment; *provided further* that the Dealer provide prompt notice to Counterparty of any such transfer. If, in the discretion of Dealer, Dealer is unable to effect such transfer or assignment after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer, Dealer may designate any Scheduled Trading Day as an Early Termination Date and an Additional Termination Date shall be deemed to occur with respect to a portion (the "**Terminated Portion**") of the Transaction, allocated to Components as Dealer determines in its discretion, such that the Equity Percentage following such partial termination will be equal to or less than 8.5%. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Terminated Portion, (ii) Counterparty shall be the Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Affected Transaction. The "**Equity Percentage**" as of any day is the fraction (A) the numerator of which is the number of Shares that Dealer or any of its affiliates that are subject to aggregation with Dealer beneficially own (within the meaning of Section 13 of the Exchange Act) on such day and (B) the denominator of which is the number of Shares outstanding on such day. Notwithstanding Section 7 of the Agreement, Counterparty may assign its rights and obligations under the Transaction, in whole or in part, on terms reasonably acceptable to both parties, without any payment being owed from Counterparty to Dealer.

9. Staggered Settlement. If Dealer determines reasonably and in good faith that the number of Shares required to be delivered to Counterparty hereunder on any Settlement Date would have resulted in the Equity Percentage (as defined above) on such date to exceed 4.9%, then Dealer may, by notice to Counterparty on or prior to such Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares comprising the related Number of Shares to be Delivered on two or more dates (each, a "**Staggered Settlement Date**") or at two or more times on the Nominal Settlement Date as follows:

(a) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than twenty (20) Scheduled Trading Days following such Nominal Settlement Date) or delivery times and how it will allocate the Shares it is required to deliver hereunder among the Staggered Settlement Dates or delivery times; and

(b) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates or delivery times will equal the number of Shares that Dealer would otherwise have been required to deliver on such Nominal Settlement Date.

10. Extension of Settlement. Dealer may divide any Component into additional Components and designate the Expiration Date, the Final Disruption Date and the Number of Options for each such Component if Dealer determines, in its reasonable discretion, that such further division is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases of Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be compliant with applicable legal and regulatory requirements.

11. Early Termination Right. Counterparty may elect to terminate the Transaction, in whole or in part, prior to the relevant Expiration Date, on terms acceptable to both parties, and, if such termination occurs following the payment of the premiums for all Components, without any payment being owed from Counterparty to Dealer.

12. Equity Rights. Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that this Confirmation is not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.



13. Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If Dealer shall owe Counterparty any amount pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of a Tender Offer or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash) or pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party, that resulted from an event or events within Counterparty's control) (a "**Payment Obligation**"), Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, between the hours of 9:00 A.M. and 4:00 P.M. New York City time on the Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or other date of termination, as applicable ("**Notice of Share Termination**"). Within a commercially reasonable period of time following receipt of a Notice of Share Termination, Dealer shall deliver to Counterparty a number of Share Termination Delivery Units having a cash value equal to the amount of such Payment Obligation (such number of Share Termination Delivery Units to be delivered to be determined by the Calculation Agent as the number of whole Share Termination Delivery Units that could be purchased over a commercially reasonable period of time with the cash equivalent of such payment obligation) (the "**Share Termination Alternative**").

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| Share Termination Delivery Unit: | In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization, Merger Event or Tender Offer, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization, Merger Event or Tender Offer. If such Insolvency, Nationalization, Merger Event or Tender Offer involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash. |
| Failure to Deliver: | Applicable |
| Other applicable provisions: | If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable as if Physical Settlement applied to the termination of the Transaction, except that all references to "Shares" shall be read as references to "Share Termination Delivery Units"; and *provided* that the |

Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Buyer is the issuer of any Share Termination Delivery Units (or any part thereof).

14. Set-Off. The parties agree to amend Section 6 of the Agreement by replacing Section 6(f) in its entirety with the following:

"(f) Upon the occurrence of an Event of Default or Termination Event with respect to a party who is the Defaulting Party or the Affected Party ("**X**"), the other party ("**Y**") will have the right (but not be obliged) without prior notice to X or any other person to set-off or apply any obligation of X under an Equity Contract owed to Y (or any Affiliate of Y) (whether or not matured or contingent and whether or not arising under the Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any obligation of Y (or any Affiliate of Y) under an Equity Contract owed to X (whether or not matured or contingent and whether or not arising under the Agreement, and regardless of the currency, place of payment or booking office of the obligation). Y will give notice to the other party of any set-off effected under this Section 6(f).



"**Equity Contract**" shall mean for purposes of this Section 6(f) any transaction relating to Shares between X and Y (or any Affiliate of Y) that qualifies as 'equity' under applicable accounting rules.

Amounts (or the relevant portion of such amounts) subject to set-off may be converted by Y into the Termination Currency at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If any obligation is unascertained, Y may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

15. Amendment to Equity Definitions. Solely for purposes of applying the Equity Definitions and for purposes of this Confirmation, any reference in the Equity Definitions to a Strike Price shall be deemed to be a reference to either of the Strike Price or the Cap Price, or both, as appropriate.

16. Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

17. Unwind. In the event the sale of the [ ]% Convertible Senior Notes due 2033 and [ ]% Convertible Senior Notes due 2033 is not consummated with the initial purchasers pursuant to the Purchase Agreement, for any reason by the close of business in New York on [ ], 2013 (or such later date as agreed upon by the parties which in no event shall be later than the third Scheduled Trading Day following [ ], 2013) (such date or such later date as agreed upon being the "**Accelerated Unwind Date**"), the Transaction shall automatically terminate (the "**Accelerated Unwind**") on the Accelerated Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Accelerated Unwind Date; *provided* that Counterparty shall reimburse Dealer for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position), which shall be paid in cash or Shares at the option of the Counterparty (and if paid in Shares, with the market valuation of such Shares being determined in a commercially reasonable manner by the Calculation Agent). The amount of any such reimbursement shall be determined by Dealer in its sole good faith discretion. Dealer shall notify Counterparty of such amount and Counterparty shall pay such amount in immediately available funds on the Accelerated Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Accelerated Unwind and the satisfaction of counterparty's payment obligation, if any, as specified in this Section 17, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

18. No Collateral by Counterparty. **No collateral is required to be posted by Counterparty in respect of the Transaction.**



19. Disposition of Hedge Shares. Counterparty hereby agrees that if at any time, in the reasonable judgment of counsel for the Dealer, the Shares acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction (other than such Shares, if any, that are, at the time of such determination, due to be delivered to Counterparty in connection with a Net Share Settlement of the Transaction) (the "**Hedge Shares**"), cannot be sold in the U.S. public market by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, use its commercially reasonable efforts to make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty customary in form for registered offerings of equity securities, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Dealer, in its reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this Section 19 shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance reasonably satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer,

due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days, and in the amounts, as requested by Dealer.

20. Opinion of Counsel. Counterparty shall deliver an opinion of counsel, dated as of the Trade Date, in substantially the form attached hereto as Annex B.

21. Illegality. The parties agree that for the avoidance of doubt, for purposes of Section 5(b)(i) of the Agreement, "any applicable law" shall include Dodd-Frank, without regard to Section 739 of Dodd-Frank or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the date on which a Transaction is entered into, and the consequences specified in the Agreement, including without limitation, the consequences specified in Section 6 of the Agreement, shall apply to any Illegality arising from any such act, rule or regulation.

22. Waiver of Trial by Jury. **EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES OR COUNTERPARTY OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.**

23. Governing Law. **THE AGREEMENT AND THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.**



24. Role of Agent. Each party agrees and acknowledges that: (i) Agent is acting as agent for both parties but does not guarantee the performance of either party; (ii) Dealer is not a member of the Securities Investor Protection Corporation; (iii) Agent, Dealer and Counterparty each hereby acknowledges that any transactions by Dealer or Agent in the Shares will be undertaken by Dealer as principal for its own account; and (iv) all of the actions to be taken by Dealer and Agent in connection with the Transaction shall be taken by Dealer or Agent independently and without any advance or subsequent consultation with Counterparty; and (v) Agent is hereby authorized to act as agent for Counterparty only to the extent required to satisfy the requirements of Rule 15a-6 under the Exchange Act in respect of the options described hereunder.



Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to , [Equity Derivatives Documentation Department,] Facsimile No. .

Yours faithfully,

**[NAME OF DEALER]**

By: _____
Name:
Title:

Agreed and Accepted By:

**MICRON TECHNOLOGY, INC.**

By: _____
Name:
Title: