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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): July 14, 2003**

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**SOHU.COM INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-30961**  
(Commission File Number)

**98-0204667**  
(I.R.S. Employer  
Identification No.)

**7 Jianguomen Nei Avenue  
Bright China Chang An Building  
Tower 2, Room 1519  
Beijing 100005  
People's Republic of China  
(011) 8610-6510-2160**

(Address, including zip code, of registrant's principal executive offices  
and registrant's telephone number, including area code)

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#### Item 5. Other Events and Required FD Disclosure

On July 14, 2003, Sohu.com Inc. completed its sale of zero coupon convertible senior notes due 2023 in a private offering, which offering resulted in net proceeds to the company of approximately \$87,750,000. The notes were issued pursuant to an Indenture, dated as of July 14, 2003, between Sohu.com Inc. and The Bank of New York.

The notes and the shares of common stock issuable upon conversion of the notes have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. Sohu has agreed in a Registration Rights Agreement, dated as of July 14, 2003, by and between Sohu and Merrill Lynch, Pierce, Fenner & Smith Incorporated, for the benefit of the holders of the notes, to file with the Securities and Exchange Commission a registration statement covering resales of the notes and the shares of common stock issuable upon conversion of the notes. A copy of the Registration Rights Agreement is filed as Exhibit 4.2 to this report.

On July 15, 2003, Sohu issued a press release announcing the completion of the offering of US\$90 million principal amount of zero coupon convertible senior notes due 2023. A copy of the press release is attached to this report as Exhibit 99.1 and is hereby incorporated by reference.

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Item 7. Financial Statements and Exhibits

(a) Exhibits.

- 4.1 Indenture, dated as of July 14, 2003, between Sohu.com Inc. and The Bank of New York.
- 4.2 Registration Rights Agreement, dated as of July 14, 2003, by and between Sohu.com Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
- 99.1 Press Release issued by Sohu.com Inc. on July 15, 2003, announcing the completion of the zero coupon convertible senior note offering.

SIGNATURES

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

SOHU.COM INC.

DATED: July 16, 2003

By:                     /s/ DEREK PALASCHUK

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Derek Palaschuk  
Senior Vice President and Chief Financial Officer

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EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
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99.1	Press Release issued by Sohu.com Inc. on July 15, 2003, announcing the completion of the zero coupon convertible senior note offering

SOHU.COM INC.

as Issuer

AND

The Bank of New York

as Trustee

**Indenture**

Dated as of July 14, 2003

Zero Coupon Convertible Senior Notes Due 2023

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INDENTURE, dated as of July 14, 2003, between Sohu.com Inc., a Delaware corporation, as Issuer (herein called the “**Company**”), having its principal office at Suite 1519, Tower 2, Bright China Chang An Building, 7 Jianguomen Nei Avenue, Beijing 100005, People’s Republic of China, and The Bank of New York, a New York banking corporation, as Trustee (herein called the “**Trustee**”).

#### RECITALS OF THE COMPANY

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

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

#### NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

#### ARTICLE 1

##### Definitions And Other Provisions Of General Application

*Section 1.01. Definitions.* For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular;
- (ii) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (iii) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and
- (iv) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Act**,” when used with respect to any Holder, has the meaning specified in Section 1.04.

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

“**Agent Members**” has the meaning specified in Section 3.08.

“**Applicable Stock**” means (i) the Common Stock or (ii) in the event of a merger, consolidation or other similar transaction involving the Company that is otherwise permitted hereunder in which the Company is not the surviving corporation, the common stock, common equity interests, ordinary shares or depository

shares or other certificates representing common equity interests of such surviving corporation or its direct or indirect parent corporation.

“**Board of Directors**” means, with respect to any Person, either the board of directors of such Person or any duly authorized committee of that board.

“**Board Resolution**” means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York are authorized or obligated by law, executive order or governmental decree to be closed.

“**Cash Dividend Amount**” has the meaning specified in Section 13.04.

“**Capital Stock**” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, including, without limitation, with respect to partnerships, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“**Change of Control**” has the meaning specified in Section 11.03.

“**Change of Control Company Notice**” has the meaning specified in Section 11.03.

“**Change of Control Repurchase Date**” has the meaning specified in Section 11.03.

“**Change of Control Repurchase Notice**” has the meaning specified in Section 11.03.

“**Change of Control Repurchase Price**” has the meaning specified in Section 11.03.

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

“**Common Stock**” means the shares of Common Stock, par value \$0.001 per share, of the Company as it exists on the date of this Indenture or any other shares of Capital Stock of the Company into which the Common Stock shall be reclassified or changed.

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

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Company by its Chief Financial Officer or its Secretary, and delivered to the Trustee.

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company where Securities may be presented for conversion.

“**Conversion Date**” has the meaning specified in Section 13.02.

“**Conversion Notice**” has the meaning specified in Section 13.02.

“**Conversion Price**” has the meaning specified in the Securities.

“**Corporate Trust Office**” means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of the execution of this Indenture is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration (Sohu.com Inc.—Zero Coupon Convertible Senior Notes due 2023), or at any other time at such other address as the Trustee may designate from time to time by notice to the Company.

“**corporation**” means a corporation, association, company, joint-stock company or business trust.

“**Current Market Price**” has the meaning specified in Section 13.04.

“**Default**” means any event that is or with the passage of time or the giving of notice or both would become an Event of Default.

“**Depository**” means The Depository Trust Company until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Depository**” shall mean such successor Depository.

“**Distributed Securities**” has the meaning specified in Section 13.04.

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

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

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

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

“**Expiration Time**” has the meaning specified in Section 13.04.

“**fair market value**” has the meaning specified in Section 13.04.

“**Final Maturity Date**” means July 14, 2023.

“**GAAP**” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, in each case, as in effect in the United States on the date hereof.

“**Global Security**” means a Security in global form registered in the Security Register in the name of a Depository or a nominee thereof.

“**Holder**” or “**Securityholder**” means a Person in whose name a Security is registered in the Security Register.

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

“**Initial Purchaser**” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“**Investment Company Act**” means the Investment Company Act of 1940 and any statute successor thereto, in each case as amended from time to time.

“**Issue Date**” means the date the Securities are originally issued as set forth on the face of the Security under this Indenture.

“**Legal Holiday**” means any day that is not a Business Day.

“**Liquidated Damages Amount**” shall have the meaning given to such term in the Registration Rights Agreement.

“**Liquidated Damages Payment Date**” means each April 15 and October 15 of each year, as provided in the Registration Rights Agreement.

“**Maturity**”, when used with respect to any Security, means the date on which the principal, Purchase Price, Redemption Price or Repurchase Price of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity, Redemption Date or Repurchase Date, or by declaration of acceleration or otherwise.

“**nonelecting share**” has the meaning specified in Section 13.05.

“**Non-U.S. Person**” means a Person who is not a U.S. person, as defined in Regulation S.

“**Notice of Default**” has the meaning specified in Section 5.01.

“**Officers’ Certificate**” means a certificate signed by the Chief Financial Officer or the Secretary of the Company, and delivered to the Trustee. One of the officers signing an Officers’ Certificate given pursuant to Section 10.04 shall be the principal executive, financial or accounting officer of the Company.

“**Opinion of Counsel**” means a written opinion of counsel, who may be external or in-house counsel for the Company, and who shall be reasonably acceptable to the Trustee.

“**Optional Repurchase Date**” has the meaning specified in Section 11.02(a).

“**Optional Repurchase Notice**” has the meaning specified in Section 11.02(b).

“**Optional Repurchase Price**” has the meaning specified in Section 11.02(a).

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

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

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

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

*provided, however*, that, in determining whether the Holders of the requisite Principal Amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver

hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

**"Paying Agent"** means any Person authorized by the Company to pay the principal of, and Liquidated Damages Amounts, Redemption Price and Repurchase Price of, any Securities on behalf of the Company. The Trustee shall initially be the Paying Agent.

**"Person"** means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

**"Physical Securities"** means permanent certificated Securities in registered form issued in denomination of \$1,000 Principal Amount and integral multiples thereof.

**"Predecessor Security"** of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

**"Principal Amount"** of a Security means the Principal Amount as set forth on the face of the Security.

**"Process Agent"** has the meaning specified in Section 1.12.

**"Purchase Agreement"** means the Purchase Agreement, dated as of July 9, 2003, entered into by the Company and the Initial Purchaser in connection with the sale of the Securities.

**"Purchase Price"** has the meaning specified in the Securities.

**"Purchased Shares"** has the meaning specified in Section 13.04.

**"Qualified Institutional Buyer"** or **"QIB"** shall have the meaning specified in Rule 144A.

**"Record Date"** has the meaning specified in Section 13.04.

**"Redemption Date"** has the meaning specified in Section 11.01(b).

**"Redemption Notice"** has the meaning specified in Section 11.01(b).

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

**"Registration Rights Agreement"** means the Registration Rights Agreement, dated as of July 14, 2003, between the Company and the Initial Purchaser, for the benefit of themselves and the Holders, as the same may be amended or modified from time to time in accordance with the terms thereof.

**"Regular Record Date"** for the Liquidated Damages Amounts payable on any Liquidated Damages Payment Date means April 1 or October 1 (whether or not a Business Day) next preceding such Liquidated Damages Payment Date.

**"Regulation S"** means Regulation S under the Securities Act.

“**Repurchase Date**” has the meaning specified in Section 11.05.

“**Repurchase Notices**” has the meaning specified in Section 11.05.

“**Repurchase Price**” has the meaning specified in Section 11.05.

“**Resale Registration Statement**” means a registration statement under the Securities Act registering the Securities for resale pursuant to the terms of the Registration Rights Agreement.

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

“**Restricted Global Security**” means a Global Security representing Restricted Securities.

“**Restricted Security**” or “**Restricted Securities**” has the meaning specified in Section 2.05.

“**Rule 144**” means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A Information**” has the meaning specified in Section 2.03.

“**Sale Price**” of a share of Applicable Stock on any date means the closing per share sale price (or if no closing sale price is reported, the average of the average bid and the average ask prices) as reported in composite transactions for the principal U.S. securities exchange on which the common stock is traded or, if the common stock is not listed on a U.S. national or regional securities exchange, as reported by the National Association of Securities Dealers Automated Quotation system or by the National Quotation Bureau Incorporated. In the absence of such a quotation, the Company shall be entitled to make a good faith determination of the sale price on the basis it considers appropriate.

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

“**Security**” or “**Securities**” has the meaning specified in the first paragraph of the Recitals of the Company.

“**Security Register**” and “**Security Registrar**” have the respective meanings specified in Section 3.05.

“**significant subsidiary**” has the meaning given to that term in Rule 1-02 of Regulation S-X under the Exchange Act, except that (a) references to “income from continuing operations” are changed to “revenues,” (b) all references to “10 percent” are changed to “50 percent” and (c) notwithstanding the foregoing, the parties agree that at all times Beijing Sohu Online Network Information Services Co., Ltd. shall be deemed to be a significant subsidiary.

“**Stated Maturity,**” when used with respect to any Security, means the date specified in such Security as the fixed date on which an amount equal to the principal amount of such Security is due and payable.

“**Subsidiary**” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, “**voting stock**” means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“**Surviving Entity**” has the meaning specified in Section 8.01.

“**Trading Day**” means (x) if the applicable security is quoted on the NASDAQ National Market System, a day on which trades may be made on thereon or (y) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national security exchange, a day on which the New York Stock Exchange or such other national security exchange is open for business or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

“**Trigger Event**” has the meaning specified in Section 13.04.

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

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

“**Unrestricted Global Security**” means a Global Security representing Securities which are not Restricted Securities.

*Section 1.02. Compliance Certificates And Opinions.* Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirement set forth in this Indenture.

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

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

*Section 1.03. Form Of Documents Delivered To Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

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



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

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

*Section 1.04. Acts Of Holders; Record Dates.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee reasonably deems sufficient.

(c) The Company may, in the circumstances permitted by the Trust Indenture Act, fix any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 7.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

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

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

*Section 1.05. Notices, Etc., to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (whether via mail, facsimile or other electronic means) to or with

the Trustee at its Corporate Trust Office; or

(ii) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, or faxed, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, Attention: Chief Financial Officer.

*Section 1.06. Notice To Holders; Waiver.* Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

*Section 1.07. Conflict With Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

*Section 1.08. Effect Of Headings And Table Of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

*Section 1.09. Successors And Assigns.* All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

*Section 1.10 Separability Clause.* In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

*Section 1.11. Benefits Of Indenture.* Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders of Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

*Section 1.12. Governing Law and Jurisdiction.* This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York. To the fullest extent permitted by applicable law, the Company irrevocably agrees that any legal suit, action or proceeding arising out of or relating to the Securities, this Indenture or the transactions contemplated hereby may be instituted in any federal or state court in the Borough of Manhattan, the City of New York, New York, and irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum, and irrevocably submits to the non-exclusive jurisdiction of any such court in any such suit, action or proceeding. The Company has appointed CT Corporation System, 111 Eighth Avenue, New York, NY 10011 (the "**Process Agent**"), as its agent to receive on its behalf service of copies of the summons and complaints and any other process which may be served in any suit, action or proceeding arising out of or relating to the Securities, this Indenture or the transactions contemplated hereby brought in

such New York state or federal court sitting in the City of New York. Such service may be made by delivering a copy of such process to the Company in care of the Process Agent at the address specified above for the Process Agent and obtaining a receipt therefor, and the Company hereby irrevocably authorizes and directs such Process Agent to accept such service on its behalf. The Company represents and warrants that the Process Agent has agreed to act as said agent for service of process, and agrees that service of process in such manner upon the Process Agent shall be deemed to the fullest extent permitted by applicable law, in every respect effective service of process upon the Company in any such suit, action or proceeding.

*Section 1.13. Legal Holiday.* If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Securities, no interest, if any, shall accrue for the intervening period.

## ARTICLE 2 SECURITY FORMS

*Section 2.01. Forms Generally.* The Securities and the Trustee's certificates of authentication shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depository therefor, the Internal Revenue Code of 1986, as amended, and regulations thereunder, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof.

The Securities shall be initially issued in the form of permanent Global Securities in registered form in substantially the form set forth in this Article. The aggregate Principal Amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, as hereinafter provided.

*Section 2.02. Form Of Face Of Security .* **[INCLUDE IF SECURITY IS A RESTRICTED SECURITY]**—THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A OR REGULATION S THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (II) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (III) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (IV) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (V) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT (THAT CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER), IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE

RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THE SECURITIES EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.

THIS SECURITY AND ANY RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON AND PROCEDURES FOR REALES AND OTHER TRANSFERS OF THIS SECURITY TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. THE HOLDER OF THIS SECURITY SHALL BE DEEMED BY THE ACCEPTANCE OF THIS SECURITY TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.

THE HOLDER OF THIS SECURITY IS SUBJECT TO, AND ENTITLED TO THE BENEFITS OF, A REGISTRATION RIGHTS AGREEMENT, DATED AS OF JULY 14, 2003, ENTERED INTO BY THE COMPANY FOR THE BENEFIT OF CERTAIN HOLDERS OF SECURITIES FROM TIME TO TIME.

**[INCLUDE IF SECURITY IS A GLOBAL SECURITY]**—THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (“DTC”), A NEW YORK CORPORATION, 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 IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

**[INCLUDE IF THE SECURITY IS NOT A GLOBAL SECURITY]**—THE NOTE EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, UNITED STATES PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT IT IS PURCHASING THE NOTE FOR ITS OWN ACCOUNT OR AN ACCOUNT WITH RESPECT TO WHICH IT EXERCISES SOLE INVESTMENT DISCRETION AND THAT IT OR SUCH ACCOUNT IS (A) A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) A NON-U.S. PERSON; (2) ACKNOWLEDGES THAT THE NOTE AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THE NOTE 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, UNITED STATES PERSONS EXCEPT AS SET FORTH BELOW; (3) ACKNOWLEDGES THAT THE NOTE HAS BEEN OFFERED ONLY TO (I) “QUALIFIED INSTITUTIONAL BUYERS” IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT IN A TRANSACTION NOT INVOLVING ANY PUBLIC OFFERING WITHIN THE MEANING OF THE SECURITIES ACT OR (II) OUTSIDE THE UNITED STATES TO NON-U.S. PERSONS IN OFFSHORE TRANSACTIONS IN RELIANCE UPON REGULATIONS UNDER THE SECURITIES ACT; (4) AGREES THAT IT WILL NOT, PRIOR TO EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE NOTE EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR

PROVISION), RESELL OR OTHERWISE TRANSFER THIS NOTE OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT (A) TO SOHU.COM INC., OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (5) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 4(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE 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; AND (6) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS NOTE PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THIS NOTE UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE TRANSFEREE IS A PURCHASER WHO IS NOT A UNITED STATES PERSON, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS SUCH TRUSTEE MAY REASONABLY REQUIRE 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. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS NOTE PURSUANT TO CLAUSE 2(D) ABOVE OR UPON ANY TRANSFER OF THIS NOTE UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATIONS UNDER THE SECURITIES ACT. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTION.

SOHU.COM INC.

Zero Coupon Convertible Senior Notes Due 2023

No. [ ] CUSIP NO. [ ] U.S. \$[ ]

Sohu.com Inc., a Delaware corporation (herein called the "Company"), which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] United States Dollars (\$ [ ]) [INCLUDE IF SECURITY IS A GLOBAL SECURITY]—(which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary) on July 14, 2023. Payment of the principal of this Security shall be made by check mailed to the address of the Holder of this Security specified in the register of Securities, or, at the option of the Holder of this Security, at the Corporate Trust Office, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Reference is made to the further provisions of this Security set forth on the reverse hereof, including,

without limitation, provisions giving the Company the right to redeem this Security, and giving Holder of this Security the right to convert this Security into Common Stock of the Company in certain circumstances, the right to require the Company to repurchase this Security upon certain events, in each case on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Security 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 and governed by the laws of said State.

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

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

SOHU.COM INC.

By:

Authorized Signatory

Attest:

By:

Authorized Signatory

*Section 2.03. Form Of Reverse Of Security.* This Security is one of a duly authorized issue of Securities of the Company, designated as its Zero Coupon Convertible Senior Notes due 2023, in an aggregate principal amount of \$90,000,000 (herein called the “**Securities**”), all issued or to be issued under and pursuant to an Indenture dated as of July 14, 2003 (herein called the “**Indenture**”), between the Company and The Bank of New York (herein called the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities.

The indebtedness evidenced by the Securities is unsecured and unsubordinated indebtedness of the Company and ranks equally with the Company’s other unsecured and unsubordinated indebtedness.

Repurchase By the Company at the Option of the Holder. At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase the Securities at 100% of the Principal Amount (the “**Optional Repurchase Price**”), which Optional Repurchase Price shall be paid in cash, on July 14, 2007, July 14, 2013, and July 14, 2018.

Holders have the right to withdraw any Optional Repurchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Optional Repurchase Price of all Securities or portions thereof to be purchased on the Optional Repurchase Date are deposited with the Paying Agent on the Business Day following the Optional Repurchase Date, the Holder thereof shall have no other rights as such (other than the right to receive the Optional Repurchase Price upon surrender of such Security).

Repurchase By the Company at the Option of the Holder Upon Change of Control. At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase the Securities if a Change of Control occurs at any time prior to July 14, 2023 at 100% of the Principal Amount (the “**Change of Control Repurchase Price**”), which Change of Control Repurchase Price shall be paid in cash, shares of the Company’s Common Stock, shares of common stock of the surviving corporation or a combination of cash and shares of the applicable common stock.

Holders have the right to withdraw any Change of Control Repurchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the portion of the Change of Control Repurchase Price that is to be paid in cash of all Securities or portions thereof to be purchased on a Change of Control Repurchase Date are deposited with the Paying Agent on the Business Day following the Change of Control Repurchase Date, the Holder thereof shall have no other rights as such (other than the right to receive the Change of Control Repurchase Price upon surrender of such Security).

**Redemption at the Option of the Company.** The Company may choose to redeem the Securities at any time on or after July 14, 2008, in whole or in part, at a redemption price equal to 100% of the Principal Amount (the “**Redemption Price**”) of the Securities to be redeemed if:

(i) the Sales Price of the Common Stock, as calculated by the Company, for each of the thirty (30) consecutive Trading Days preceding the day on which the Company mails the Redemption Notice is equal to at least one hundred thirty percent (130%) of the Conversion Price; or

(ii) at such time at least ninety percent (90%) of the initial aggregate Principal Amount of all of the Securities has been converted, redeemed or repurchased.

If cash sufficient to pay the Redemption Price of all Securities or portions thereof to be redeemed on a Redemption Date are deposited with the Paying Agent, the Holder thereof shall have no other rights as such (other than the right to receive the Redemption Price upon surrender of such Security).

**Conversion.** Subject to and in compliance with the provisions of the Indenture, including without limitation the conditions of conversion of this Security set forth in Section 13.01 thereof, the Holder hereof has the right, at its option at any time prior to the earlier of the redemption or repurchase of the Security and the close of business on the Stated Maturity of the Security, to convert the Principal Amount hereof or any portion of such principal which is \$1,000 or an integral multiple thereof, into, subject to Section 13.02 of the Indenture, that number of fully paid and non-assessable shares of Common Stock, as said shares shall be constituted at the date of conversion, obtained by dividing the Principal Amount of this Security or portion thereof to be converted by the conversion price of \$44.76 (the “**Conversion Price**”) as adjusted from time to time as provided in this Indenture, upon surrender of this Security, together with a Conversion Notice as provided in this Indenture, to the Company at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, or at the option of such Holder, the Corporate Trust Office, and, unless the shares issuable on conversion are to be issued in the same name as this Security, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or by his duly authorized attorney. No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Securities for conversion. Securities in respect of which a Holder is exercising its right to require repurchase on a Repurchase Date may be converted only if such Holder withdraws its election to exercise such right in accordance with the terms of the Indenture.

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

**[INCLUDE IF SECURITY IS A GLOBAL SECURITY]**—In the event of a deposit or withdrawal of an interest in this Security, including an exchange, transfer, redemption, repurchase or conversion of this Security in part only, the Trustee, as custodian of the Depository, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the rules and procedures of the Depository.

**[INCLUDE IF SECURITY IS A RESTRICTED SECURITY]**—Subject to certain limitations in the Indenture, at any time when the Company is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended, upon the request of a Holder of a Restricted Security, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such

Holder of Restricted Securities, or to a prospective purchaser of any such security designated by any such Holder, to the extent required to permit compliance by any such Holder with Rule 144A under the Securities Act of 1933, as amended (the “**Securities Act**”). “**Rule 144A Information**” shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

If an Event of Default shall occur and be continuing, the Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate Principal Amount of the Outstanding Securities, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities, the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity satisfactory to it, and the Trustee shall not have received from the Holders of a majority in Principal Amount of Outstanding Securities a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of said principal hereof on or after the respective due dates expressed herein or for the enforcement of any conversion right.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount, Redemption Price, Repurchase Price of, and Liquidated Damages Amounts, if any, on, this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in The City of New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form in denominations of \$1,000 and any integral multiple of \$1,000 above that amount, as provided in the Indenture and subject to certain limitations therein set forth. Securities are exchangeable for a like aggregate Principal Amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

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



Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

**This Security shall be governed by and construed in accordance with the laws of the State of New York.**

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

### ASSIGNMENT FORM

If you want to assign this Security, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Security to:

(Print or type name, address and zip code and social security or tax ID number of assignee)

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

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

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

Signature Guarantee:

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

In connection with any transfer of this Security occurring prior to the date which is the earlier of (i) the date of the declaration by the Commission of the effectiveness of a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), covering resales of this Security (which effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) July 14, 2005, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer and that this Security is being transferred:

[ Check One ]

- (1) to the Company or a subsidiary thereof; or
- (2) in the United States to a "**Qualified Institutional Buyer**" pursuant to and in compliance with Rule 144A under the Securities Act; or
- (3) outside the United States to a "**foreign person**" in compliance with Rule 904 of Regulation S under the Securities Act; or
- (4) pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available).

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof, *provided* that if box (3)

or (4) is checked, the Company may require, prior to registering any such transfer of the Securities, in its sole discretion, such legal opinions, certifications (including an investment letter in the case of box (3)) and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Security Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 3.10 of the Indenture shall have been satisfied.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee:

Note: Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

#### TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “**qualified institutional buyer**” within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

NOTICE: To be executed by an executive officer.

#### CONVERSION NOTICE

If you want to convert this Security into Common Stock (or cash if the Company so elects) of the Company, check the box:

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

\$

Please fill in the form below:

(Insert the social security or tax ID no. of the person in whose name the Common Stock should be issued)

(Print or type such person’s name, address and zip code and the address and other appropriate delivery information to which the Common Stock should be delivered, if different)

Date:  
(Sign exactly as your name appears on the other side of this Security)  
Signature Guarantee:

Signed:

Note: Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

*Section 2.04. Form Of Trustee’s Certificate Of Authentication.* This is one of the Securities referred to in the within-mentioned Indenture.

Dated: [ \_\_\_\_\_ ],

as Trustee

By

Authorized Signatory

*Section 2.05. Legend On Restricted Securities.* During the period beginning on July 14, 2003 and ending on the date two years from such date, any Security, including any Security issued in exchange therefor or in lieu thereof, shall be deemed a “**Restricted Security**” and shall be subject to the restrictions on transfer provided in the legends set forth on the face of the form of Security in Section 2.02; *provided, however,* that the term “**Restricted Security**” shall not include any Securities as to which restrictions have been terminated in accordance with Section 3.05. All Securities shall bear the applicable legends set forth on the face of the form of Security in Section 2.02. Except as provided in Section 3.05 and Section 3.10, the Trustee shall not issue any unlegended Security until it has received an Officers’ Certificate from the Company directing it to do so.

### ARTICLE 3 THE SECURITIES

*Section 3.01. Title And Terms.* The aggregate Principal Amount of Securities which may be authenticated and delivered under this Indenture is limited to \$90,000,000, except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.04, 3.06, 9.06, 11.07 or 13.02.

The Securities shall be known and designated as the “Zero Coupon Convertible Senior Notes due 2023” of the Company. The Principal Amount shall be payable on July 14, 2023.

The Principal Amount of and Liquidated Damages Amounts, if any, on the Securities shall be payable at the office or agency of the Company in The City of New York maintained for such purpose and at any other office or agency maintained by the Company for such purpose; *provided, however,* that at the option of the Company payments may be made by wire transfer or by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

The Securities shall not have the benefit of a sinking fund.

The Securities shall not be superior in right of payment to, and shall rank *pari passu* with, all other unsecured and unsubordinated indebtedness of the Company.

*Section 3.02. Denominations.* The Securities shall be issuable only in registered form without coupons and in denominations of \$1,000 and any integral multiple of \$1,000 above that amount.

*Section 3.03. Execution, Authentication, Delivery And Dating.* The Securities shall be executed on behalf

of the Company by its Chief Executive Officer or its Chief Financial Officer. The signature of any of these officers on the Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities. The Company Order shall, in accordance with this Section 3.03, specify the amount of Securities to be authenticated, and shall further specify the amount of such Securities to be issued as a Global Security or as Physical Securities. The Trustee in accordance with such Company Order shall authenticate and deliver such Securities as in this Indenture provided and not otherwise.

Each Security shall be dated the date of its authentication.

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

*Section 3.04. Temporary Securities.* Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

*Section 3.05. Registration; Registration Of Transfer And Exchange Restrictions On Transfer.* (a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 10.02 being herein sometimes collectively referred to as the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed “**Security Registrar**” (the “**Security Registrar**”) for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate Principal Amount and tenor, each such Security bearing such restrictive legends as may be required by this Indenture (including Section 2.02, 2.05 and 3.10).

At the option of the Holder and subject to the other provisions of this Section 3.05 and to Section 3.10,

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

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

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Securities, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such securities.

Except as provided in the following sentence and in Section 3.10, all Securities originally issued hereunder and all Securities issued upon registration of transfer or exchange or replacement thereof shall be Restricted Securities and shall bear the legend required by Section 2.02 and 2.05, unless the Company shall have delivered to the Trustee (and the Security Registrar, if other than the Trustee) a Company Order stating that the Security is not a Restricted Security and may be issued without such legend thereon. Securities which are issued upon registration of transfer of, or in exchange for, Securities which are not Restricted Securities shall not be Restricted Securities and shall not bear such legend.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.04 or 9.06 not involving any transfer.

The Company shall not be required to exchange or register a transfer of any Security (i) that has been surrendered for conversion, (ii) as to which a Redemption Notice has been delivered, except, where such Redemption Notice provides that such Security is to be redeemed only in part, the Company shall be required to exchange or register a transfer of the portion thereof not to be redeemed or (iii) as to which a Repurchase Notice has been delivered and not withdrawn, except, where such Repurchase Notice provides that such Security is to be purchased only in part, the Company shall be required to exchange or register a transfer of the portion thereof not to be purchased.

(b) Beneficial ownership of every Restricted Security shall be subject to the restrictions on transfer provided in the legends required to be set forth on the face of each Restricted Security pursuant to Section 2.02 and 2.05, unless such restrictions on transfer shall be terminated in accordance with this Section 3.05(b) or Section 3.10. The Holder of each Restricted Security, by such Holder's acceptance thereof, agrees to be bound by such restrictions on transfer.

The restrictions imposed by this Section 3.05 and Sections 2.02, 2.05 and 3.10 upon the transferability of any particular Restricted Security shall cease and terminate upon delivery by the Company to the Trustee of an Officers' Certificate stating that such Restricted Security has been sold pursuant to an effective Resale Registration Statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto). Any Restricted Security as to which the Company has delivered to the Trustee an Officers' Certificate that such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon surrender of such Restricted Security for exchange to the Security Registrar in accordance with the provisions of this Section 3.05, be exchanged for a new Security, of like tenor and aggregate Principal Amount, which shall not bear the restrictive legends required by Section 2.02 and 2.05. The Company shall inform the Trustee in writing of the effective date of any Resale Registration Statement registering the Securities under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Resale Registration Statement.

As used in the preceding two paragraphs of this Section 3.05, the term “transfer” encompasses any sale, pledge, transfer or other disposition of any Restricted Security.

(c) Neither the Trustee nor any of its agents shall (i) have any duty to monitor compliance with or with respect to any federal or state or other securities or tax laws or (ii) have any duty to obtain documentation on any transfers or exchanges other than as specifically required hereunder.

*Section 3.06. Mutilated, Destroyed, Lost And Stolen Securities.* If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity satisfactory to them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

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

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

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

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

*Section 3.07. Persons Deemed Owners.* Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

*Section 3.08. Book-entry Provisions For Global Securities.* (a) The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for the Depository and (iii) bear legends as set forth on the face of the form of Security in Section 2.02.

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

(b) Transfers of the Global Securities shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred or exchanged, in whole or in part, for Physical Securities in accordance with the rules and procedures of the Depositary and the provisions of Section 3.10. In addition, Physical Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in the Global Securities if (A) such Depositary has notified the Company (or the Company becomes aware) that the Depositary (i) is unwilling or unable to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act when the Depositary is required to be so registered to act as such Depositary and, in both such cases, no successor Depositary shall have been appointed within 90 days of such notification or of the Company becoming aware of such event or (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security and the Outstanding Securities shall have become due and payable pursuant to Section 5.02 and the Trustee requests that Physical Securities be issued; *provided* that Holders of Physical Securities offered and sold in reliance on Rule 144A shall have the right, subject to applicable law, to request that such Securities be exchanged for interests in the applicable Global Security.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in the Global Security to beneficial owners pursuant to paragraph (b), the Security Registrar shall (if one or more Physical Securities are to be issued) reflect on its books and records the date and a decrease in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Physical Securities of like tenor and amount.

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

(e) Any Physical Security constituting a Restricted Security delivered in exchange for an interest in the Global Security pursuant to paragraph (c) or (d) shall, except as otherwise provided by paragraphs (a)(i)(x) and (c) of Section 3.10, bear the legend regarding transfer restrictions applicable to the Physical Securities set forth on the face of the form of Security in Section 2.02.

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

*Section 3.09. Cancellation.* The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Trustee shall cancel and dispose of all Securities surrendered for registration of transfer, exchange, payment, purchase, repurchase, redemption, conversion (pursuant to Article 13 hereof) or cancellation in accordance with its customary practices. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

*Section 3.10. Special Transfer Provision.* (a) *Transfers to Non-U.S. Persons.* The following provisions shall apply with respect to the registration of any proposed transfer of a Security constituting a Restricted Security to any Non-U.S. Person to which Securities in the form of Global Securities cannot be issued:

(i) the Security Registrar shall register the transfer of any Security constituting a Restricted Security, whether or not such Security bears the legend required by Section 2.02 and 2.05, if (x) the requested transfer is after July 14, 2005 or (y) the proposed transferor has delivered to the Security Registrar a

certificate substantially in the form of **Exhibit A** hereto, together with such other certifications, legal opinions or other information as the Company may reasonably require 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; and

(ii) if the proposed transferor is an Agent Member holding a beneficial interest in the Global Security, upon receipt by the Security Registrar of the certificate, if any, required by paragraph (i) above and instructions given in accordance with the Depositary's and the Security Registrar's procedures,

whereupon (1) the Security Registrar shall reflect on its books and records the date and (if the transfer does not involve a transfer of outstanding Physical Securities) a decrease in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the beneficial interest in the Global Security to be transferred, and (2) the Company shall execute and the Trustee shall authenticate and deliver one or more Physical Securities of like tenor and amount.

(b) *Transfers to QIBs.* The following provisions shall apply with respect to the registration of any proposed transfer of a Security constituting a Restricted Security to a QIB (excluding transfers to Non-U.S. Persons):

(i) the Security Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating, or has otherwise advised the Company and the Security Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Security stating, or has otherwise advised the Company and the Security Registrar in writing, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a QIB within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; and

(ii) if the proposed transferee is an Agent Member, and the Securities to be transferred consist of Physical Securities which after transfer are to be evidenced by an interest in the Global Security, upon receipt by the Security Registrar of instructions given in accordance with the Depositary's and the Security Registrar's procedures, the Security Registrar shall reflect on its books and records the date and an increase in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the Physical Securities to be transferred, and the Trustee shall cancel the Physical Securities so transferred.

(c) *Private Placement Legend.* Upon the registration of transfer, exchange or replacement of Securities not bearing the legends required by Section 2.02 and 2.05, the Security Registrar shall deliver Securities that do not bear such legends. Upon the registration of transfer, exchange or replacement of Securities bearing the legends required by Section 2.02 and 2.05, the Security Registrar shall deliver only Securities that bear such legends unless (i) the circumstance contemplated by paragraph (a)(i)(x) of this Section 3.10 exists or (ii) there is delivered to the Security Registrar an Opinion of Counsel reasonably satisfactory to the Company and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(d) *General.* By its acceptance of any Security bearing the legends required by Section 2.02 and 2.05, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and in such legends and agrees that it will transfer such Security only as provided in this Indenture.

The Security Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 3.10. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Security Registrar.



*Section 3.11. CUSIP Numbers.* The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such notice 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 3.12. Ranking.* The indebtedness of the Company arising under or in connection with this Indenture and every Outstanding Security issued under this Indenture from time to time constitutes and will constitute a senior unsecured general obligation of the Company, ranking equally with other existing and future senior unsecured and unsubordinated Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to the Securities by the terms of such Indebtedness. For purposes of this Section 3.12 only, “Indebtedness” means, without duplication, the principal or face amount of (i) all obligations for borrowed money, (ii) all obligations evidenced by debentures, notes or other similar instruments, (iii) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto), (iv) all obligations to pay the deferred purchase price of property or services, (v) all obligations as lessee which are capitalized in accordance with generally accepted accounting principles, and (vi) all Indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others).

#### ARTICLE 4 SATISFACTION AND DISCHARGE

*Section 4.01. Satisfaction And Discharge Of Indenture.* This Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (B) Securities for whose payment money has theretofore been deposited with the Trustee in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation have become due and payable and the Company has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness evidenced by such Securities not theretofore delivered to the Trustee for cancellation.

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

(c) the Company has delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for 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 6.07 and, if money shall have been deposited with the Trustee pursuant to subclause (ii) of Clause (a) of this Section, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive.

*Section 4.02. Application Of Trust Money.* Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Trustee pursuant to Section 4.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and Liquidated Damages Amounts, if any, for whose payment such money has been deposited with the Trustee.

ARTICLE 5  
REMEDIES

*Section 5.01. Events Of Default.* “**Event of Default**”, wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of the Principal Amount (or premium, if any), Redemption Price or Repurchase Price on any Security when it becomes due and payable; or
- (b) default in the payment of Liquidated Damages Amounts upon any Security, when such amounts become due and payable, and continuance of such default for a period of 30 days; or
- (c) default in the delivery of the Common Stock, together with cash instead of fractional shares, when such Common Stock, or cash instead of fractional shares, are required to be delivered following conversion of any Security, and the continuance of such default for a period of 10 days; or
- (d) default in the performance of any covenant, agreement or condition of the Company in this Indenture or the Securities (other than a default specified in (a) or (b) above), and continuance of such default for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate Principal Amount of the Outstanding Securities a written notice specifying such default and requiring it to be remedied and stating that such notice is a “**Notice of Default**” hereunder; or
- (e) failure by the Company to give the Change of Control Company Notice within 30 days of the occurrence of the Change of Control; or
- (f) in the event of either (i) the failure of the Company or any of its significant subsidiaries to make any payment by the end of the applicable grace period, if any, after the final scheduled payment date for such payment with respect to any indebtedness for borrowed money in an aggregate principal amount in excess of US\$15,000,000, or (ii) the acceleration of indebtedness for borrowed money of the Company or any of its significant subsidiaries in an aggregate amount in excess of US\$15,000,000 due to a default with respect to such indebtedness, without such indebtedness referred to in either (i) or (ii) above having been discharged, cured, waived, rescinded or annulled, for a period of 30 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate Principal Amount of the Securities a written notice specifying such default and requiring it to be remedied and stating that such notice is a “**Notice of Default**” hereunder; or
- (g) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any of its significant subsidiaries of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law or (iii) a decree or order appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

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

*Section 5.02. Acceleration Of Maturity; Rescission And Annulment.* (a) If an Event of Default (other than those specified in Section 5.01(g) and 5.01(h)) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities may declare the Principal Amount (or premium, if any) plus Liquidated Damages Amounts, if any, on all the Outstanding Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, shall become immediately due and payable. If an Event of Default is cured prior to any such declaration by the Trustee or the Holders, the Trustee and the Holders shall not be entitled to declare the Securities due and payable as provided herein as a result of such cured Event of Default and any such cured Event of Default shall be deemed waived by the Holders and the Trustee.

Notwithstanding the foregoing, in the case of an Event of Default specified in Section 5.01(g) or 5.01(h), the Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, on all Outstanding Securities will *ipso facto* become due and payable without any declaration or other Act on the part of the Trustee or any Holder.

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

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

(A) the Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, or the Redemption Price or Repurchase Price, as applicable, on any Securities which have become due otherwise than by such declaration of acceleration, and

(B) all sums paid or advanced by the Trustee hereunder and the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07; and

(ii) all Events of Default, other than the non-payment of the Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, on Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

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

*Section 5.03. Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture. The Trustee may maintain a proceeding even if the

Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 5.04. *Collection Of Indebtedness And Suits For Enforcement By Trustee.* (a) The Company covenants that if:

(i) default is made in the payment of any Liquidated Damages Amounts on any Security when such amounts become due and payable, and such default continues for a period of 30 days, or

(ii) default is made in the payment of the Principal Amount plus accrued but unpaid Liquidated Damages Amounts, if any, at the Stated Maturity thereof or in the payment of the Redemption Price or Repurchase Price in respect of any Security,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Payments of principal, premium, if any, and Liquidated Damages Amounts, if any, or the Redemption Price or Repurchase Price on the Securities, if any, that are not made when due will accrue interest at the annual rate of 1% above the then applicable interest rate from the required payment date.

Section 5.05. *Trustee May File Proofs Of Claim.* In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 6.07.

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

Section 5.06. *Application Of Money Collected.* Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money to Holders, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.07; and

SECOND: To the payment of the amounts then due and unpaid on the Securities for the Principal Amount, Redemption Price, Repurchase Price or Liquidated Damages Amounts, if any, as the case may be, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities.

Section 5.07. *Limitation On Suits.* No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in

Section 5.01(a), 5.01(b) or 5.01(c)), unless:

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

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

(iii) such Holder or Holders have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities 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) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate Principal Amount of the Outstanding Securities;

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

*Section 5.08. Unconditional Right Of Holders To Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount, Redemption Price, Repurchase Price or Liquidated Damages Amounts, if any, in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or on or after any Redemption Date or Repurchase Date, as applicable, and to convert the Securities in accordance with Article 13, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder. For purposes of clarification, the provisions relating to the right to receive payment upon a Repurchase Date or Conversion Date may be modified in the manner set forth in Section 9.02.

*Section 5.09. Restoration Of Rights And Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

*Section 5.10. Rights And Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

*Section 5.11. Delay Or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

*Section 5.12 . Control By Holders.* The Holders of a majority in Principal Amount of the Outstanding

Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, *provided that*:

- (i) such direction shall not be in conflict with any rule of law or with this Indenture; and
- (ii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

*Section 5.13. Waiver Of Past Defaults.* The Holders of not less than a majority in Principal Amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past Default hereunder and its consequences, except a Default:

- (i) Described in Section 5.01(a), 5.01(b) or 5.01(c); or
- (ii) in respect of a covenant or provision hereof which under Article 9 cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

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

*Section 5.14. 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, in either case in respect of the Securities, a court may require any party litigant in such suit to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorney's fees, against any party litigant in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in Principal Amount of the Outstanding Securities, to any suit by any Holder pursuant to Section 5.08 or to any suit instituted by any Holder for the enforcement of the payment of the Principal Amount or accrued but unpaid Liquidated Damages Amounts, if any, on any Security on or after Maturity of such Security or the Redemption Price or Repurchase Price.

*Section 5.15. Waiver Of Stay Or Extension Laws.* The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay, or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE 6 THE TRUSTEE

*Section 6.01. Certain Duties And Responsibilities.* The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. In case an Event of Default with respect to the Securities has occurred (which has not been cured or waived), the Trustee shall exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

*Section 6.02. Notice Of Defaults.* The Trustee shall give the Holders notice of any Default hereunder

within 90 days after the occurrence thereof or, if later, within 15 days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice; *provided*, that (except in the case of any Default in the payment of Principal Amount, premium or Liquidated Damages Amount, if any, on any of the Securities or the Redemption Price or Repurchase Price), the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the holders of Securities.

*Section 6.03. Certain Rights Of Trustee.* Subject to the provisions of Section 6.01:

- (a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;
- (c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;
- (d) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;
- (e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
- (f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (including mathematical calculations), but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.
- (g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;
- (h) the Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Securities unless either (i) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or any other obligor on such Securities or by any Holder of such Securities;
- (i) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;
- (j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its

capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

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

*Section 6.04. Not Responsible For Recitals.* The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

*Section 6.05. May Hold Securities.* The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Section 6.08 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

*Section 6.06. Money Held In Trust.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

*Section 6.07. Compensation And Reimbursement.* The Company agrees:

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

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

(iii) to indemnify the Trustee and any predecessor Trustee for, and to hold it harmless against, any loss, liability or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses, properly incurred, of defending itself against any claim (whether assessed by the Company, by any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The obligations of the Company under this Section 6.07 shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. To secure the Company's payment obligations in this Section 6.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on the Securities. Such lien shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. When the Trustee incurs expenses or renders services after a Default or an Event of Default specified in Section 5.01(e) and 5.01(f) hereof occurs, the expenses and the compensation for the services (including, the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under U.S. Code, Title 11 or any other similar foreign, federal or state law for the relief of debtors.

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



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

*Section 6.10. Resignation And Removal; Appointment Of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction at the expense of the Trustee for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of a majority in Principal Amount of the Outstanding Securities, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or

(iv) a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Company by a Company Order may remove the Trustee, or (B) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

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

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

*Section 6.11. Acceptance Of Appointment By Successor.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

*Section 6.12. Merger, Conversion, Consolidation Or Succession To Business.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

*Section 6.13. Preferential Collection Of Claims Against.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

## ARTICLE 7 HOLDERS' LISTS AND REPORTS BY TRUSTEE AND THE COMPANY

*Section 7.01. Company To Furnish Trustee Names And Addresses Of Holders.* The Company will furnish or cause to be furnished to the Trustee:

- (i) semi-annually, not later than 15 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and
- (ii) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

*excluding* from any such list names and addresses received by the Trustee in its capacity as Security Registrar; *provided, however*, that no such list need be furnished so long as the Trustee is acting as Security Registrar.

*Section 7.02. Preservation Of Information; Communications To Holders.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders

received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

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

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

*Section 7.03. Reports By Trustee.* The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture if so required by the Trust Indenture Act at the times and in the manner provided pursuant thereto. Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than December 15<sup>th</sup> in each calendar year, commencing on December 15, 2003. Each such report shall be dated as of a date not more than 60 days prior to the date of transmission.

*Section 7.04 . Reports By Company.* The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission. In the event the Company is not subject to Section 13 or 15(d) of the Exchange Act, it shall file with the Trustee upon request the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. 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). It is expressly understood that materials transmitted electronically by the Company to the Trustee shall be deemed filed with the Trustee for purposes of this Section 7.04.

## ARTICLE 8 CONSOLIDATION, MERGER, CONVEY, TRANSFER OR LEASE

*Section 8.01. Company May Consolidate, Etc., Only On Certain Terms.* The Company shall not consolidate with, merge into or transfer all or substantially all of its assets to any other Person, unless:

(a) either (i) the Company shall be the continuing Person or (ii) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety (the "**Surviving Entity**"), (1) shall be organized and validly existing under the laws of the United States of America or any of its political subdivisions, the Cayman Islands, Bermuda, the British Virgin Islands, Hong Kong or the People's Republic of China and (2) the Surviving Entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

(b) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company or the Surviving Entity has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a

supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article 8 and Article 9, respectively.

*Section 8.02. Successor Substituted.* Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

#### ARTICLE 9 SUPPLEMENTAL INDENTURES

*Section 9.01. Supplemental Indentures Without Consent Of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may amend, modify or supplement this Indenture or the Securities, in form satisfactory to the Trustee, for any of the following purposes:

- (i) subject to Section 11.03, to evidence the succession of another Person to the Company in the case of merger, consolidation, conveyance, or transfer or lease of all or substantially all of the Company's assets, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (ii) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company; or
- (iii) to provide for a successor Trustee with respect to the Securities; or
- (iv) to add any additional Events of Default with respect to the Securities; or
- (v) to cure any ambiguity or defect, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, *provided* that such action pursuant to this clause (v) shall not adversely affect the interests of the Holders in any material respect; or
- (vi) to secure the Securities; or
- (vii) to reduce the Conversion Price; *provided, however,* that such reduction in the Conversion Price is in accordance with the terms of this Indenture or shall not adversely affect the interests of the Holders of Securities (after taking into account tax and other consequences of such reduction) in any material respect; or
- (viii) to supplement any of the provisions of the Indenture to such extent as shall be necessary to permit or facilitate the discharge of the Securities; *provided, however,* that such change or modification does not adversely affect the interests of the Holders of the Securities; or
- (ix) to make any changes or modifications necessary in connection with the registration of the Securities under the Securities Act as contemplated in the Registration Rights Agreement; *provided, however,* that such change or modification does not adversely affect the interests of the Holders of Securities; or
- (x) to add or modify any other provisions herein with respect to matters or questions arising hereunder which the Company and the Trustee may deem necessary or desirable and which would not reasonably be

expected to adversely affect the interests of the Holders of Securities in any material respect; or

(xi) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities any property or assets; or

(xii) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act.

*Section 9.02. Supplemental Indentures With Consent Of Holders.* (a) With the consent of the Holders of not less than a majority in Principal Amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; *provided, however,* that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(i) change the stated Maturity of any Security and any installment of interest on such Security (including any payment of Liquidated Damages); or

(i) reduce the Principal Amount of, or the premium amount or interest, if any, of, any Security (including any payment of Liquidated Damages); or

(ii) reduce the amount of principal payable upon acceleration of the Stated Maturity of any Security after the occurrence of an Event of Default giving rise to such acceleration; or

(iii) reduce the Redemption Price or Repurchase Price of any Security; or

(iv) Except as otherwise permitted or contemplated by provisions concerning corporate reorganizations, make any change that adversely affects the right of Holders of the Securities to require the Company to repurchase such Securities in accordance with the terms thereof and this Indenture or the conversion rights of the Holders of the Securities; or

(v) change the place or the currency of any payment amount of any Security or interest thereon from U.S. Dollars as provided herein; or

(vi) make any change that impairs the right of Holders of Securities to convert any Security; or

(vii) make any change that impairs the right of Holders to institute suit for payment of the Securities; or

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

(ix) change the ranking of the Securities in any manner that adversely affects the rights of Holders of Securities under this Indenture;

(x) reduce the percentage of the principal amount of the outstanding Securities the written consent or affirmative vote of whose Holders is required to take specific actions under the Indenture; or

(xi) modify the obligation of the Company to maintain an agency in The City of New York as required under this Indenture; or

(xii) modify any of the provisions of this Section or Section 5.13, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

(b) The Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities may, on behalf of the Holders of all of the Securities, waive any past default and its consequences under this Indenture, except a default (i) in the payment of the Principal Amount of or any premium or Liquidated Damages Amount, if any, or Redemption Price or Repurchase Price, if any, on or with respect to the Securities or (ii) in respect of a covenant or provision that cannot be modified without the consent of the Holder of each Security affected thereby as set forth in paragraph (a) above.

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

*Section 9.03. Execution Of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Subject to the preceding sentence, the Trustee shall sign such supplemental indenture if the same does not adversely affect the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

*Section 9.04. Effect Of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

*Section 9.05. Conformity With Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

*Section 9.06. Reference In Securities To Supplemental Indentures.* Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article shall bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

## ARTICLE 10 COVENANTS

*Section 10.01. Payments.* The Company shall duly and punctually make all payments in respect of the Securities in accordance with the terms of the Securities and this Indenture.

Any payments made or due pursuant to this Indenture shall be considered paid on the applicable date due if by 10:00 a.m., New York City time, on such date the Paying Agent holds, in accordance with this Indenture, cash or securities, if permitted hereunder, sufficient to pay all such amounts then due. Payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts or in Applicable Stock, as the case may be.

*Section 10.02. Maintenance Of Office Or Agency.* The Company shall maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, redemption, repurchase or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served, which shall initially be the Corporate Trust Office of the Trustee. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders,

notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in or outside the Borough of Manhattan, The City of New York) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company shall 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 10.03. Money For Security Payments To Be Held In Trust.* If the Company shall at any time act as its own Paying Agent, it shall, on or before each due date of any payment in respect of any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to make the payment so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, at least one Business Day prior to each due date of any payment in respect of any Securities, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the making of payments in respect of any Security and remaining unclaimed for two years after such payment has become due shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining shall be repaid to the Company.

*Section 10.04. Statement By Officers As To Default.* The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof the Company is in Default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in Default, specifying all such Defaults and the nature and status thereof of which they may have knowledge.

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

*Section 10.05. Existence.* Subject to Article 8, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; *provided, however,* that the Company shall not be required to preserve any such right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

*Section 10.06. Reports And Delivery Of Certain Information.* Whether or not required by the rules and regulations of the Commission, so long as any Securities are Outstanding, the Company shall promptly furnish to the Trustee (i) all quarterly and annual financial information that is substantially equivalent to that which would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and, with respect to the annual information only, a report thereon by the Company's certified independent accountants and (ii) all reports that are substantially equivalent to that which would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports; *provided* that in each case the delivery of materials to the Trustee by electronic means shall be deemed to be "furnished" to the Trustee for purposes of this Section 10.06. 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). In addition, whether or not required by the rules and regulations of the Commission, the Company shall file a copy of all such information with the Commission for public availability (unless the Commission will not accept such a filing) and make such information available to investors who request it in writing. So long as any of the Securities remain Outstanding, the Company shall make available the information required by Rule 144A(d)(4) under the Securities Act to any Holder or any beneficial owner of Securities or holder or beneficial owner of shares of Common Stock, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security.

*Section 10.07. Resale Of Certain Securities.* During the period beginning on the Issue Date and ending on the date that is two years from the Issue Date, the Company shall not resell any Securities which constitute "**restricted securities**" under Rule 144 that have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

*Section 10.08 Book-Entry System.* If the Securities cease to trade in the Depository's book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book-entry arrangements that it determines are reasonable for the Securities.

*Section 10.9. Liquidated Damages Amounts Under The Registration Rights Agreement.* If at any time Liquidated Damages Amounts become payable by the Company pursuant to the Registration Rights Agreement, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Liquidated Damages Amounts that are payable and (ii) the date on which such Liquidated Damages Amounts are payable pursuant to the terms of the Registration Rights Agreement. Unless and until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Liquidated Damages Amounts are payable. If the Company has paid Liquidated Damages Amounts directly to the Persons entitled to such Liquidated Damages Amounts, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

*Section 10.10. Information For IRS Filings.* The Company shall provide to the Trustee on a timely basis



such information as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders of the Securities.

*Section 10.11. Further Instruments And Acts.* Upon reasonable request of the Trustee, or as otherwise necessary, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 11  
REDEMPTION AND REPURCHASES

*Section 11.01. Optional Redemption By The Company.*

(a) General. The Company may choose to redeem the Securities at any time on or after July 14, 2008, in whole or in part, at a redemption price equal to one hundred percent (100%) of the Principal Amount (the "**Redemption Price**") of the Securities to be redeemed if:

(i) the Sale Price of the Common Stock, as calculated by the Company, for each of the thirty (30) consecutive Trading Days preceding the day on which the Company mails the Redemption Notice is equal to at least one hundred thirty percent (130%) of the Conversion Price; or

(ii) at such time at least ninety percent (90%) of the initial aggregate Principal Amount of all of the Securities has been converted, repurchased or redeemed.

(b) Redemption Notice. The Company may exercise its rights specified in Section 11.01(a) upon delivery of a written notice of redemption (a "**Redemption Notice**"), on any date that the requirements of Section 11.01(a) are met, stating:

(i) the certificate numbers of the Securities which the Company is electing to redeem;

(ii) the portion of the Principal Amount of each Security which the Company is electing to redeem;

(iii) that each such Security shall be redeemed with respect to the Redemption Date pursuant to the terms and conditions specified in the Securities and in this Indenture;

(iv) the date on which the redemption shall occur (the "**Redemption Date**"), which shall not be less than thirty (30) days, nor more than sixty (60) days, after the mailing of the Redemption Notice;

(v) the Redemption Price;

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

(vii) that Securities subject to the Redemption Notice must be surrendered to the Paying Agent for cancellation to collect payment;

(viii) the procedures that the Holder must follow to exercise rights under this Section 11.01; and

(ix) the CUSIP number of the Securities.

(c) Payment of Redemption Price. The Company shall, no later than the Business Day immediately prior to the Redemption Date, deposit with the Trustee or with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of any of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Redemption Price of all the Securities or portions thereof which are to be redeemed on such Redemption Date. Upon the later of the receipt by the Paying Agent of the aggregate Redemption Price and the Redemption Date, the Securities subject to the Redemption Notice will cease to be Outstanding, and the rights of the Holders in respect thereof shall terminate (other than the right to

receive the Redemption Price upon delivery of such Securities).

(d) Delivery of Redemption Notice to Holders. The Paying Agent shall promptly after receiving the Redemption Notice from the Company deliver a copy of each Redemption Notice to each Holder which holds Securities that are the subject of the Redemption Notice. No later than five (5) days after delivery of such Security (together with all necessary endorsements) to the Paying Agent at the offices of the Paying Agent, the Paying Agent shall pay to the Holder thereof the Redemption Price therefor; *provided, however*, that such Redemption Price shall be so paid pursuant to this Section 11.01 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the Redemption Notice.

Provisions of this Indenture that apply to the redemption of all of a Security also apply to the redemption of such portion of such Security.

*Section 11.02. Repurchase Of Securities At Option Of The Holder.*

(a) General. The Securities shall be repurchased by the Company at the option of the Holder, in whole or in part, at a purchase price equal to one hundred percent (100%) of the Principal Amount of the Securities to be repurchased (the “**Optional Repurchase Price**”), subject to satisfaction by or on behalf of any Holder of the requirements set forth in Section 11.02(b), on July 14, 2007, July 14, 2013, and July 14, 2018 (each an “**Optional Repurchase Date**”).

(b) Optional Repurchase Notice. A Holder may exercise its right specified in Section 11.02(a) by delivery, no less than thirty (30) days and no more than sixty (60) days prior to the Optional Repurchase Date on which it wishes the Securities to be repurchased, of a written notice of repurchase (an “**Optional Repurchase Notice**”), substantially in the form of **Exhibit B** hereto, stating:

(i) the certificate number of the Security which the Holder will deliver to be repurchased;

(ii) the portion of the Principal Amount of the Security which the Holder will deliver to be repurchased, which portion must be in a Principal Amount of \$1,000 or an integral multiple thereof; and

(iii) that such Security shall be repurchased on the applicable Optional Repurchase Date pursuant to the terms and conditions specified in the Securities and in this Indenture.

The delivery of such Security to the Paying Agent with, or at any time after delivery of, the Optional Repurchase Notice (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Optional Repurchase Price therefor; *provided, however*, that such Optional Repurchase Price shall be so paid pursuant to this Section 11.02 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Optional Repurchase Notice.

The Company shall repurchase from the Holder thereof, pursuant to this Section 11.02, a portion of a Security, so long as the Principal Amount of such portion is \$1,000 or an integral multiple thereof. Provisions of this Indenture that apply to the repurchase of all of a Security also apply to the repurchase of such portion of such Security.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 11.02 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Optional Repurchase Date and the time of delivery of the Security.

Notwithstanding anything contained herein to the contrary, any Holder delivering to the Paying Agent the Optional Repurchase Notice contemplated by this Section 11.02(b) shall have the right to withdraw such Optional Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Optional Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 11.05.

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

*Section 11.03. Repurchase Of Securities At Option Of The Holder Upon Change of Control.*

(a) General.

(i) If at any time prior to the Maturity Date there shall have occurred a Change of Control, Securities shall be purchased by the Company at the option of the Holder, in whole or in part, as of the date that is 30 days after the date of the mailing of the Change of Control Company Notice under Section 11.03(b) (the “**Change of Control Repurchase Date**”) at a purchase price equal to 100% of the Principal Amount of the Securities to be repurchased, together with interest accrued and unpaid, but excluding, the Change of Control Repurchase Date (the “**Change of Control Repurchase Price**”), subject to satisfaction by or on behalf of any Holder of the requirements set forth in Section 11.03(c).

(ii) Subject to the fulfillment by the Company of the conditions set forth in Section 11.04(d) below, the Company may elect to pay the Change of Control Repurchase Price in Common Stock by delivering the number of shares of Applicable Stock equal to (i) the Change of Control Repurchase Price divided by (ii) 95% of the average of the Sale Price of the Applicable Stock for the five consecutive Trading Days immediately preceding and including the third Trading Day immediately preceding the Change of Control Repurchase Date. A “**Change of Control**” shall be deemed to have occurred at such time after the Issue Date of the Securities when the following has occurred:

- (1) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Exchange Act, acquires the beneficial ownership (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person shall be deemed to have “beneficial ownership” of all securities that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, through a purchase, merger or other acquisition transaction, of 50% or more of the total outstanding voting stock of the Company or any of the Company’s significant subsidiaries, other than an acquisition by the Company, any of its subsidiaries or any of its employee benefit plans;
- (2) the Company or any of the Company’s significant subsidiaries consolidates with or merges with or into another Person or conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with or merges with or into the Company or any of the Company’s significant subsidiaries, other than:
  - (x) any transaction (i) that does not result in any reclassifications, conversion, exchange or cancellation of outstanding shares of the capital stock of the Company or any of the Company’s significant subsidiaries and (ii) pursuant to which holders of the capital stock of the Company or any of the Company’s significant subsidiaries immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of such capital stock entitled to vote generally in the election of directors of the continuing or surviving Person immediately after the transaction; and
  - (y) any merger solely for the purpose of changing the Company’s or any of its significant subsidiaries’ jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding Common Stock solely into shares of common stock of the surviving entity;
- (3) during any consecutive two-year period, individuals who at the beginning of such period constituted the Board of Directors of the Company or any of its significant subsidiaries (together with any new directors whose election to such Board of Directors, or whose nomination for election by stockholders, was approved by a vote of a majority of the

directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of Directors; or

- (4) the stockholders of the Company or any of its significant subsidiaries pass a special resolution approving a plan of liquidation or dissolution and no additional approvals of stockholders are required under applicable laws to cause a liquidation or dissolution.

(b) Notice of Change of Control. Within 30 days after the occurrence of a Change of Control, the Company shall mail a written notice of Change of Control (the “**Change of Control Company Notice**”) by first-class mail to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include a form of Change of Control Repurchase Notice to be completed by the Securityholder and shall state:

(i) the events causing a Change of Control and the date of such Change of Control;

(ii) that the Holder has a right to require the Company to repurchase the Holder’s Securities;

(iii) the date by which the Change of Control Repurchase Notice pursuant to this Section 11.03 must be delivered to the Paying Agent in order for a Holder to exercise the Change of Control repurchase right;

(iv) the Change of Control Repurchase Date;

(v) the Change of Control Repurchase Price;

(vi) whether the Change of Control Repurchase Price will be paid in cash or shares of Applicable Stock, or a combination thereof and, in the case of a combination, the percentage of each;

(vii) if the Company elects to pay the Change of Control Repurchase Price in shares of Applicable Stock or a combination of cash and shares of Applicable Stock, that the number of shares of Applicable Stock each Holder will receive will equal the quotient obtained by dividing the amount of the Change of Control Repurchase Price to be paid in shares of Applicable Stock by 95% of the average of the Sale Price of the Applicable Stock for the five consecutive Trading Days immediately preceding and including the third Trading Day immediately preceding the Change of Control Repurchase Date;

(viii) if the Company elects to pay the Change of Control Repurchase Price in shares of Applicable Stock or a combination of cash and shares of Applicable Stock, the method of calculating the Sale Price of the shares of Applicable Stock;

(ix) that because the Sale Price of the shares of Applicable Stock will be determined prior to the Change of Control Repurchase Date, Holders of the Securities will bear the market risk that the shares of Applicable Stock to be received will decline in value between the date such Sale Price is determined and the Change of Control Repurchase Date;

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

(xi) the Conversion Price applicable on the Change of Control Company Notice Date;

(xii) that Securities as to which a Change of Control Repurchase Notice has been given may be converted pursuant to Article 13 hereof only if the Change of Control Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(xiii) that Securities must be surrendered to the Paying Agent for cancellation to collect payment;

(xiv) that the Change of Control Repurchase Price for any Security as to which a Change of Control Repurchase Notice has been duly given and not withdrawn will be paid promptly following the later of the

Change of Control Repurchase Date and the time of surrender of such Security as described in (xiii);

(xv) the procedures the Holder must follow to exercise rights under this Section 11.03;

(xvi) the conversion rights, if any, of the Securities;

(xvii) the procedures for withdrawing a Change of Control Repurchase Notice; and

(xviii) the CUSIP number of the Securities.

At the Company's request, the Trustee shall give such Change of Control Company Notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Change of Control Company Notice shall be prepared by the Company.

(c) **Change of Control Repurchase Notice.** A Holder may exercise its right specified in Section 11.03(a) upon delivery of a written notice of repurchase (a "**Change of Control Repurchase Notice**"), substantially in the form of **Exhibit C** hereto, at any time from the opening of business on the date of the Change of Control Company Notice until the close of business on the Change of Control Repurchase Date, stating:

(i) the certificate number of the Security which the Holder will deliver to be repurchased;

(ii) the portion of the Principal Amount of the Security which the Holder will deliver to be repurchased, which portion must be in a Principal Amount of \$1,000 or an integral multiple thereof;

(iii) that such Security shall be repurchased with respect to the Change of Control Repurchase Date pursuant to the terms and conditions specified in the Securities and in this Indenture;

(iv) payment instructions for the payment of cash and share delivery instructions for shares of Applicable Stock (as applicable); and

(v) in the event the Company elects, pursuant to Section 11.04, to pay the Change of Control Repurchase Price, in whole or in part, in shares of Applicable Stock but such portion of the Change of Control Repurchase Price shall ultimately be paid to such Holder entirely in cash because any of the conditions to payment of the Change of Control Repurchase Price in shares of Applicable Stock is not satisfied prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Repurchase Date, as set forth in Section 11.04, whether such Holder elects to (A) withdraw such Change of Control Repurchase Notice as to some or all of the Securities to which such Change of Control Repurchase Notice relates (stating the principal amount and certificate numbers, if any, or the appropriate Depository procedures, if applicable, of the Securities as to which such withdrawal shall relate), or (B) receive cash in respect of the entire Change of Control Repurchase Price for all Securities (or portions thereof) to which such Change of Control Repurchase Notice relates.

The delivery of such Security to the Paying Agent with, or at any time after delivery of, the Change of Control Repurchase Notice (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Change of Control Repurchase Price therefor; *provided, however*, that such Change of Control Repurchase Price shall be so paid pursuant to this Section 11.03 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Change of Control Repurchase Notice.

If a Holder, in such Holder's Change of Control Repurchase Notice and in any written notice of withdrawal delivered by such Holder pursuant to the terms of Section 11.05, fails to indicate such Holder's choice with respect to the election set forth in Section 11.03(c)(v), such Holder shall be deemed to have elected to receive cash in respect of the entire Change of Control Repurchase Price for all Securities subject to such Change of Control Repurchase Notice in the circumstances set forth in such Section 11.03(c)(v).

The Company shall repurchase from the Holder thereof, pursuant to this Section 11.03, a portion of a Security, so long as the Principal Amount of such portion is \$1,000 or an integral multiple thereof. Provisions of this Indenture that apply to the repurchase of all of a Security also apply to the repurchase of such portion of such Security.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 11.03 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Change of Control Repurchase Date and the time of delivery of the Security; *provided, however*, that if the Change of Control Repurchase Notice is delivered after a date which is two Business Days prior to the Change of Control Repurchase Date, such payment may be made as promptly after such Change of Control Repurchase Date as is practicable.

Notwithstanding anything contained herein to the contrary, any Holder delivering to the Paying Agent the Change of Control Repurchase Notice contemplated by this Section 11.03(c) shall have the right to withdraw such Change of Control Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Change of Control Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 11.05.

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

*Section 11.04. The Company's Right To Elect Manner Of Payment Of Change of Control Repurchase Price.* (a) The Securities to be repurchased with respect to any Change of Control Repurchase Date pursuant to Section 11.03(a) may be paid for at the election of the Company in cash or shares of Applicable Stock, or in any combination of cash and shares of Applicable Stock, subject to the conditions set forth in Section 11.04(b). The Company shall designate, in the notice of Change of Control delivered pursuant to Section 11.03(b), whether the Company will repurchase the Securities for cash or shares of Applicable Stock, or, if a combination thereof, the percentages of the Change of Control Repurchase Price in respect of which it will pay in cash or shares of Applicable Stock; *provided, however*, that the Company will pay cash for fractional interests in shares of Applicable Stock. For purposes of determining the existence of potential fractional interests, all Securities subject to repurchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each Holder whose Securities are repurchased pursuant to Section 11.03 shall receive the same percentage of cash or shares of Applicable Stock in payment of the Change of Control Repurchase Price for such Securities, except (i) as provided in this Section 11.04(a) with regard to the payment of cash in lieu of fractional shares of Applicable Stock and (ii) in the event that the Company is unable to purchase the Securities of a Holder or Holders for shares of Applicable Stock because any necessary qualifications or registrations of the shares of Applicable Stock under applicable securities laws cannot be obtained, the Company may purchase the Securities of such Holder or Holders for cash. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its notice of Change of Control to Holders except in the event of a failure to satisfy, prior to 5:00 p.m. (New York City time), on the Business Day immediately preceding the Change of Control Repurchase Date, any condition to the payment of the Change of Control Repurchase Price in whole or in part, in shares of Applicable Stock.

(b) If the Company elects to pay the Change of Control Repurchase Price by delivering shares of Applicable Stock in lieu of cash or by delivering a combination of Applicable Stock and cash, the number of shares of Applicable Stock to be issued shall be equal to the relevant amount of the Change of Control Repurchase Price to be paid divided by 95% of the average of the Sale Prices of the Applicable Stock for the five consecutive Trading Days immediately preceding and including the third Trading Day immediately preceding the Change of Control Repurchase Date.

(c) The Company will not issue any fraction of a share of Applicable Stock in payment of the Change of Control Repurchase Price. Instead, the Company will make a cash payment (calculated to the nearest cent) equal to such fraction multiplied by the Sale Price of one share of Applicable Stock on the second Business Day immediately preceding the Change of Control Repurchase Date. If a Holder elects to have

more than one Security purchased, the number of shares of Applicable Stock shall be based on the aggregate amount of Securities to be purchased.

(d) The Company's right to exercise its election to repurchase Securities through the issuance of shares of Applicable Stock shall be conditioned upon satisfaction of the following conditions prior to 5:00 p.m. (New York City time), on the Business Day immediately preceding the Change of Control Repurchase Date:

(i) the registration of such shares of Applicable Stock to be issued upon repurchase under the Securities Act and the Exchange Act, in each case, if required;

(ii) any qualification or registration of such shares of Applicable Stock to be issued upon repurchase under applicable state securities laws, if necessary, or the availability of an exemption from such qualification and registration;

(iii) the listing of such shares of Applicable Stock on a United States national securities exchange or the quotation of such shares of Applicable Stock on an inter-dealer quotation system of any registered United States national securities association; and

(iv) the receipt by the Trustee of an Officers' Certificate stating (A) that the terms of the issuance of the shares of Applicable Stock are in conformity with this Indenture; (B) that the shares of Applicable Stock to be issued in payment of the Change of Control Repurchase Price in respect of Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Change of Control Repurchase Price in respect of Securities, will be validly issued, fully paid, non assessable and free from preemptive rights; (C) that the conditions above and the condition set forth in the second succeeding sentence have been satisfied in all material respects; and (D) the number of shares of Applicable Stock to be issued for each \$1,000 Principal Amount of Securities and the Sale Price of a share of Applicable Stock on each Trading Day during the period commencing on the first Trading Day of the period during which the Sale Price is calculated and ending on the Trading Day immediately preceding the Change of Control Repurchase Date; and

(v) the receipt by the Trustee of an Opinion of Counsel stating that: (A) the shares of Applicable Stock to be issued by the Company in payment of the Change of Control Repurchase Price in respect of Securities have been duly authorized, and when issued and delivered pursuant to the terms of this Indenture in payment of the Change of Control Repurchase Price in respect of Securities, will be validly issued, fully paid and non assessable and, to the best of such counsel's knowledge, free from preemptive rights under the Company's certificate of incorporation, bylaws or any material contract; and (B) the conditions in clause (i) above have been satisfied in all material respects.

If the foregoing conditions are not satisfied with respect to a Holder or Holders prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Repurchase Date, and the Company has elected to repurchase the Securities pursuant to this Section 11.04, in whole or in part, through the issuance of shares of Applicable Stock, the Company shall pay the entire Change of Control Repurchase Price of the Securities of such Holder or Holders in cash. Upon determination of the actual number of shares of Applicable Stock to be issued upon repurchase of Securities, the Company shall be required to disseminate a press release through a public medium as is customary for such a press release.

*Section 11.05. Effect Of Repurchase Notice.* Upon receipt by the Paying Agent of the Optional Repurchase Notice specified in Section 11.02(b) or the Change of Control Repurchase Notice specified in Section 11.03(c) (Optional Repurchase Notices and Change of Control Repurchase Notices, as applicable, being referred to herein as "**Repurchase Notices**"), the Holder of the Security in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Optional Repurchase Price or the Change of Control Repurchase Price, as applicable (the Optional Repurchase Price and the Change of Control Repurchase Price, as applicable, being referred to herein as the "**Repurchase Price**"), with respect to such Security. Such Repurchase Price shall be paid to such Holder, subject to prior receipt of funds by

the Paying Agent, promptly following the later of (x) the Optional Repurchase Date or the Change of Control Repurchase Date, as applicable (the Optional Repurchase Date and the Change of Control Repurchase Date, as applicable, being referred to herein as the “**Repurchase Date**”), with respect to such Security (provided the conditions in 11.02(b) or 11.03(c), as applicable, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 11.02(b) or 11.03(c), as applicable, *provided, however*, that should any portion of the Repurchase Price be payable in shares of Applicable Stock, the Company will deliver such shares directly to the Holders in accordance with the share delivery instructions set forth in the Repurchase Notice. Securities in respect of which a Repurchase Notice has been given may not be converted pursuant to Article 13 hereof on or after the date of the delivery of such Repurchase Notice, except if the Repurchase Notice, if applicable, has first been validly withdrawn as specified in the following two paragraphs.

A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the procedures set forth in the Change of Control Company Notice at any time prior to the close of business on the Business Day prior to the Repurchase Date specifying:

- (i) the certificate number of the Security in respect of which such notice of withdrawal is being submitted;
- (ii) the Principal Amount of the Security with respect to which such notice of withdrawal is being submitted; and
- (iii) the Principal Amount, if any, of such Security which remains subject to the original Repurchase Notice and which has been or will be delivered for repurchase by the Company.

There shall be no purchase of any Securities pursuant to Section 11.02 or 11.03 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Repurchase Notice) and is continuing an Event of Default (other than a default in the payment of the Repurchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders of any Securities (x) with respect to which a Repurchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Repurchase Price with respect to such Securities) in which case, upon such return, the Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

*Section 11.06. Deposit Of Repurchase Price.* Prior to 10:00 a.m. (New York City time) on the Business Day following the Repurchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of any of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the portion of the aggregate Repurchase Price of all the Securities or portions thereof which are to be repurchased on such Repurchase Date that is to be paid in cash as set forth in the relevant notice of Change in Control in accordance with Section 11.04.

If the Paying Agent holds, in accordance with the terms hereof, at 10:00 a.m. (New York City time) on the Business Day immediately following the applicable Repurchase Date, cash sufficient to pay the portion of the Repurchase Price that is to be paid in cash of any Securities for which a Repurchase Notice has been tendered and not withdrawn pursuant to Section 11.05, then, immediately after such Repurchase Date, such Securities will cease to be outstanding, and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Repurchase Price upon delivery of such Securities).

As soon as practicable on and after the Change of Control Repurchase Date, the Company shall deliver to each Holder entitled to receive shares of Applicable Stock, a certificate (other than in the case of Holders of Securities in book-entry form with the Depository, which shares shall be delivered in accordance with the Depository customary practices) for the number of full shares of Applicable Stock issuable in payment of the Change of Control Repurchase Price and cash in lieu of any fractional interests. The person in whose name the certificate for the shares of Applicable Stock is registered shall be treated as a holder of record of Applicable Stock on the Change of Control Repurchase Date. No payment or adjustment will be made for



dividends on the shares of Applicable Stock the record date for which occurred on or prior to the Change of Control Repurchase Date.

*Section 11.07. Securities Repurchased or Redeemed In Part.* Any Security which is to be repurchased or 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 Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to, and in exchange for, the portion of the Principal Amount of the Security so surrendered which is not repurchased or redeemed.

*Section 11.08. Covenant To Comply With Securities Laws Upon Repurchase or Redemption Of Securities.* In connection with any offer to redeem or repurchase Securities under Section 11.01, 11.02 or 11.03 hereof (provided that such offer of redemption or repurchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions under applicable law, the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Section 11.01, 11.02 or 11.03, as applicable, to be exercised in the time and in the manner specified in such Section.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Article 11, the Company's compliance with such laws and regulations including the extension of the payment or notice periods contemplated by this Article, shall not in and of itself cause a breach of their obligations under this Article 11.

*Section 11.09. Repayment To The Company.* The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed, together with dividends, if any, thereon, held by them for the payment of the Redemption Price or Repurchase Price; *provided, however,* that to the extent that the aggregate amount of cash deposited by the Company exceeds the portion of the aggregate Redemption Price or Repurchase Price of the Securities or portions thereof which the Company is obligated to purchase in cash as of the Redemption Date or Repurchase Date then on the Business Day following the Redemption Date or Repurchase Date the Trustee or the Paying Agent, as the case may be, shall return any such excess to the Company.

## ARTICLE 12

### PAYMENTS OF LIQUIDATED DAMAGES AMOUNTS ON THE SECURITIES

*Section 12.01. Payment Of Liquidated Damages Amounts; Interest Rights Preserved.* (a) Accrued but unpaid Liquidated Damages Amounts, if any, on any Security that is payable, and is punctually paid or duly provided for, on any Liquidated Damages Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose. Each installment of Liquidated Damages Amounts, if any on any Security shall be made by check mailed to the address of the Holder specified in the register of Securities, or, at the option of the Holder, at the Corporate Trust Office, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts; *provided, however,* that, with respect to any Holder of Securities with an aggregate principal amount in excess of \$5,000,000, at the request of such Holder in writing to the Company, Liquidated Damages Amounts, if any on such Holder's Securities shall be paid by wire transfer in immediately available funds in accordance with the written wire transfer instruction supplied by such Holder from time to time to the Trustee and Paying Agent (if different from the Trustee) at least two days prior to the applicable Regular Record Date. In the case of a permanent Global Security, interest payable on any Liquidated Damages Payment Date will be paid to the Depository, with respect to that portion of such permanent Global Security held for its account by Cede & Co. for the purpose of permitting such

party to credit the interest received by it in respect of such permanent Global Security to the accounts of the beneficial owners thereof.

ARTICLE 13  
CONVERSION

*Section 13.01. Right To Convert.* (a) Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at such Holder's option, at any time following the Issue Date of the Securities hereunder through the close of business on the Final Maturity Date to convert the Principal Amount of any such Securities, or any portion of such Principal Amount which is \$1,000 or an integral multiple thereof, at the Conversion Price then in effect.

(b) Notwithstanding the foregoing, a Security in respect of which a Holder has delivered a Repurchase Notice exercising such Holder's option to require the Company to repurchase such Security may be converted only if such notice of exercise is withdrawn in accordance with Article 11 hereof prior to the close of business on the Business Day immediately preceding the Repurchase Date.

*Section 13.02. Conversion Procedure.* (a) Each Security shall be convertible at the office of the Conversion Agent into fully paid and nonassessable shares (calculated to the nearest 1/100th of a share) of Common Stock. The Security will be converted into shares of Common Stock at the Conversion Price therefor.

(b) In order to exercise the conversion privilege with respect to any Securities in certificated form, the Holder of any such Securities to be converted, in whole or in part, shall:

(i) complete and manually sign the conversion notice provided on the back of the Security (the "**Conversion Notice**") and deliver such notice to a Conversion Agent;

(ii) surrender the Security to a Conversion Agent;

(iii) furnish appropriate endorsements and transfer documents, if required; and

(iv) pay any transfer or similar tax, if required.

The date on which the Holder satisfies all of the requirements set forth in (i) through (iv) above is the "**Conversion Date**." Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. All such Securities surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Securities, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or his duly authorized attorney.

In order to exercise the conversion privilege with respect to any interest in Securities in global form, the Holder must complete the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent, and pay the funds, if any, required by this Section 13.02 and any transfer taxes if required pursuant to Section 13.06.

(c) As promptly as practicable after satisfaction of the requirements for conversion set forth above (but in no event later than three Business Days after the Conversion Date), subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the Holder (as if such transfer were a transfer of the Securities (or portion thereof) so converted), the Company shall issue and shall deliver to such Holder, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Securities or portion thereof in accordance with the provisions of this Article and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, as provided in Section 13.03. In case any Securities of a

denomination greater than \$1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Securities so surrendered, without charge to him, new Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Securities.

Each conversion shall be deemed to have been effected as to any such Securities (or portion thereof) on the date on which the requirements set forth above in this Section 13.02 have been satisfied as to such Securities (or portion thereof), and the person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the Holder of record of the shares represented thereby; *provided, however*, that in case of any such surrender on any date when the stock transfer books of the Company shall be closed, the person or persons in whose name the certificate or certificates for such shares are to be issued shall be deemed to have become the record Holder thereof for all purposes on the next day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Securities shall be surrendered.

(d) Upon the conversion of an interest in Global Securities, the Trustee (or other Conversion Agent appointed by the Company) shall make a notation on such Global Securities as to the reduction in the Principal Amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Securities effected through any Conversion Agent other than the Trustee.

(e) Each stock certificate representing Common Stock issued upon conversion of the Securities that are Restricted Securities shall bear the legend in substantially the form of **Exhibit D** hereto.

*Section 13.03. Cash Payments In Lieu Of Fractional Shares.* The Company will not issue fractional shares of Common Stock upon conversion of Securities. If multiple Securities shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate Principal Amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Securities, the Company shall make payment therefor in cash equal to the fraction of a share of Common Stock otherwise issuable multiplied by the Current Market Price (as defined in Section 13.04(g)) to the Holder of Securities.

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

(a) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, pay a dividend or make a distribution in shares of Common Stock to all holders of its outstanding shares of Common Stock, then the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be adjusted by multiplying such Conversion Price by a fraction, (i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination, and (ii) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution. Such reduction becomes effective immediately after the opening of business on the day following the date fixed for such determination. If any dividend or distribution of the type described in this Section 13.04(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, issue to all holders of its outstanding shares of Common Stock rights or warrants entitling them (for a period of not more than 60 days after such issuance) to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable or exercisable for Common Stock) at a price per share (or having a conversion, exchange or exercise price per share) less than the Sale Price of Common Stock on the Business Day immediately preceding the date of announcement of such issuance, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the

Conversion Price in effect at the opening of business on the date of such announcement by a fraction, (i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of announcement, plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such Sale Price of Common Stock on the Business Day immediately preceding the date of announcement of such issuance (determined by multiplying such total number of shares so offered by the exercise price of such rights or warrants and dividing the product so obtained by such Sale Price), and (ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date of announcement plus the total number of additional shares of Common Stock offered for subscription or purchase or into which convertible, exchangeable or exercisable, securities so offered are convertible, exchangeable or exercisable.

Such adjustment shall become effective immediately after the opening of business on the day following the date of announcement of such issuance.

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

(c) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case the Company shall, at any time or from time to time while any of the Securities are outstanding, combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased. In each such case, the Conversion Price shall be adjusted by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision or combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately after giving effect to such subdivision or combination. Such reduction or increase, as the case may be, shall become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) (i) In case the Company shall, at any time or from time to time while the Securities are outstanding, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 13.04(a) applies) or evidences of its indebtedness or assets (including securities, but excluding any rights or warrants referred to in Section 13.04(b), and excluding any dividend or distribution (x) paid exclusively in cash or (y) referred to in Section 13.04(a)) (any of the foregoing hereinafter in this Section 13.04(d)) called the “**Distributed Securities**”), then, in each such case, the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect on the Record Date with respect to such distribution by a fraction:

(A) the numerator of which shall be the Current Market Price per share of the Common Stock on such Record Date less the fair market value (as determined by the Board of Directors, whose good faith determination shall be conclusive, and described in a resolution of the Board of Directors) on the Record

Date of the portion of the Distributed Securities so distributed applicable to one share of Common Stock, and

(B) the denominator of which shall be the Current Market Price per share of the Common Stock.

Such reduction shall become effective immediately prior to the opening of business on the day following the Record Date for such distribution. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 13.04(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock.

Each share of Common Stock issued upon conversion of securities pursuant to this Article 13 shall be entitled to receive the appropriate number of common stock or preferred stock purchase rights, if any, as may be provided by the terms of any stockholder rights plan adopted by the Company (notwithstanding the occurrence of an event causing such rights to separate from the Common Stock at or prior to the time of conversion). Any distribution of rights or warrants pursuant to a stockholder rights plan complying with the requirements set forth in the immediately preceding sentence of this paragraph shall not constitute a distribution of rights or warrants for the purposes of Section 13.04(b) or this Section 13.04(d).

(ii) For the purposes of this Section 13.04(d), rights or warrants distributed by the Company to all holders of its Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (A) are deemed to be transferred with such shares of Common Stock; (B) are not exercisable; and (C) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 13.04(d) (and no adjustment to the Conversion Price under this Section 13.04(d) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Price shall be made under this Section 13.04(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 13.04(d) was made, (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any Holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all applicable holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

(iii) For purposes of this Section 13.04(d) and Sections 13.04(a), 13.04(b), and 13.04(c), any dividend or distribution to which this Section 13.04(d) is applicable that also includes (x) shares of Common Stock, (y) rights or warrants to subscribe for or purchase shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock to which Section 13.04(b) applies (or any combination thereof), or (z) a subdivision or combination of shares of Common Stock to which Section 13.04(c) applies or shall be deemed instead to be:

(A) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants, other than such shares of Common Stock, such rights or warrants or securities convertible into or exercisable or exchangeable for Common Stock or such subdivision or combination to which Sections

13.04(a), 13.04(b), and 13.04(c) apply, respectively (and any Conversion Price reduction required by this Section 13.04(d) with respect to such dividend or distribution shall then be made), immediately followed by,

(B) a dividend or distribution of such shares of Common Stock, such rights or warrants or securities convertible into or exercisable or exchangeable for Common Stock or such subdivision or combination (and any further Conversion Price reduction required by Section 13.04(a), 13.04(b), and 13.04(c) with respect to such dividend or distribution shall then be made), except:

(1) the Record Date of such dividend or distribution shall be substituted as (x) “the date fixed for the determination of stockholders entitled to receive such dividend or other distribution,” and “the date fixed for such determination” within the meaning of Section 13.04(a), (y) “the date fixed for the determination of stockholders entitled to receive such rights or warrants,” within the meaning of Section 13.04(b) and (z) “the day upon which such subdivision becomes effective” and “the day upon which such combination becomes effective” within the meaning of Section 13.04(c); and

(2) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding at the close of business on the date fixed for such determination” within the meaning of Section 13.04(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

(e) In case the Company shall, at any time or from time to time while any of the Securities are outstanding, by dividend or otherwise, distribute to all holders of its shares of Common Stock, cash (excluding any cash that is distributed upon a merger or consolidation to which Section 13.05 applies or as part of a distribution referred to in Section 13.04(d)) (on a per-share basis, the “**Cash Dividend Amount**”), then, and in each case, immediately after the close of business on such date, the Conversion Price shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Price in effect immediately prior to the close of business of such Record Date by a fraction:

(A) the numerator of which shall be equal to the Current Market Price on the Record Date less the Cash Dividend Amount; and

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

(f) In case a tender offer made by the Company or any of its subsidiaries for all or any portion of the Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose good faith determination shall be conclusive and described in a resolution of the Board of Directors) that combined together with the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose good faith determination shall be conclusive and described in a resolution of the Board of Directors), as of the expiration of such tender offer, of any other consideration payable in respect of any other tender offers, by the Company or any of its subsidiaries for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this Section 13.04(f) has been made, exceeds 10% of the product of the Sale Price of the Common Stock as of the last time (the “**Expiration Time**”) tenders could have been made pursuant to such tender offer (as it may be amended), times the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction (A) the numerator of which shall be the product of (1) the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time and (2) the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, and (B) the denominator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in

the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the “**Purchased Shares**”) and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time. Such reduction (if any) shall become effective immediately prior to the opening of business on the Business Day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer had not been made. If the application of this Section 13.04(f) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 13.04(f).

(g) For purposes of this Section 13.04, the following terms shall have the meaning indicated:

(1) “**Current Market Price**” on any date means the average of the Sales Prices per share of Common Stock for the 10 consecutive Trading Days immediately preceding the day before the record date (or, if earlier, the Ex-Dividend date) with respect to any distribution, issuance or other event requiring such computation.

(2) “**fair market value**” shall mean the amount which a willing buyer would pay a willing seller in an arm’s length transaction.

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

(h) The Company may make such decreases in the Conversion Price, in addition to any adjustments required by Sections 13.04(a), 13.04(b), 13.04(c), 13.04(d), 13.04(e) or 13.04(f), 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.

(i) To the extent permitted by applicable law, the Company from time to time may decrease the Conversion Price by any amount for any period of time if the period is at least 20 days, the decrease is irrevocable during the period and the Board of Directors shall have made a determination that such decrease would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Price is decreased pursuant to the preceding sentence, the Company shall mail to Holders of record of the Securities a notice of the decrease at least 15 days prior to the date the decreased Conversion Price takes effect, and such notice shall state the decreased Conversion Price and the period during which it will be in effect.

(j) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; *provided, however*, that any adjustments which by reason of this Section 13.04(j) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 13 shall be made by the Company and shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Securities become convertible into cash, assets, property or securities (other than capital stock of the Company), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on the cash.

(k) Whenever the Conversion Price is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent an Officers’ Certificate setting forth the Conversion Price after

such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Price and may assume without inquiry that the last Conversion Price of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each Holder of Securities at such Holder's last address appearing on the list of Security holders provided for in Section 3.05 of this Indenture, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) In any case in which this Section 13.04 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Securities converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 13.03.

(m) For purposes of this Section 13.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(n) No adjustment to the Conversion Price shall be made pursuant to this Section 13.04 if the Holders of the Securities may participate in the transaction that would otherwise give rise to an adjustment pursuant to this Section 13.04.

*Section 13.05. Effect Of Reclassification, Consolidation, Merger Or Sale.* If any of the following events occur, namely:

(i) any reclassification or change of shares of Common Stock issuable upon conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, or any other change for which an adjustment is provided in Section 13.04(c));

(ii) any consolidation or merger or combination to which the Company is a party other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in outstanding shares of Common Stock; or

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

then the Company or the successor or purchasing person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act of 1939 as in force at the date of execution of such supplemental indenture) providing that such Securities shall be convertible into the kind and amount of shares of stock, securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Securities (assuming, for such purposes, a sufficient number of authorized shares of Common Stock available to convert all such Securities) immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance, assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such reclassification, change,



consolidation, merger, combination, sale or conveyance ( *provided* that, if the kind or amount of stock, securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised (“**nonelecting share**”), then for the purposes of this Section 13.05, the kind and amount of stock, securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 13. If, in the case of any such reclassification, change, consolidation, merger, combination, sale or conveyance, the stock, securities or other property or assets (including cash) receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash) of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Securities maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances. If this Section 13.05 applies to any event or occurrence, Section 13.04 shall not apply.

*Section 13.06. Taxes On Shares Issued.* The issue of stock certificates on conversions of Securities shall be made without charge to the converting Holder for any documentary, transfer, stamp or any similar tax in respect of the issue thereof, and the Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the Holder of any Securities converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

*Section 13.07. Reservation Of Shares; Shares To Be Fully Paid; Compliance With Governmental Requirements; Listing Of Common Stock.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares, sufficient shares of Common Stock to provide for the conversion of the Securities from time to time as such Securities are presented for conversion (assuming that, at the time of the computation of such number of shares or securities, all such Securities would be held by a single Holder).

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Securities, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities shall be newly issued shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any lien or adverse claim.

The Company shall use its reasonable efforts to list or cause to have quoted any shares of Common Stock to be issued upon conversion of Securities on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

*Section 13.08. Responsibility Of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine the Conversion Price or whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Securities; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Securities for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.05 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Securities after any event referred to in such Section 13.05 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 6.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

*Section 13.09. Notice To Holders Prior To Certain Actions.* In case,

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Price pursuant to Section 13.04; or

(b) the Company shall authorize the granting to the holders of all or substantially all of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or reorganization of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company or any of its significant subsidiaries; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its significant subsidiaries;

then, in each case, the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Securities at such Holder's address appearing on the list of Security holders provided for in Section 3.05 of this Indenture, as promptly as practicable but in any event at least 15 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

*Section 13.10. Company Determination Final.* Any determination that the Company or the Board of Directors must make pursuant to this Article 13 shall be conclusive if made in good faith and in accordance

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with the provisions of this Article, absent manifest error, and set forth in a Board Resolution.

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

**[signature page follows]**



Form of Certificate to Be Delivered  
in Connection with Transfers  
Pursuant to Regulation S

The Bank of New York  
101 Barclay Street, Floor 21-W  
New York, New York 10286  
Attention: Global Trust Services

Re: Sohu.com Inc. (the “**Company**”)  
Zero Coupon Convertible Senior Notes Due 2023 (the “**Notes**”)

Ladies and Gentlemen:

In connection with our proposed sale of \$[ ] aggregate Principal Amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), and, accordingly, we represent that:

1. the offer of the Notes was not made to a Person in the United States;
2. either (a) at the time the buy offer was originated, the transferee was outside the United States or we and any Person acting on our behalf reasonably believed that the transferee was outside the United States, or (b) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any Person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;
3. no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(a) or Rule 904(a) of Regulation S, as applicable (or applicable successor rules);
4. the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and the conditions of Rule 903(b) or 904(b) of Regulation S, as applicable (or applicable successor rules) have been satisfied; and
5. We have advised the transferee of the transfer restrictions applicable to the Notes.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party, in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,  
[Name of Transferor]  
By  
Authorized Signature

## Form of Optional Repurchase Notice

The Bank of New York  
101 Barclay Street, Floor 21-W  
New York, New York 10286  
Attention: Global Trust Services

Re: Sohu.com Inc. (the “**Company**”)  
Zero Coupon Convertible Senior Notes Due 2023

This is an Optional Repurchase Notice as defined in Section 11.02 of the Indenture dated as of July 14, 2003 (the “**Indenture**”) between the Company and The Bank of New York, as Trustee. Terms used but not defined herein shall have the meanings ascribed to them in the Indenture.

Certificate No(s). of Securities:

I intend to deliver the following aggregate Principal Amount of Securities for purchase by the Company pursuant to Section 11.02 of the Indenture (in multiples of \$1,000):

\$

I hereby agree that the Securities will be purchased as of the Optional Repurchase Date pursuant to the terms and conditions thereof and of the Indenture.

Signed:

## Form of Change of Control Repurchase Notice

The Bank of New York  
 101 Barclay Street, Floor 8 West  
 New York, New York 10286  
 101 Barclay Street, Floor 21-W  
 New York, New York 10286  
 Attention: Global Trust Services

Re: Sohu.com Inc. (the “**Company**”)  
Zero Coupon Convertible Senior Notes Due 2023

This is a Change of Control Repurchase Notice as defined in Section 11.03 of the Indenture dated as of July 14, 2003 (the “**Indenture**”) between the Company and The Bank of New York, as Trustee. Terms used but not defined herein shall have the meanings ascribed to them in the Indenture.

Certificate No(s). of Securities:

I intend to deliver the following aggregate Principal Amount of Securities for purchase by the Company pursuant to Section 11.03 of the Indenture (in multiples of \$1,000):

\$

I hereby agree that the Securities will be purchased as of the Change of Control Repurchase Date pursuant to the terms and conditions thereof and of the Indenture.

Set forth below are applicable payment instructions for the Change of Control Repurchase Price and delivery instructions for Applicable Shares, if applicable.

Signed:

**Payment Instructions**

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Address:  
 Attention:  
 Bank Name:  
 Account No.  
 Name of payee:

**Share Delivery Instructions (if different)**

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Address:  
 Attention:  
 Bank Name:  
 Account No.  
 Name of certificate holder

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, UNITED STATES PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION), (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY EXCEPT (A) TO SOHU.COM INC. OR TO ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), OR (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); (2) PRIOR TO SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE), IT WILL FURNISH TO THE BANK OF NEW YORK, AS TRANSFER AGENT (OR SUCCESSOR TRANSFER AGENT, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE 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 AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(E) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IF THE PROPOSED TRANSFEREE IS A PURCHASER WHO IS NOT A U.S. PERSON, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE BANK OF NEW YORK, AS TRANSFER AGENT (OR SUCCESSOR TRANSFER AGENT, AS APPLICABLE) SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE 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. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(E) ABOVE OR UPON ANY TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY AFTER THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE SECURITY EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION). AS USED HEREIN, THE TERMS "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.



Certain Sections of this Indenture relating to

Sections 310 through 318 of the

Trust Indenture Act of 1939:

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
§310(a)(1)	6.09
(a)(2)	6.09
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	6.08
	6.10
§ 311(a)	6.13
(b)	6.13
§ 312(a)	7.01
	7.02(a)
(b)	7.02(b)
(c)	7.02(c)
§ 313(a)	7.03(a)
(b)	7.03(a)
(c)	7.03(a)
(d)	7.03(b)
§ 314(a)	7.04
(b)	Not Applicable
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.02
§ 315(a)	6.01
(b)	6.02
(c)	6.01
(d)	6.01
(e)	5.14
§316(a)(1)(A)	5.12
(a)(1)(B)	5.13
(a)(2)	Not Applicable
(b)	5.08
(c)	1.04(c)
§ 317(a)(1)	5.03
(a)(2)	5.04
(b)	10.03
§ 318(a)	1.07

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

**REGISTRATION RIGHTS AGREEMENT**

**by and between**

**SOHU.COM INC.**

**as Issuer**

**and**

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

**as Initial Purchaser**

**Dated as of July 14, 2003**

This REGISTRATION RIGHTS AGREEMENT (the "Agreement") dated as of July 14, 2003 by and between Sohu.com Inc., a Delaware corporation (the "Company"), and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Initial Purchaser") pursuant to the Purchase Agreement dated July 9, 2003 (the "Purchase Agreement"), between the Company and the Initial Purchaser. In order to induce the Initial Purchaser to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchaser (i) for its benefit as Initial Purchaser and (ii) subject to the terms and conditions hereof, for the benefit of the beneficial owners (including the Initial Purchaser) from time to time of Registrable Securities, as follows:

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

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

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

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

"**Common Stock**" means the shares of common stock, par value US\$0.001 per share, of the Company, together with the rights evidenced by such Common Stock to the extent provided in the Shareholders' Rights Agreement dated as of July 15, 2001 by and between the Company and The Bank of New York., and any other shares of common stock as may constitute "Common Stock" for purposes of the Indenture, including the Underlying Common Stock.

"**Conversion Price**" has the meaning assigned to such term in the Indenture.

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

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

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

"**Effectiveness Period**" means the period commencing on the date hereof and ending on the date that all Notes and Underlying Common Stock have ceased to be Registrable Securities.

“**Event**” has the meaning set forth in Section 2(e) hereof.

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

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

“**Holder**” means a Person who owns, beneficially or otherwise, Registrable Securities.

“**Indenture**” means the Indenture, dated as of July 14, 2003, between the Company and The Bank of New York, as trustee, pursuant to which the Notes are being issued.

“**Initial Purchaser**” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“**Initial Shelf Registration Statement**” has the meaning set forth in Section 2(a) hereof.

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

“**Liquidated Damages Accrual Period**” has the meaning set forth in Section 2(e) hereof.

“**Liquidated Damages Amount**” has the meaning set forth in Section 2(e) hereof.

“**Liquidated Damages Payment Date**” means each April 15 and October 15.

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

“**Notes**” means the Zero Coupon Convertible Senior Notes due 2023 of the Company to be purchased pursuant to the Purchase Agreement.

“**Notice and Questionnaire**” means a written notice delivered to the Company containing substantially the information called for by the Selling Security Holder Notice and Questionnaire attached as Annex A to the Offering Memorandum as such notice may be amended by the Company upon the advice of nationally-recognized counsel experienced in such matters, to the extent reasonably necessary to ensure compliance with applicable law.

“**Notice Holder**” means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date, so long as all of the Holder’s Registrable Securities that have been registered for resale pursuant to a Notice and Questionnaire have not been sold in accordance with a Registration Statement.

“**Offering Memorandum**” has the meaning assigned to it in the Purchase Agreement.

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

**“Prospectus”** means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

**“Record Holder”** means with respect to any Liquidated Damages Payment Date relating to any Notes or Underlying Common Stock as to which any Liquidated Damages Amount has accrued, the registered holder of such Note or Underlying Common Stock on the April 1 immediately preceding a Liquidated Damages Payment Date occurring on an April 15, and on the October 1 immediately preceding a Liquidated Damages Payment Date occurring on an October 15.

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

**“Registration Statement”** means any registration statement of the Company that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such registration statement.

**“Restricted Securities”** means “restricted securities” as defined in Rule 144.

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

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

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

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

“**Shelf Registration Statement**” has the meaning set forth in Section 2(a) hereof.

“**Special Counsel**” means such counsel as shall be specified by the Holders of a majority of the Registrable Securities, but which may, with the written consent of the Initial Purchaser (which shall not be unreasonably withheld, delayed or conditioned), be another nationally recognized law firm experienced in securities law matters designated by the Company, the reasonable fees and expenses of which will be paid by the Company pursuant to Section 5 hereof. For purposes of determining the holders of a majority of the Registrable Securities in this definition, Holders of Notes shall be deemed to be the Holders of the number of shares of Underlying Common Stock into which such Notes are or would be convertible as of the date the consent is requested.

“**Subsequent Shelf Registration Statement**” has the meaning set forth in Section 2(b) hereof.

“**TIA**” means the Trust Indenture Act of 1939, as amended.

“**Trustee**” means The Bank of New York, the Trustee under the Indenture.

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

## Section 2. *Shelf Registration.*

(a) The Company shall prepare and file or cause to be prepared and filed with the SEC, as soon as practicable but in any event by the date (the “**Filing Deadline Date**”) that is ninety (90) days after the Issue Date, a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act (a “**Shelf Registration Statement**”) registering the resale from time to time by Holders thereof of all of the Registrable Securities (the “**Initial Shelf Registration Statement**”). The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution reasonably requested by the Holders and set forth in the Initial Shelf Registration Statement. The Company shall use its reasonable best efforts to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable but in any event by the date (the “**Effectiveness Deadline Date**”) that is one hundred eighty (180) days after the Issue Date, and to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement) continuously effective under the Securities Act until the expiration of the Effectiveness Period. At the time the Initial Shelf Registration Statement is declared effective, each Holder that became a Notice Holder on or prior to the date that is ten (10) Business Days prior to such time of effectiveness shall be named as a selling security holder in the Initial Shelf Registration Statement and the related

Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law. None of the Company's security holders (other than the Holders of Registrable Securities) shall have the right to include any of the Company's securities in the Shelf Registration Statement.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof including, if reasonably necessary, by amending the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a "**Subsequent Shelf Registration Statement**"). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Registration Statement (or subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement, if required by the Securities Act or as necessary to name a Notice Holder as a selling security holder pursuant to Section (d) below.

(d) Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 3(h). Each Holder wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least three (3) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement; provided that such Holder shall have ten (10) Business Days from the date on which the Notice and Questionnaire is first received by such Holder to return a completed and signed Notice and Questionnaire to the Company. Such Notice and Questionnaire shall be effective for five (5) Business Days from its receipt by the Company, and, if the Holder has not sold such Registrable Securities within such five-day period, such Holder shall be required to deliver another Notice and Questionnaire to the Company in accordance with the immediately preceding sentence before the Holder may sell such Registrable Securities. Each holder who elects to sell Registrable Securities pursuant to a Shelf Registration Statement agrees by submitting a Notice and Questionnaire to the Company, it will be bound by the terms and conditions of the Notice and Questionnaire and this Agreement. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a Notice and Questionnaire is delivered pursuant to Section 8(c) hereof, and in any event upon the later of (x) ten (10) Business Days after such date or (y)

ten (10) Business Days after the expiration of any Deferral Period in effect when the Notice and Questionnaire is delivered or put into effect within ten (10) Business Days of such delivery date:

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

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

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

*provided*, that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(h). Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling security holder in any Registration Statement or related Prospectus and (ii) the Amendment Effectiveness Deadline Date shall be extended by up to ten (10) Business Days from the expiration of a Deferral Period (and the Company shall incur no obligation to pay Liquidated Damages during such extension) if such Deferral Period shall be in effect on the Amendment Effectiveness Deadline Date.

(e) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if, other than as permitted hereunder,

(i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date,

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

(iii) the Company has failed to perform its obligations set forth in Section 2(d) within



the time period required therein,

(iv) any post-effective amendment to a Shelf Registration Statement filed pursuant to Section 2(d)(i) has not become effective under the Securities Act on or prior to the Amendment Effectiveness Deadline Date, or

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

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

<u>Type of Event by Clause</u>	<u>Beginning Date</u>	<u>Ending Date</u>
(i)	Filing Deadline Date	the date the Initial Shelf Registration Statement is filed
(ii)	Effectiveness Deadline Date	the date the Initial Shelf Registration Statement becomes effective under the Securities Act
(iii)	the date by which the Company is required to perform its obligations under Section 2(d)	the date the Company performs its obligations set forth in Section 2(d)
(iv)	the Amendment Effectiveness Deadline Date	the date the applicable post-effective amendment to a Shelf Registration Statement becomes effective under the Securities Act
(v)	the date on which the aggregate duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(h)	termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods to be exceeded

Commencing on (and including) any date that an Event has begun and ending on (but excluding) the next date on which there are no Events that have occurred and are continuing (a “**Liquidated Damages Accrual Period**”), the Company shall pay, as Liquidated Damages and not as a penalty, to Record Holders of Registrable Securities an amount (the “**Liquidated Damages Amount**”) accruing, for each day in the Liquidated Damages Accrual Period, (i) in respect of any Note, at a rate per annum equal to 0.25% of the aggregate principal amount of such Note and (ii) in respect of each share of outstanding Underlying Common Stock that is a Registrable Security at a rate per annum equal to 0.25% on the Conversion Price on such date, as the case may be during the first 90 days of each Liquidated Damages Accrual Period and thereafter at a rate per annum equal to 0.50% in each of (i) and (ii) of this sentence; provided that in the case of a Liquidated Damages Accrual Period that is in effect solely as a result of an Event of the type described in clause (iii), (iv) or (v) of the preceding paragraph, such Liquidated Damages Amount shall be paid only to the Holders (as set forth in the succeeding paragraph) that have delivered Notices and Questionnaires within the time periods set

forth in Section 2(d) that caused the Company to incur the obligations set forth in Section 2(d) the non-performance of which is the basis of such Event. In calculating the Liquidated Damages Amount on any date on which no Notes are outstanding, the Conversion Price and the Liquidated Damages Amount payable with respect to shares of Common Stock that are Registrable Securities shall be calculated as if the Notes were still outstanding. Notwithstanding the foregoing, no Liquidated Damages Amount shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the Liquidated Damages Amount with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Events.

The Liquidated Damages Amount shall accrue from the first day of the applicable Liquidated Damages Accrual Period, and shall be payable on each Liquidated Damages Payment Date during the Liquidated Damages Accrual Period (and, without duplication, on the Liquidated Damages Payment Date next succeeding the end of Liquidated Damages Accrual Period if the Liquidated Damages Accrual Period does not end on an Liquidated Damages Payment Date) to the Record Holders of the Registrable Securities entitled thereto; provided that any Liquidated Damages Amount accrued with respect to any Note or portion thereof redeemed by the Company on a redemption date, repurchased by the Company on a repurchase date or converted into Underlying Common Stock on a conversion date prior to the Liquidated Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Note or portion thereof for redemption, repurchase or conversion on the applicable redemption date, repurchase date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion); provided further, that, in the case of an Event of the type described in clause (iii) or (iv) of the first paragraph of this Section 2(e), such Liquidated Damages Amount shall be paid only to the Holders entitled thereto pursuant to such first paragraph by check mailed to the address set forth in the Notice and Questionnaire delivered by such Holder. The Trustee shall be entitled, on behalf of registered holders of Notes or Underlying Common Stock, to seek any available remedy for the enforcement of this Agreement, including for the payment of such Liquidated Damages Amount. Notwithstanding the foregoing, the parties agree that the sole damages payable for a violation of the terms of this Agreement with respect to which a Liquidated Damages Amount is expressly provided shall be such Liquidated Damages Amount. Nothing shall preclude any Holder from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

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

The parties hereto agree that the Liquidated Damages Amount provided for in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by

Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

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

(a) Prepare and file with the SEC a Registration Statement or Registration Statements on any appropriate form under the Securities Act available for the sale of the Registrable Securities by the Holders thereof in accordance with the reasonably requested method or methods of distribution thereof, and use its reasonable best efforts to cause each such Registration Statement to become effective and remain effective as provided herein; provided that before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, the Company shall furnish to the Initial Purchaser and the Special Counsel of such offering, if any, copies of all such documents proposed to be filed at least three (3) Business Days prior to the filing of such Registration Statement or amendment thereto or Prospectus or supplement thereto; *provided*, that documents required to be filed pursuant to Section 2(d) shall be furnished instead to the requesting Notice Holders and the Special Counsel not later than one (1) Business Day prior to the filing thereof.

(b) Subject to Section 3(h), prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable period specified in Section 2(a); cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and use its reasonable best efforts to comply with the provisions of the Securities Act applicable to it with respect to the disposition of all securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders, the Initial Purchaser and the Special Counsel, (i) when any Prospectus, Prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC and, with respect to a Registration Statement or any post-effective amendment, when the same has been declared effective, (ii) of any request, following the effectiveness of the Initial Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to any Registration Statement or related Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Registration Statement or the initiation or threatening of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from

qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (v) of the occurrence of, but not the nature of or details concerning, a Material Event and (vi) of the determination by the Company that a post-effective amendment to a Registration Statement will be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(h)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(h) shall apply.

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

(e) As promptly as practicable furnish to each Notice Holder, the Special Counsel and the Initial Purchaser, upon request and without charge, at least one (1) conformed copy of the Registration Statement and any amendment thereto, including financial statements but excluding (i) schedules, (ii) all documents incorporated or deemed to be incorporated therein by reference and (iii) all exhibits (unless requested in writing to the Company by such Notice Holder, such Special Counsel or the Initial Purchaser).

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

(g) Prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable best efforts to register or qualify or cooperate with the Notice Holders in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things reasonably necessary to legally permit the disposition in such jurisdictions of such Registrable Securities in the manner set forth

in the relevant Registration Statement and the related Prospectus; *provided* that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement or (ii) take any action that would subject it to general service of process in suits or to taxation in any such jurisdiction where it is not then so subject.

(h) Upon (A) the issuance by the SEC of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a “**Material Event**”) as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any pending corporate development that, in the reasonable discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus:

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

(ii) give notice to the Notice Holders, and the Special Counsel, if any, that the availability of the Shelf Registration Statement is suspended (a “**Deferral Notice**”) and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder’s receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus.

The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in

the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as in the reasonable discretion of the Company, such suspension is no longer appropriate. The Company shall be entitled to exercise its right under this Section 3(h) to suspend the availability of the Shelf Registration Statement or any Prospectus, and any such period during which the availability of the Registration Statement and any Prospectus is suspended (the “**Deferral Period**”) shall, without incurring any obligation to pay Liquidated Damages pursuant to Section 2(e), not exceed 45 days; *provided* that the aggregate duration of any Deferral Periods shall not exceed 45 days in any three month period (or 60 days in any three month period in the event of a Material Event pursuant to which the Company has delivered a second notice as required below) or 120 days in any twelve (12) month period; provided that in the case of a Material Event relating to an acquisition or a probable acquisition or financing, recapitalization, business combination or other similar transaction, the Company may, without incurring any obligation to pay Liquidated Damages pursuant to Section 2(e), deliver to Notice Holders a second notice to the effect set forth above, which shall have the effect of extending the Deferral Period by up to an additional 15 days, or such shorter period of time as is specified in such second notice.

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

(j) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold or to be sold pursuant to a Registration Statement, which certificates shall not bear any restrictive legends (unless required by applicable law), and cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least two (2) Business Days prior to any sale of such Registrable Securities.

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

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

(m) Upon (i) the filing of the Initial Registration Statement and (ii) the effectiveness of the Initial Shelf Registration Statement, announce the same, in each case by release to Business Wire.

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

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

securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company. Notwithstanding the provisions of this Section 5, each seller of Registrable Securities shall pay selling expenses, commissions and discounts, expenses of counsel except to the extent set forth above, and all registration expenses to the extent required by applicable law.

Section 6. *Indemnification and Contribution.*

(a) *Indemnification by the Company.* The Company agrees to indemnify and hold harmless each Notice Holder, each person, if any, who controls any Notice Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Notice Holder within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, subject to Section 6(c) hereof, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Holder furnished to the Company in writing by such Holder expressly for use therein; provided that the indemnification contained in this paragraph shall not inure to the benefit of any Holder (or to the benefit of any person controlling such Holder) on account of any such losses, claims, damages or liabilities caused by any untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus provided in each case the Company has performed its obligations under Section 3(a) hereof if either (A) (i) such Holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale by such Holder to the person asserting the claim from which such losses, claims, damages or liabilities arise and (ii) the Prospectus would have corrected such untrue statement or alleged untrue statement or such omission or alleged omission, or (B) (x) such untrue statement or alleged untrue statement, omission or alleged omission is corrected in an amendment or supplement to the Prospectus and (y) having previously been furnished by or on behalf of the Company with copies of the Prospectus as so amended or supplemented, such Holder thereafter fails to deliver such Prospectus as so amended or supplemented, with or prior to the delivery of written confirmation of the sale of a Registrable Security to the person asserting the claim from which such losses, claims, damages or liabilities arise.

(b) *Indemnification by Holders.* Each Holder agrees severally and not jointly to indemnify and hold harmless the Company and its directors, its officers and each person, if any, who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) or any other Holder, to the same extent



as the foregoing indemnity from the Company to such Holder, but only (i) with reference to information relating to such Holder furnished to the Company in writing by such Holder expressly for use in such Registration Statement or Prospectus or amendment or supplement thereto or (ii) with respect to a failure to deliver the Prospectus as described in clause (A) or (B) of Section 6(a) hereof, provided the Company has provided such Prospectus to the Holder in accordance with this Agreement. In no event shall the liability of any Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of the Registrable Securities pursuant to the Registration Statement giving rise to such indemnification obligation.

(c) *Conduct of Indemnification Proceedings.* In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b) hereof, such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impeded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by, in the case of parties indemnified pursuant to Section 6(a), the Holders of a majority (with Holders of Notes deemed to be the Holders, for purposes of determining such majority, of the number of shares of Underlying Common Stock into which such Notes are or would be convertible as of the date on which such designation is made) of the Registrable Securities covered by the Registration Statement held by Holders that are indemnified parties pursuant to Section 6(a) and, in the case of parties indemnified pursuant to Section 6(b), the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment to 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 (to the extent such settlement or judgment is subject to indemnification under Section 6(a) or 6(b) as the case may be). Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding

effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request before the date of such settlement, unless such indemnifying party has (1) reimbursed such indemnified party for the amount of such fees and expenses of counsel as the indemnifying party believes in good faith to be reasonable, and (2) provided written notice to the indemnified party that the indemnifying party disputes in good faith the reasonableness of the unpaid balance of such fees and expenses. 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 (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Contribution.* To the extent that the indemnification provided for in Section 6(a) or 6(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company shall be deemed to be equal to the total net proceeds from the initial placement pursuant to the Purchase Agreement (before deducting expenses) of the Registrable Securities to which such losses, claims, damages or liabilities relate. The relative benefits received by any Holder shall be deemed to be equal to the value of receiving Registrable Securities that are registered under the Securities Act. The relative fault of the Holders on the one hand and the Company on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Holders or by the Company, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Holders' respective obligations to contribute pursuant to this Section 6(d) are several in proportion to the respective number of Registrable Securities they have sold pursuant to a Registration Statement, and not joint.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by pro rata allocation (even if the Holders were treated

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

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

(f) The indemnity and contribution provisions contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder, any person controlling any Holder or any affiliate of any Holder or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) the sale of any Registrable Securities by any Holder.

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

**Section 8. *Miscellaneous.***

(a) *No Conflicting Agreements.* The Company is not, as of the date hereof, a party

to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders in this Agreement. The Company represents and warrants that the rights granted to the Holders hereunder do not in any way conflict with the rights granted to the holders of the Company's securities under any other agreements except such as have been waived.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of a majority of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of Notes deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such Notes are or would be convertible as of the date on which such consent is requested). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Registration Statement; provided that the provisions of this sentence may not be amended, modified or supplemented except in accordance with the provisions of the immediately preceding sentence, and provided further that no modification may change the provisions relating to the payment of Liquidated Damages without the consent of each Holder of Registrable Securities. Notwithstanding the foregoing sentence, this Agreement may be amended by written agreement signed by the Company and the Initial Purchaser, without the consent of the Holders of Registrable Securities, to cure any ambiguity or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising under this Agreement that shall not adversely affect the interests of the Holders of Registrable Securities. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by telecopy, by courier guaranteeing overnight delivery or by first-class mail, return receipt requested, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopy, (iii) one (1) Business Day after being deposited with such courier, if made by overnight courier or (iv) on the date indicated on the notice of receipt, if made by first-class mail, to the parties as follows:

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

(ii) if to the Company, to:

Sohu.com Inc.  
Suite 1519, Tower 2  
Bright China Chang An Building  
7 Jianguomen Nei Avenue  
Beijing 100005  
People's Republic of China  
Attention: Chief Financial Officer  
Telecopy No.: (011) 8610-6510-1377

and

Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, MA 02110  
Attention: Timothy B. Bancroft, Esq.  
Telecopy No.: (617) 574-4112

(iii) if to the Initial Purchaser, to:

Merrill Lynch, Pierce, Fenner & Smith Incorporated.  
c/o Merrill Lynch & Co.  
World Financial Center  
250 Vesey Street  
New York, NY 10281  
Attention: Equity Capital Markets  
Telecopy No.: 212-738-2309

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

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

(e) *Successors and Assigns.* Any person who purchases any Registrable Securities from the Initial Purchaser shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchaser. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder of any Registrable Securities, provided that

nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement, applicable law or the Indenture. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such person shall be entitled to receive the benefits hereof.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be with the same effect as if the signatures thereto and hereto were upon the same instrument.

(g) *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.

(h) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

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

(j) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such registration rights. No party hereto shall have any rights, duties or obligations other than those specifically set forth in this Agreement. In no event will such methods of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

(k) *Termination.* This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Effectiveness Period, except for any liabilities or obligations under Section 4, 5 or 6 hereof and the obligations to make payments of and provide for Liquidated Damages under Section 2(e) hereof to the extent such damages

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accrue prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

**[signature page follows]**

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**SOHU.COM INC.**

By: \_\_\_\_\_ /s/ DEREK PALASCHUK

Name: Derek Palaschuk  
Title: Chief Financial Officer

Confirmed and accepted as of the date first above written:

**MERRILL LYNCH, PIERCE,  
FENNER & SMITH  
INCORPORATED**

By: \_\_\_\_\_ /s/ JOHN C. LEE

Name: John C. Lee  
Title: Vice President



**SOHU.COM Announces Completion of the US\$90 Million  
Zero Coupon Convertible Senior Notes Due 2023**

BEIJING, CHINA, July 15, 2003— SOHU.COM Inc. (Nasdaq: SOHU), China's leading online media, communications, commerce and mobile value-added services company, today announced the completion of the US\$90 million principal amount of zero coupon convertible senior notes due 2023.

As noted previously, the notes do not pay any interest unless specified defaults under the registration rights agreement in favor of holders of the notes occur, have a zero yield to maturity, and will be convertible into SOHU common stock at a conversion price of US\$44.76 per share, subject to adjustment. Each US\$1,000 principal amount at maturity will initially be convertible into 22.3414 shares of SOHU common stock.

The notes and the common stock issuable upon conversion of the notes have not been registered under the U.S. Securities Act of 1933 or the securities laws of any other jurisdiction. Unless they are registered, the notes may be offered and sold only in transactions that are exempt from registration under the U.S. Securities Act of 1933 and the securities laws of any other jurisdiction.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

**Safe Harbor Statement**

This announcement contains forward-looking statements. We may also make written or oral forward-looking statements in our periodic reports to the Securities and Exchange Commission on Forms 10-K, 10-Q, 8-K, etc., in our annual report to shareholders, in our proxy statements, in press releases and other written materials and in oral statements made by our officers, directors or employees to third parties. Statements that are not historical facts, including statements about our beliefs and expectations, are forward-looking statements. These statements are based on current plans, estimates and projections, and therefore you should not place undue reliance on them.

Forward-looking statements involve inherent risks and uncertainties. We caution you that a number of important factors could cause actual results to differ materially from those contained in any forward-looking statement. Potential risks and uncertainties include, but are not limited to, SOHU's historical and possible future losses, limited operating history, uncertain regulatory landscape in the People's Republic of China, fluctuations in quarterly operating results, and the company's reliance on online advertising sales, e-subscriptions (most of which are collected from a few telecom operators) and e-commerce for its revenues. Further information regarding these and other risks is included in SOHU's Annual Report on Form 10K for the year ended December 31, 2002, Quarterly Report on Form 10Q for the quarter ended March 31, 2003 and other filings with the Securities and Exchange Commission.

**For further information:**

Caroline Straathof

SOHU Investor Relations and Communications

Tel: +86 10 6510 1379

E-mail: [ir@sohu-inc.com](mailto:ir@sohu-inc.com)

<http://www.sohu.com/about/English/>