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

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended June 30, 2008

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____ .

Commission file number 0-15086

SUN MICROSYSTEMS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**94-2805249**
(State of incorporation)	(I.R.S. Employer Identification No.)
4150 Network Circle **Santa Clara, CA 95054**	**(650) 960-1300**
(Address of principal executive offices, including zip code)	(Registrant's telephone number, including area code) **http://www.sun.com/aboutsun/investor** (Registrant's url)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock	The NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act of 1933. YES ☒ NO ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). YES ☐ NO ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. YES ☐ NO ☒

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The aggregate market value of the voting stock (Common Stock) held by non-affiliates of the registrant, as of December 28, 2007 (the last business day of registrant's second quarter of fiscal 2008), was approximately $13 billion based upon the last sale price reported for such date on The NASDAQ Global Select Market. For purposes of this disclosure, shares of Common Stock held by persons who hold more than 5% of the outstanding shares of Common Stock and shares held by officers and directors of the Registrant have been excluded because such persons may be deemed to be affiliates. This determination is not necessarily conclusive.

The number of shares of the registrant's Common Stock (par value $0.001) outstanding as of August 22, 2008 was 752,953,410.

DOCUMENTS INCORPORATED BY REFERENCE

Parts of the Proxy Statement for the 2008 Annual Meeting of Stockholders are incorporated by reference into Items 10, 11, 12, 13 and 14 hereof.

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PART I

ITEM 1. BUSINESS

GENERAL

Sun Microsystems, Inc. (NASDAQ: JAVA) provides network computing infrastructure solutions that drive global network participation through shared innovation, community development and open source leadership. Guided by a singular vision, "The Network is the Computer™", we provide a diversity of software, systems, storage, services and microelectronics that power everything from consumer electronics, to developer tools and the world's most powerful data centers.

With core brands including the Java™ technology platform, the Solaris™ Operating System, the MySQL™ database management system, Sun StorageTek™ storage solutions and the UltraSPARC® processor, our network computing platforms are used by nearly every sector of society and industry, and provide the infrastructure behind some of the world's best known search, social networking, entertainment, financial services, manufacturing, healthcare, retail, news, energy and engineering companies.

By investing in research and development, we create products and services that address the complex information technology issues facing customers today, including increasing demands for network access, bandwidth and storage. We share these innovations in order to grow communities, in turn increasing participation on the network and building new market opportunities while maintaining partnerships with some of the most innovative technology companies in the world.

For the fiscal year ended June 30, 2008, we reported net revenues of $13.9 billion, employed approximately 34,900 employees and conducted business in over 100 countries. We were incorporated in California in February 1982, and reincorporated in Delaware in July 1987.

Our Internet address is http://www.sun.com. The following filings are posted to our Investor Relations web site, located at http://www.sun.com/investors as soon as reasonably practical after submission to the United States (U.S.) Securities and Exchange Commission (SEC): annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, the proxy statement related to our most recent annual stockholders' meeting and any amendments to those reports or statements filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended. All such filings are available free of charge on our Investor Relations web site. We periodically webcast company announcements, product launch events and executive presentations which can be viewed via our Investor Relations web site. Additionally, we provide notifications of our material news including SEC filings, investor events, press releases and CEO blogs as part of the Official Investor Communications section of our Investor Relations web site. The contents of these web sites are not intended to be incorporated by reference into this report or in any other report or document we file and any references to these web sites are intended to be inactive textual references only.

BUSINESS STRATEGY

Our business strategy is to provide superior network computing infrastructure solutions that rely on innovation as a core differentiator. A key driver behind this strategy is the development, integration and sharing of our software, microprocessors, storage, services and systems in order to grow communities of developers and users around the world, while increasing participation on the network and building new markets for our solutions. We intend to continue to invest in this model, with a focus on the development and delivery of leading-edge, energy-efficient network computing products based upon our latest innovations.

With a strong commitment to open standards, open interfaces and the open source community, we believe sharing and collaboration is key to our long-term success. We focus on creating communities and sharing innovations and technologies to foster global network participation and advance the use of the Internet as a social utility, driving increases in use and demand for the infrastructure to support that increased use. Our open source initiatives are intended to increase participation in software and hardware design by making our innovative hardware and software intellectual property freely available. A core premise to the success of our software business is our ability to attract innovative application developers to our Java platform and Solaris Operating System. We build relationships with these communities of developers to stimulate demand for our commercial products and services. For example, more Java technology-driven devices means more demand for what we build to support those devices. Today, there are billions of Java-enabled devices in the marketplace. As more people gain access to the network, more opportunities surface for developers and businesses to deploy applications that create value, from educational institutions deploying high-performance computing grids, to banks and social networks serving millions of users. Bringing more people to the network and encouraging development of community-based intellectual property fuels greater demand for the innovative technologies and services that we create.

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Accordingly, the cornerstones of our business strategy include:

Innovation and Intellectual Property Creation. In order to maintain our position as a leading developer of enterprise and network computing solutions, we must continue to invest and innovate. A sampling of these innovations during fiscal 2008 includes the introduction of the following products:

- Our first quad-core Intel® Xeon® processor-based systems, offering advanced performance, density and expandability and an energy-efficient design.
- Our entry into the commercial silicon market with our UltraSPARC® T2 commodity microprocessor, a volume processor with 8 cores and 8 threads per core.
- Our Sun SPARC® Enterprise T5120 and T5220 servers, the first servers to use the UltraSPARC T2 processor.
- Third-generation CMT SPARC Enterprise T5140 and T5240 servers based on the UltraSPARC T2 Plus processor — an expansion of the Sun and Fujitsu SPARC Enterprise server line optimized and managed by the Solaris 10 Operating System.
- Our Sun Blade™ X8440 server module, a blade server designed for quad-core AMD Opteron™ processors.
- Our Sun Blade X8450 server module, bringing the energy-efficient performance of Quad-Core Intel Xeon processors to the Sun Blade 8000 system family.
- Our Sun Constellation and Sun StorageTek 5800 Systems, next generation open petascale computing and storage systems designed to address extreme compilation, scale and storage requirements.
- Our Sun Netra™ T5220 server, a carrier grade, 64-thread rackmount server.
- Key enhancements to the Solaris 10 Operating System, including the integration of PostgreSQL 8.2 for Solaris, new virtualization capabilities with Solaris Containers for Linux Applications, enabling customers to run existing Linux applications on x86 systems running the Solaris Operating System without modification and improved performance and power-management capabilities on AMD and Intel processors.
- Our OpenSolaris™ Operating System based on our Solaris kernel and created through community collaboration, featuring a new network-based Image Packaging System (IPS) and featuring ZFS™ as its default file system.
- Our Project Blackbox release as the Sun Modular Data center (Sun MD) S20, highlighting global demand and broad applicability of a virtualized, modular data center housed in an enhanced twenty-foot shipping container.
- Our MySQL Cluster Carrier Grade Edition 6.3, the latest version of the MySQL high-availability open source database, especially designed and certified for use in carrier grade telecom environments, such as Subscriber Data Management systems (HLR, HSS) and in Service Delivery Platforms.

Interoperability and Choice. We take a “whole system” view of the products that we deliver into the marketplace. We are uniquely qualified to integrate our microelectronics, servers, storage, software and services into eco-responsible solutions that can transform information technology (IT) into a competitive weapon for customers. Our focus on providing multi-platform implementations provides customers with greater choice for their heterogeneous environments. The Java Enterprise System is available on Linux, Windows and HP-UX platforms in addition to Solaris. Our x64 systems are available for use with Solaris, Windows, Red Hat and SuSe Linux operating systems, and our SPARC systems are available with Solaris and Ubuntu Linux. We remain committed to standards-based designs and implementations, including standards-based networking protocols and Web services that allow customers to build heterogeneous network computing environments. Interoperability gives customers choice so they can choose best-of-breed hardware and software solutions for their IT environments and lowers barriers to entry and exit.

Environmentally Responsible Products and Business Practices. Eco-responsibility is part of our overall corporate social responsibility strategy, which strives to create positive social change, minimize environmental impact and generate business. Our approach to eco-responsibility is to deliver eco-friendly products that enable sustainable computing, reduce the environmental impact of our own operations and build and share open source solutions.

We are innovating to develop products and programs that reduce energy needs and carbon dioxide production at all levels including microprocessors, servers, thin clients and computer grids. We are also reducing the environmental impact of our own operations by streamlining data center operations for maximum efficiency, choosing less harmful materials; working to recover, remanufacture or recycle products; and continuing to strive to minimize electronic waste.

In 2006, the Sun Fire™ T1000 and T2000 servers became the first servers to qualify for a local utility company rebate. Our cost control objectives are facilitated by our Open Work program, which allows employees to work wherever they need or want to — while armed with a cell phone and Internet access — which has contributed to reduced real estate costs and we believe has

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eased pollution and reduced energy use. More than 56% of our employees around the world work from home or a flexible office, saving us tens of millions of dollars annually in real estate costs. We have driven out additional costs by significantly consolidating our global data center square footage and implementing state-of-the-art energy efficient data center design principles. During fiscal 2008, we have significantly reduced our annual energy costs in the Bay Area as a result of the consolidation into our new Santa Clara data center which was completed in June 2007. Silicon Valley Power, a local utility company, has recognized the breakthrough efficiencies and design of this data center by giving us approximately $1.2 million in rebates and awards, which included a $250,000 innovation grant.

SEGMENT INFORMATION

During fiscal 2008, our Products revenue was comprised of revenue from Computer Systems products and Storage products. Our Services revenue was comprised of sales from two classes of services: (1) Support Services (Support and Managed Services) and (2) Professional Services and Educational Services. Support Services are services that offer customers technical support, software, and firmware updates, online tools, product repair and maintenance and preventive services for system, storage and software products. Managed Services include on-site and remote monitoring and management for the components of their IT infrastructure, including operating systems, third-party and custom applications, databases, networks, security, storage and the web. Professional Services are services that enable customers to reduce costs and complexity, improve operational efficiency and build or transform their IT infrastructure. Professional Services include IT assessments, architectural services, implementation services and consolidation and migration services. Educational Services include training and certification for individuals and teams. In fiscal 2008, 2007 and 2006, Computer Systems represented approximately 45%, 46% and 46%, respectively, of total net revenues. In fiscal 2008, 2007 and 2006, Storage products represented approximately 17%, 17% and 18%, respectively, of total net revenues. In fiscal 2008, 2007 and 2006, Support Services represented approximately 29%, 29% and 28%, respectively, of total net revenues. In fiscal 2008, 2007 and 2006, Professional Services and Educational Services represented approximately 9%, 8% and 8%, respectively, of total net revenues. A table providing external revenue for similar classes of products and services for the last three fiscal years is found in Note 15 to the Consolidated Financial Statements in Item 8. Financial information for each segment for fiscal 2008, 2007 and 2006 is found in Note 15 to the Consolidated Financial Statements in Item 8.

PRODUCTS

We develop innovative networking computing products and technologies that include energy-efficient servers, storage, open source software, tools, services and training. For information about revenue for similar classes of products and services, refer to Note 15 to the Consolidated Financial Statements in Item 8 and Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations — Results of Operations.

SYSTEMS

The substantial growth of network data and traffic, increasing compliance and regulatory demands, expanding needs for increased computing capacity and market pressure for energy and space reductions requires a broad set of system solutions that are cost effective, reliable, scalable and eco-responsible.

Servers. We offer a full line of scalable servers based on SPARC64®, UltraSPARC, AMD Opteron and Intel Xeon microprocessors, that range from cost and energy efficient entry level servers and blade systems through data center/high-performance business critical computing servers designed for heterogeneous computing environments.

Entry server systems. We offer a wide range of Sun Fire and Sun Blade entry server systems differentiated by their size, their cost, their processor architecture (UltraSPARC, SPARC64, AMD Opteron or Intel Xeon), their form factor (rack, blade or stand-alone systems) and the environment for which they are targeted (general purpose or specialized systems). These systems are compatible with the Solaris, Linux and Windows operating system environments.

Enterprise and data center servers. Our enterprise and data center servers, including the Sun Fire and SPARC Enterprise product families, are designed to offer greater performance and lower total cost of ownership than mainframe systems for business critical applications and more computational intensive environments. These systems are based on UltraSPARC, SPARC64, AMD and Intel microprocessor platforms and are also compatible with the Solaris, Linux and Windows operating system environments.

Desktops. Our Sun Ray™ Ultra-Thin Client platforms provide an alternative to traditional desktop personal computers where client applications are better suited and more economical to run on a network versus an individual desktop platform.

We also offer a line of products aimed at the unique needs of Original Equipment Manufacturers (OEMs) and Network Equipment Providers (NEPs). Rack-optimized systems and our blade product offerings combine high-density hardware

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architecture and system management software that OEMs find particularly useful in building their own solution architectures. Our NEP-certified Sun Netra systems are designed to meet the specialized needs of NEPs.

Microelectronics. Our microelectronics business develops and sells silicon-based chips that facilitate networking, cryptography and high-performance computing. These chips are utilized by OEM customers and hardware vendors worldwide in a broad range of devices from servers to routers, switches, network devices, medical imaging, industrial printing and more.

Storage. We offer a broad range of products and services for securely managing mission critical data assets. Our entry-to-enterprise-level data storage products and services include heterogeneous tape, disk, software, networking and services for mainframe and open systems environments.

Our tape storage includes libraries, drives, virtualization systems, media and software. The extensive disk system product line includes data center disks, Network Attached Storage (NAS), Enterprise Archive System, mid-range disks, workgroups disks, a boot disk and a full range of disk device software.

We are leveraging the Solaris Operating System across our storage portfolio to increase data management per administrator, scalability, security, utilization rates, observability and self-healing. The heterogeneous, industry-standard modular storage hardware works with Windows, Linux, z/OS, HP-UX, AIX and Solaris platforms and other software, so customers can more quickly and cost-effectively adapt to changing business needs. Our Storage solutions help to improve data availability, providing fast data access, dynamic data protection for restoration and secure archiving for compliance.

SOFTWARE

Our software offerings consist primarily of enterprise infrastructure software systems, software desktop systems, developer software and infrastructure management software.

Solaris. The Solaris Operating System is a high performance, reliable, scalable and secure operating environment for SPARC and x64 platforms. It is optimized for enterprise computing, Internet and intranet business requirements, powerful databases and high-performance technical computing environments. The Solaris Operating System runs on hundreds of different server platforms including standard x64/x86 servers. The ability to run on multiple platforms has contributed to the rapid growth of the Solaris Operating System on non-SPARC based systems over the last two years. Additionally, we recently announced that Fujitsu-Siemens Computers will distribute the Solaris Operating System and Solaris Subscriptions for select x86-based PRIMERGY servers, joining other leading OEMs — including IBM, Dell and Intel — that support and offer Solaris on x86 hardware.

OpenSolaris. OpenSolaris is an open source project we created in 2005 to build a developer community around the Solaris Operating System. In May 2008, Sun and the global OpenSolaris community introduced the availability of the OpenSolaris Operating System, a single distribution for desktop, server and high-performance computing deployments. OpenSolaris, based on the Solaris kernel and created through community collaboration, delivers a development and deployment environment offering a combination of rapid innovation, platform stability and support to meet business and development needs. OpenSolaris features a new network-based IPS and features ZFS as its default file system.

Java Technology. Java technology plays a key role in powering compelling content and rich end-user experiences across various consumer electronics platforms. The Java platform is a global standard that powers billions of devices — from desktop browsers and computers to mobile phones and Blu-ray Disc players, TVs, Java smart cards and other connected consumer products.

Middleware. We also offer a full range of middleware solutions including mission-critical clustering, messaging, identity management, directory, service-oriented architecture (SOA), business integration, application server and Web services infrastructure software. Other software offerings include provisioning and monitoring software for network computing resource optimization and systems management simplification.

Virtualization. We announced our virtualization and management strategy in fiscal 2008, which includes an end-to-end portfolio of virtualization products from the desktop to the data center — Sun xVM VirtualBox™, Sun VDI, Sun xVM Ops Center and our to-be-released Sun xVM Server.

MySQL. MySQL is one of the fastest growing open source databases in the world. Many of the world's largest and fastest-growing organizations use MySQL to save time and money powering their high-volume web sites, critical business systems and packaged software. We provide corporate users with commercial subscriptions and services and actively support the large MySQL open source developer community.

Network.com. Our Network.com™ site offers access to compute infrastructure on a pay-per-use basis via our Sun Grid compute utility at $1/CPU-hr. It is powered by the Solaris 10 Operating System and Sun Grid Engine running on our x64 hardware. CPU-hr is defined as the aggregate time spent across all CPUs and rounded up to the next hour.

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SERVICES

We offer a broad range of services from Support Services and Managed Services for hardware, software and client solutions, to Professional Services and Educational Services. We assist customers globally with Support Services contracts in more than 100 countries.

Our services innovation is focused on integrating technology, knowledge, process and partners to deliver customer satisfaction, profitably, through our services to architect, implement and manage IT infrastructure. Our global service and support offerings help our customers increase system service levels, improve data center operational efficiency and effectiveness, and to deploy next-generation automation technologies to provide predictive, preemptive and proactive service to heterogeneous infrastructures.

SALES, MARKETING AND DISTRIBUTION

Our Global Sales and Services organization manages and has primary responsibility for our field sales organization, relationships with selling partners, technical sales support, sales operations and delivery of Support, Managed and Professional Services. We sell end-to-end networking architecture platform solutions, including products and services, in most major markets globally through a combination of direct and indirect channels. We also offer component products, such as central processor unit (CPU) chips and embedded boards, on an OEM basis to other hardware manufacturers and supply after-market and peripheral products to their end-user installed base, both directly and through independent distributors and value added resellers (VARs).

We have organized our sales coverage within 16 geographically established markets (GEMs) around the world and employ independent distributors in over 100 countries. In general, the sales coverage model calls for independent distributors to be deployed via strategic alliances with our direct sales force. However, in some smaller markets, independent distributors and joint venture partners may be the sole means of sales, marketing and distribution. Our relationships with channel partners are very important to our future revenues and profitability. Channel relationships accounted for more than 63%, 65% and 63% of our total net revenues in fiscal 2008, 2007 and 2006, respectively.

The partner community is essential to our success. With a vast and diverse product and service portfolio, we recognize that no single supplier of computing solutions can meet the needs of all of its customers. As a result, we have established relationships with leading Independent Software Vendors (ISVs), VARs, OEMs, channel development providers, independent distributors, computer systems integrators and Service Development Providers (SDPs) to deliver solutions that customers demand. Through these relationships, it is our goal to optimize our ability to be the technology of choice, the platform of choice, the partner of choice and to provide the end-to-end solutions that customers require to compete. Our Worldwide Marketing Organization oversees marketing planning, determines product and pricing strategy, coordinates advertising, demand creation and public relations activities, maintains strategic alliances with major ISVs and performs competitive analyses. Additionally, ISV partners help us to maximize our technology footprint by integrating their software products with our platforms and technologies. SDPs, such as Internet Service Providers (ISPs) and Application Service Providers (ASPs), allow us to expand our service coverage without new large-scale investments.

We seek out partner companies that align with our technology direction and vision of enabling network participation. We have long-standing partnerships with several companies, including: Advanced Micro Devices, Inc. (AMD) to expand its entry-level line of Opteron processor-based x64 systems; Intel Corporation, whereby Intel endorses the Solaris Operating System and we offer a comprehensive family of servers and workstations based on Xeon processors; Fujitsu to deliver and support a generation of SPARC-based systems that we have developed through collaboration (our relationship with Fujitsu is discussed in greater detail in Item 1A, “Risk Factors”) and is intended to enlarge the Solaris Operating System footprint, drive increased market share for our enterprise-class systems and allow for additional dedicated resources to our throughput computing initiative and next generation of processor products; and Hitachi Data Systems to provide high-end storage solutions and extend our storage offerings into other enterprise environments.

Several new or expanded partnerships were announced in fiscal 2008, including those with: IBM to distribute our Solaris 10 Operating System and Solaris for select x86-based IBM servers and blade servers; Google to make our StarOffice™ Suite available through the Google Pack software download service; Dell to establish a multi-year OEM agreement making the Solaris Operating System and support services available directly to customers for select Dell PowerEdge services; and Microsoft to expand our existing alliance with the official opening of the Sun/Microsoft Interoperability Center for optimizing Microsoft applications on Sun Fire x64 server systems and storage, and the availability of the Sun Infrastructure Solution for Microsoft Exchange Server 2007.

Revenues from outside the U.S. were approximately 63%, 59% and 58% of our total net revenues in fiscal 2008, 2007 and 2006, respectively. Direct sales outside of the U.S. are generally priced in local currencies and can be subject to currency exchange fluctuations. The net foreign currency impact on our total net revenues and operating results is difficult to precisely measure due

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to hedging and pricing actions we take to mitigate the effect of foreign exchange rate fluctuations. Excluding the effect of these actions, and due to the general weakening of the U.S. dollar, the maximum favorable impact related to foreign exchange rate changes during fiscal 2008, as compared with fiscal 2007, would be approximately 4% to net revenues.

For further financial information on our sales and long-lived assets by geographic area, see “Net Revenues by Geographic Area” in Item 7, Management’s Discussion and Analysis of Financial Condition and Results of Operations and Note 15 to the Consolidated Financial Statements in Item 8.

For a discussion of risks attendant to our foreign operations, see “Risk Factors — Our international customers and operations subject us to a number of risks,” in Item 1A.

Although our sales and other operating results can be influenced by a number of factors, and historical results are not necessarily indicative of future results, our sequential quarterly operating results generally fluctuate downward in the first and third quarters of each fiscal year when compared with the immediately preceding quarter.

Sales to Avnet, Inc. (Avnet), the largest distributor of our products, accounted for approximately 11% of our net revenues in each of fiscal 2008, 2007 and 2006. In January 2007, Access Distribution, the largest distributor of our products at the time, was sold to Avnet by General Electric Company. Avnet was StorageTek’s largest distributor and became a distributor of our products after our acquisition of StorageTek in August 2005. The net revenue percentages for fiscal 2007 and 2006 represent sales to Avnet and Access Distribution on a combined basis. No other customer accounted for more than 10% of our net revenues in fiscal 2008.

Our product order backlog at June 30, 2008 was $1.1 billion, as compared with $1.0 billion at June 30, 2007. The product backlog total includes orders for which customer-requested delivery is scheduled within six months and orders that have been specified by the customer for which products have been shipped but revenue has been deferred. Although actual customer delivery can occur over several periods, product backlog can be used to identify potential revenue coverage for future periods. The larger the percentage coverage of targeted pending revenue, the lower the potential risk of non-achievement. Backlog levels vary with demand, product availability, product revenue recognition treatment, and delivery lead times and are subject to significant decreases as a result of, among other things, customer order delays, changes or cancellations. As such, backlog levels may not be a reliable indicator of future operating results.

WORLDWIDE OPERATIONS

Our Worldwide Operations organization manages company-wide purchasing of materials used in making our products, assists in product design enhancements, oversees in-house manufacturing operations and those of our manufacturing partners and coordinates logistics operations.

Our manufacturing operations consist primarily of final assembly, test and quality control of enterprise and data center servers and storage systems. For all other systems, we rely on external manufacturing partners. We manufacture primarily in Oregon and Scotland and distribute much of our hardware products from our facilities and partner facilities located in California, the Netherlands and Japan.

We are expanding our direct ship capabilities, using a customer fulfillment architecture that enables us to ship certain products from suppliers directly to customers, with the goal of reducing cost, risk and complexity in the supply chain. We have continued to simplify our manufacturing process by increasing the standardization of components across product types. In addition, we have continued to increase our focus on quality and processes that are intended to proactively identify and solve quality issues. The early identification of products containing defects in engineering, design and manufacturing processes, as well as defects in third-party components included in the products, could prevent or reduce delays of product shipments.

RESEARCH AND DEVELOPMENT

Our research and product development programs are intended to sustain and enhance our competitive position by incorporating the latest advances in hardware, microprocessors, software, graphics, networking, data communications and storage technologies. As such, we have extended our product offerings and intellectual property through acquisitions of businesses, technologies and other arrangements with alliance partners. Product development continues to focus on enhancing the performance, scalability, reliability, availability, security, energy efficiency and serviceability of our existing systems and the development of new technology standards. Additionally, we remain focused on system software platforms for Internet and intranet applications, telecommunications and next-generation service provider networks, developing advanced workstation, server and storage architectures and advanced service offerings. We devote substantial resources to research and development (R&D) believing it provides and will continue to provide significant competitive differentiation. R&D expenses were $1.8 billion, $2.0 billion and $2.0 billion in fiscal 2008, 2007 and 2006, respectively.

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COMPETITION

We operate in the computer systems (hardware and software), storage (hardware and software) and services markets. These markets are intensely competitive. Our competitors are some of the largest, most successful companies in the world. They include International Business Machines Corporation (IBM), Dell Inc. (Dell), Hewlett-Packard Company (HP), EMC Corporation (EMC), Oracle Corporation (Oracle), Fujitsu Limited (Fujitsu), Hitachi Data Systems, Inc. (HDS) and the Fujitsu-Siemens joint venture. We also compete with (i) systems manufacturers and resellers of systems based on microprocessors manufactured by Intel Corporation (Intel), the Windows family of operating systems software from Microsoft and the Linux family of operating systems from Red Hat and others, as well as (ii) companies that focus on providing support and maintenance services for computer systems and storage products.

We continue to invest significantly in R&D to create hardware, software and services based on open standards and innovative business models to offer differentiated solutions to our customer, partner and developer communities. We focus our R&D investments to address complex customer issues such as escalating IT infrastructure costs, data security, under-utilized IT assets and the rising costs of power consumption, cooling and space in data-centers. We believe our innovations will continue to help businesses and developers address these IT concerns, drive high-growth business solutions and differentiate us from our major competitors.

We believe competition will be at least as intense in the next fiscal year as it was over the last fiscal year. In this environment, a lack of competitive advantage with respect to our hardware, software or services offerings could lead to a loss of competitive position resulting in fewer customer orders, reduced revenues, reduced margins, reduced levels of profitability and loss of market share. For more information about the competitive risks we face, refer to Item 1A. Risk Factors.

PATENTS, TRADEMARKS AND INTELLECTUAL PROPERTY LICENSES

We have used, registered or applied to register certain trademarks and service marks to distinguish our products, technologies and services from those of our competitors in the U.S. and in foreign countries and jurisdictions. We enforce our trademark, service mark and trade name rights in the U.S. and abroad.

We hold a number of U.S. and foreign patents relating to various aspects of our products and technology. While we believe that patent protection is important, we believe that factors such as innovative skills and technological expertise provide even greater competitive differentiation. From time to time we receive assertions that we may be infringing certain patents or other intellectual property rights of others. The action we take with respect to such assertions varies depending on our assessment of the nature of the particular assertion. When we believe there is a substantial likelihood that one of our products, component parts, or activities may infringe a valid intellectual property right of another party, there are several steps we may take to address such possible infringement, including securing alternative non-infringing products, designing our products or activities such that they do not infringe, or seeking a license on commercially reasonable terms. There is no guarantee that such efforts to remediate any infringement will be successful or that we will be able to obtain a license or that litigation will not occur. The adverse resolution of litigation arising out of such claims could adversely affect our business or financial condition, and could include injunctive relief that could limit our ability to market and sell certain of our products.

EXECUTIVE OFFICERS OF THE REGISTRANT

The following sets forth certain information regarding our Executive Officers as of August 28, 2008.

Name	Age	Position
Jonathan I. Schwartz	42	Chief Executive Officer and President
V. Kalyani Chatterjee-Tandon	45	Vice President, Corporate Controller and Chief Accounting Officer
Michael A. Dillon	49	Executive Vice President, General Counsel and Secretary
John F. Fowler	47	Executive Vice President, Systems Group
Anil P. Gadre	51	Executive Vice President and Chief Marketing Officer
Richard L. Green	52	Executive Vice President, Software Group
Michael E. Lehman	57	Chief Financial Officer and Executive Vice President, Corporate Resources
William N. MacGowan	51	Chief Human Resources Officer and Executive Vice President, People and Places
Gregory M. Papadopoulos	50	Executive Vice President, Research and Development and Chief Technology Officer
Peter Ryan	47	Executive Vice President, Global Sales and Services
Michael E. Splain	51	Executive Vice President, Microelectronics Group

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Mr. Schwartz has served as President and Chief Executive Officer since April 2006, as President and Chief Operating Officer from April 2004 to April 2006, as Executive Vice President, Software from July 2002 to April 2004, as Senior Vice President, Corporate Strategy and Planning from July 2000 to July 2002, as Vice President, Ventures Fund from October 1999 to July 2000. Prior to that, Mr. Schwartz served in several other positions with Sun.

Ms. Chatterjee-Tandon has served as Vice President, Corporate Controller and Chief Accounting Officer (Principal Accounting Officer) since September 2006 and Vice President, Finance and Assistant Controller from February 2006 until September 2006. From March 2004 to February 2006, Ms. Chatterjee served as Sun's Senior Director and Assistant Corporate Controller. From January 2003 to March 2004, Ms. Chatterjee served as the Vice President, Finance with Hotwire, Inc, an online travel company. From January 2000 to November 2002, Ms. Chatterjee served as a Senior Manager at KPMG LLP, an accounting firm.

Mr. Dillon has served as Executive Vice President, General Counsel and Secretary since April 2006, as Senior Vice President, General Counsel and Secretary from April 2004 to April 2006 and previously held the position of Vice President, Products Law Group, from July 2002 to March 2004. From October 1999 until June 2002, he served as Vice President, General Counsel and Corporate Secretary of ONI Systems Corp, an optical networking company. Mr. Dillon initially joined Sun in 1993 and thereafter held successive management positions in several legal support groups until October 1999.

Mr. Fowler has served as Executive Vice President, Systems Group since May 2006, as Executive Vice President, Network Systems Group from May 2004 to May 2006, as Chief Technology Officer, Software Group from July 2002 to May 2004 and Director, Corporate Development from July 2000 to July 2002.

Mr. Gadre has served as Executive Vice President, Chief Marketing Officer since November 2004, as Vice President, Software Marketing from May 2002 to November 2004 and Vice President and General Manager of Solaris Software from April 1999 to May 2002. Previously, he has held several positions related to Product and Corporate Marketing at Sun.

Mr. Green has served as Executive Vice President, Software Group since May 2006. From May 2004 to May 2006, Mr. Green served as Executive Vice President, Products for Cassatt Corporation, a data center software company. From April 2004 to May 2004, Mr. Green served as Vice President, Java and Developer Programs and as Vice President, Java from December 1999 to April 2004.

Mr. Lehman has served as Chief Financial Officer and Executive Vice President, Corporate Resources since February 2006 and as Executive Vice President from July 2002 until his resignation from employment in September 2002. From September 2002 to February 2006, he was a member of the board of directors of Sun. He resigned from the Board when he returned to full-time employment at Sun. During that time, he was self-employed as a business consultant. From July 2000 to July 2002, he served as Executive Vice President, Corporate Resources and Chief Financial Officer of Sun and from January 1998 to July 2000, as Vice President, Corporate Resources and Chief Financial Officer. He is a director of MGIC Investment Corporation.

Mr. MacGowan has served as Chief Human Resources Officer and Executive Vice President of People and Places since April 2006, as Senior Vice President, Human Resources, from April 2004 to April 2006, as Vice President, Human Resources, Global Centers of Expertise, from May 2003 to April 2004, as Vice President, Human Resources, Systems, Storage and Operations, from May 2002 to May 2003, Vice President, Human Resources, Enterprise Services, from May 2000 to May 2002 and as Director, Human Resources, Enterprise Services, from June 1998 to May 2000.

Mr. Papadopoulos has served as Executive Vice President, Research and Development and Chief Technology Officer since May 2006, as Executive Vice President and Chief Technology Officer from December 2002 to May 2006, as Senior Vice President and Chief Technology Officer from July 2000 to December 2002 and as Vice President and Chief Technology Officer from April 1998 to July 2000. He served as Vice President and Chief Technology Officer of Sun Microsystems Computer Corporation (SMCC), a wholly-owned subsidiary of Sun from March 1996 to April 1998, as Chief Technology Officer of SMCC from December 1995 to March 1996 and as Chief Scientist, Server Systems Engineering from September 1994 to December 1995. Mr. Papadopoulos had a part-time, non-compensated appointment as a Visiting Professor of Electrical Engineering and Computer Science at the Massachusetts Institute of Technology from September 2002 to August 2003.

Mr. Ryan has served as Executive Vice President, Global Sales and Services of Sun since June 2008, as Senior Vice President, Global Sales for the Americas Region from July 2007 to June 2008 and as Senior Vice President, Global Sales and Services for the Europe, Middle East and Africa Region from July 2006 to July 2007. Prior to Sun, Mr. Ryan was a Consultant Executive and served as Chairman of three technology companies: Elateral Limited, an e-solution for marketing companies, from January 2003 to June 2006, Wesupply, a supply chain management company, from June 2003 to June 2006, and CopperEye Ltd., an enterprise data management solutions company, from December 2004 to September 2007. Previously, he served as President, Europe for Aspect Development, and had several leadership positions at IBM.

Mr. Splain has served as Executive Vice President, Microelectronics since April 2008, as Chief Engineer since January 2007 and Chief Technology Officer, Systems Group since June 2006. From March 2004 to June 2006, Mr. Splain served as Chief

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Technology Officer, Scalable Systems. From June 2002 to June 2004, Mr. Splain served as Chief Technology Officer, Processor Products.

FORWARD-LOOKING STATEMENTS

This annual report, including the foregoing sections and "Management's Discussion and Analysis of Financial Condition and Results of Operations," contains forward-looking statements, particularly statements regarding: our vision and business strategy; future investments in companies, products and technologies; our expectation of competitive pressures; our solution-based sales approach; our commitment to standards-based designs and implementations; our expectations regarding R&D investment; the estimated sublease income to be generated from sublease contracts not yet negotiated; our expectations with respect to workforce and facility-related expenses; our expectation that the resolution of pending claims and legal proceedings will not have a material adverse effect on us; our estimates of the impact of foreign currency exchange rates; our expectations of aggregate selling, general and administrative and research and development expenses during fiscal 2009; our expectations regarding our cash flow from operations for the fiscal year ending June 30, 2009; our products gross margins expectations for the fiscal 2009 period; our expectations of severance and benefit costs and restructuring charges under our restructuring plans; our estimated contractual obligations at June 30, 2008; our expectations with respect to the effects of accounting pronouncements on our consolidated financial statements; and our belief that the liquidity provided by existing cash, cash equivalents, marketable debt securities and cash generated from operations will provide sufficient capital to meet our requirements for at least the next 12 months.

These forward-looking statements involve risks and uncertainties and the cautionary statements set forth above and those contained in the section of this report entitled "Risk Factors" identify important factors that could cause actual results to differ materially from those predicted in any such forward-looking statements.

ITEM 1A. RISK FACTORS

If we are unable to compete effectively with existing or new competitors, the loss of our competitive position could result in price reductions, fewer customer orders, reduced revenues, reduced margins, reduced levels of profitability and loss of market share.

We compete in the computer systems (hardware and software) and storage (hardware and software) products and services markets. These markets are intensely competitive. If we fail to compete successfully in these markets, the demand for our products and services would decrease. Any reduction in demand could lead to fewer customer orders, reduced revenues, pricing pressures, reduced margins, reduced levels of profitability and loss of market share. These competitive pressures could materially and adversely affect our business and operating results.

Our competitors are some of the largest, most successful companies in the world. They include IBM, Dell, HP, EMC, Fujitsu, HDS, the Fujitsu-Siemens joint venture, Microsoft, Oracle and Intel. We compete with (i) systems manufacturers and resellers of systems based on microprocessors from Intel, the Windows family of operating systems software from Microsoft and the Linux family of operating systems software from Red Hat and others, as well as (ii) companies that focus on providing support and maintenance services for computer systems and storage products. A substantial majority of our computer systems products are based on our SPARC platform, which has a significantly smaller installed base than the Windows and Linux platforms. Certain of these competitors compete aggressively on price, as well as based on their platform, and seek to maintain very low cost structures. Some of these competitors are seeking to increase their market share, which creates increased pressure, including pricing pressure, on our product lines and service offerings. In particular, we are seeing increased competition and pricing pressures from competitors offering systems running Linux software and other open source software, as well as competitors offering support services. Additionally, some of these competitors are able to compete with us by using software pricing strategies that make it more expensive for their customers to use our hardware. Certain of our competitors, including IBM and HP, have financial and human resources that are substantially greater than ours, which increases the competitive pressures we face. These competitors also have significant installed bases, and it can be very difficult to win a new customer that has made significant investments in a competitor's platform.

Customers make buying decisions based on many factors, including among other things, new product and service offerings and features; product performance and quality; availability and quality of support and other services; price; platform; interoperability with hardware and software of other vendors; quality; reliability, security features and availability of products; breadth of product line; ease of doing business; a vendor's ability to adapt to customers' changing requirements; responsiveness to shifts in the marketplace; business model (e.g., utility computing, subscription-based software usage, consolidation versus outsourcing); contractual terms and conditions; vendor reputation and vendor viability. As competition increases, each factor on which we compete becomes more important and the lack of competitive advantage with respect to one or more of these factors could lead to a loss of competitive position, resulting in fewer customer orders, reduced revenues, reduced margins, reduced levels of profitability and loss of market share. We expect competitive pressure to remain intense.

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Fujitsu and its subsidiaries have, for many years, been key strategic channel partners with us, distributing substantial quantities of our products throughout the world. We entered into a number of agreements with Fujitsu intended to substantially increase the scope of our relationship with them, including through collaborative selling efforts and joint development and marketing of server products known as the Advanced Product Line (APL). The first group of APL server products was released in April 2007 and branded as the SPARC Enterprise line of servers. Enhanced versions of the SPARC Enterprise M4000, M5000, M8000 and M9000 servers, with new quad-core SPARC64 VII processor technology, were released in July 2008. However, Fujitsu is also a competitor of ours and, as a licensee of various technologies from us and others, it has developed products that currently compete directly with our products.

Over the last several years, we have invested significantly in our Storage products business, including through the acquisition of StorageTek, with a view to increasing the sales of these products both on a stand-alone basis to customers using the systems of our competitors, and as part of the systems that we sell. The Storage products business is intensely competitive. EMC is currently a leader in the storage products market and our primary competitor.

We are continuing the implementation of a solution-based selling approach. While we believe that strategy will enable us to increase our revenues and margins, there can be no assurance that we will be successful in this approach. In fact, our implementation of this selling model may result in reductions in our revenues and/or margins, particularly in the short term, as we compete to attract business. In addition, because of our emphasis on solution-based sales, we face strong competition from systems integrators such as IBM, Fujitsu-Siemens and HP. Our inability to successfully implement this model could have a material adverse impact on our revenues and margins.

The products we make are very complex. If we are unable to rapidly and successfully develop and introduce new products and manage our inventory, we will not be able to satisfy customer demand.

We operate in a highly competitive, quickly changing environment, and our future success depends on our ability to develop and introduce new products that our customers choose to buy. If we are unable to develop new products, our business and operating results could be adversely affected. We must quickly develop, introduce, and deliver in quantity new, complex systems, software and hardware products and components. These include products that incorporate certain UltraSPARC microprocessors and the Solaris Operating System, the Java platform, Sun Java™ System portfolio and Sun N1™ Grid™ architecture, among others. The development process for these complicated products is very uncertain. It requires high levels of innovation from both our product designers and the suppliers of the components used in our products. The development process is also lengthy and costly. If we fail to accurately anticipate our customers' needs and technological trends, or are otherwise unable to complete the development of a product on a timely basis, we will be unable to introduce new products into the market on a timely basis, if at all, and our business and operating results would be materially and adversely affected.

The manufacture and introduction of our new products is also a complicated process. Once we have developed a new product, we face several challenges in the manufacturing process. We must be able to manufacture new products in sufficient volumes so that we can have an adequate supply of new products to meet customer demand. We must also be able to manufacture the new products at acceptable costs. This requires us to be able to accurately forecast customer demand so that we can procure the appropriate components at optimal costs. Forecasting demand requires us to predict order volumes, the correct mix of our products and the correct configurations of these products. We must manage new product introductions and transitions to minimize the impact of customer-delayed purchases of existing products in anticipation of new product releases. We must also try to reduce the levels of older product and component inventories to minimize inventory write-offs. If we have excess inventory, it may be necessary to reduce our prices or write down inventory, which could result in lower gross margins. Additionally, our customers may delay orders for existing products in anticipation of new product introductions. As a result, we may decide to adjust prices of our existing products during this process to try to increase customer demand for these products. Our future operating results would be materially and adversely affected if such pricing adjustments were to occur and we were unable to mitigate the resulting margin pressure by maintaining a favorable mix of systems, software, service and other products, or if we were unsuccessful in achieving component cost reductions, operating efficiencies and increasing sales volumes.

If we are unable to timely develop, manufacture and introduce new products in sufficient quantity to meet customer demand at acceptable costs, or if we are unable to correctly anticipate customer demand for our new and existing products, our business and operating results could be materially adversely affected.

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We expect our quarterly revenues, cash flows and operating results to fluctuate for a number of reasons.

Future operating results and cash flows will continue to be subject to quarterly fluctuations based on a wide variety of factors, including:

Seasonality. Although our sales and other operating results can be influenced by a number of factors and historical results are not necessarily indicative of future results, our sequential quarterly operating results generally fluctuate downward in the first and third quarters of each fiscal year when compared with the immediately preceding quarter.

Linearity. Our quarterly sales have historically reflected a pattern in which a disproportionate percentage of each quarter's total revenues occur in the last month of the quarter. This pattern can make prediction of revenues, earnings and working capital for each financial period difficult and uncertain and increase the risk of unanticipated variations in quarterly results and financial condition.

Foreign Currency Fluctuations. As a large portion of our business takes place outside of the U.S., we enter into transactions in other currencies. Although we employ various hedging strategies, we are exposed to changes in exchange rates, which could cause fluctuations in our quarterly operating results.

Deferred Tax Assets. Estimates and judgments are required in the calculation of certain tax liabilities and in the determination of the recoverability of certain of the deferred tax assets, which arise from net operating losses, tax credit carryforwards and temporary differences between the tax and financial statement recognition of revenue and expense. SFAS 109, "Accounting for Income Taxes," also requires that the deferred tax assets be reduced by a valuation allowance, if based on the weight of available evidence, it is more likely than not that some portion or all of the recorded deferred tax assets will not be realized in future periods.

In evaluating our ability to recover our deferred tax assets, in full or in part, we consider all available positive and negative evidence including our past operating results, the existence of cumulative losses in the most recent fiscal years and our forecast of future taxable income on a jurisdiction by jurisdiction basis. In determining future taxable income, we are responsible for the assumptions utilized including the amount of state, federal and international pre-tax operating income, the reversal of temporary differences and the implementation of feasible and prudent tax planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates we are using to manage the underlying businesses. Cumulative losses incurred in the U.S. and certain foreign jurisdictions in recent years and insufficient forecasted future taxable income in certain other foreign jurisdictions represented sufficient negative evidence to require full and partial valuation allowances in these jurisdictions. We have established a valuation allowance against the deferred tax assets in these jurisdictions, which will remain until sufficient positive evidence exists to support reversal. Future reversals or increases to our valuation allowance could have a significant impact on our future earnings.

Goodwill and Other Intangible Assets. We perform an analysis on our goodwill balances to test for impairment on an annual basis or whenever events occur that may indicate impairment possibly exists. Goodwill is deemed to be impaired if the net book value of the reporting unit exceeds the estimated fair value. The impairment of a long-lived intangible asset other than goodwill is only deemed to have occurred if the sum of the forecasted undiscounted future cash flows related to the asset are less than the carrying value of the intangible asset we are testing for impairment. If the forecasted cash flows are less than the carrying value, then we must write down the carrying value to its estimated fair value. We recognized an impairment charge of $70 million related to acquired intangible assets during the fourth quarter of fiscal 2006. As of June 30, 2008, we had a goodwill balance of $3,215 million. Going forward, we will continue to review our goodwill and other intangible assets for possible impairment. Any additional impairment charges could adversely affect our future earnings. Goodwill impairment analysis and measurement is a process that requires significant judgment. A decline in our stock price and resulting market capitalization (such as the decline which occurred subsequent to April 2008), could result in impairment of a material amount of our $3,215 million goodwill balance if we determine that the decline is sustained and has reduced the fair value of any of our reporting units below its carrying value. We cannot be certain that a future downturn in our business, changes in market conditions or a longer-term decline in the quoted market price of our stock will not result in an impairment of goodwill and the recognition of resulting expenses in future periods, which could adversely affect our results of operations for those periods.

We are dependent on significant customers, specific industries and geographies.

Sales to Avnet, the largest distributor of our products, accounted for approximately 11% of our net revenues in each of fiscal 2008, 2007 and 2006. In January 2007, Access Distribution, the largest distributor of our products at the time, was sold to Avnet by General Electric Company. Avnet was StorageTek's largest distributor and became a distributor of our products after our acquisition of StorageTek in August 2005. The net revenue percentages for fiscal 2007 and 2006 represent sales to Avnet and Access Distribution on a combined basis. No other customer accounted for more than 10% of our net revenues in fiscal 2008. If our distribution arrangement with Avnet significantly deteriorates or is terminated, and we are unable to find another distributor for our products on similar financial terms, our future operating results could be adversely affected.

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We depend on the telecommunications, financial services and government sectors for a significant portion of our revenues. Our revenues are dependent on the level of technology capital spending in the U.S. and international economies. If capital spending declines in these industries over an extended period of time, our business will continue to be materially and adversely affected. We continue to execute on our strategy to reduce our dependence on these industries by expanding our product reach into new industries, but no assurance can be given that this strategy will be successful.

Weakening economic conditions in specific geographic areas, particularly the U.S. or Europe, can also adversely affect our operating results. For example, the direction and relative strength of the U.S. economy has recently been increasingly uncertain due to rising oil prices, difficulties in the financial services sector, softness in the housing markets and geopolitical uncertainties. If economic growth in the U.S. is slowed, many customers may delay or reduce technology capital spending which would likely have an adverse affect on our operating results.

We derive significant revenues from the sales of our higher end server products and decreased demand for these products could adversely affect our revenues and gross margins.

We derive significant revenues from the sales of our higher end server products. These products are offered at higher price points and may provide us with higher gross margin percentages than our entry-level products. If demand for our higher end server products declines, this could adversely affect our revenues, gross margins and earnings.

We have licensed significant elements of our intellectual property, including our Solaris Operating System and Java technology, as open source software and intend to license additional intellectual property in the future under open source licenses, which could reduce the competitive advantage we derive from this intellectual property.

We have released significant elements of our intellectual property, including the Solaris Operating System, the Java Enterprise System infrastructure software platform, MySQL database technology, the Sun N1 Grid Engine software and various developer tools, to the open source development community as open source software under an open source license and have made the hardware source code of our UltraSPARC T1 and T2 processors available under an open source license. We have also released our Java Platform, Standard Edition (Java SE), Enterprise Edition (Java EE) and Micro Edition (Java ME) technologies under an open source license. Although open source licensing models vary, generally open source software licenses permit the liberal copying, modification and distribution of a software program allowing a diverse programming community to contribute to the software. As a result of such release, there could be an impact on revenue related to this intellectual property and we may no longer be able to exercise control over some aspects of the future development of this intellectual property. In particular, the feature set and functionality of the Solaris Operating System may diverge from those that best serve our strategic objectives, move in directions in which we do not have competitive expertise or fork into multiple, potentially incompatible variations. We currently derive a significant competitive advantage from our development, licensing and sale of the Solaris Operating System, Java and MySQL technologies, and system products based on the UltraSPARC family of microprocessors, and any of these events could reduce our competitive advantage or impact market demand for our products, software and services. In addition, disclosing the content of our source code could limit the intellectual property protection we can obtain or maintain for that source code or the products containing that source code and could facilitate intellectual property infringement claims against us. Finally, there can be no assurance that making our intellectual property freely available will yield incremental revenue to us.

Delays in product development or customer acceptance and implementation of new products and technologies could seriously harm our business.

Generally, the computer systems we sell to customers incorporate various hardware and software products that we sell, such as UltraSPARC microprocessors, various software elements, from the Solaris Operating System to the Java platform, Sun Java System portfolio, Sun N1 Grid Engine , the Sun StorageTek SL8500 modular library system and Sun StorEdge™ array products. Any delay in the development, delivery or acceptance of key elements of the hardware or software included in our systems could delay our shipment of these systems. Delays in the development and introduction of our products may occur for various reasons.

In addition, if customers decided to delay the adoption and implementation of new releases of our Solaris Operating System, this could also delay customer acceptance of new hardware products tied to that release. Implementing a new release of an operating environment requires a great deal of time and money for a customer to convert its systems to the new release. The customer must also work with software vendors who port their software applications to the new operating system and make sure these applications will run on the new operating system. As a result, customers may decide to delay their adoption of a new release of an operating system because of the cost of a new system and the effort involved to implement it. Such delays in product development and customer acceptance and implementation of new products could materially and adversely affect our business.

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We maintain higher research and development costs, as a percentage of total net revenues, than many of our competitors and our earnings are dependent upon maintaining revenues and gross margins at a sufficient level to offset these costs.

One of our business strategies is to derive a competitive advantage and a resulting enhancement of our gross margins from our investment in innovative new technologies which customers value. As a result, as a percentage of total net revenues, we incur higher fixed R&D costs than many of our competitors. To the extent that we are unable to develop and sell products with attractive gross margins in sufficient volumes, our earnings may be materially and adversely affected by our cost structure. We continue to add new products to our entry-level server product line that are offered at a lower price point and that may provide us with a lower gross margin percentage than our products as a whole. Although our strategy is to sell these products as part of overall systems that include other products with higher gross margin percentages, to the extent that the mix of our overall revenues represented by sales of lower gross margin products increases, our gross margins and earnings may be materially and adversely affected.

We are currently implementing a new enterprise resource planning system, and problems with the design or implementation of this system could interfere with our business and operations.

We are in the process of implementing a project to consolidate all of our database infrastructure to a single global enterprise resource planning (ERP) system. We have invested, and will continue to invest, significant capital and human resources in the design and implementation of the ERP system, which may be disruptive to our underlying business. Any disruptions, delays or deficiencies in the design and implementation of the new ERP system, particularly any disruptions, delays or deficiencies that impact our operations, could adversely affect our ability to process customer orders, ship products, provide services and support to our customers, bill and track our customers, fulfill contractual obligations, file SEC reports in a timely manner and otherwise run our business. Further, as we are dependent upon our ability to gather and promptly transmit accurate information to key decision makers, our business, results of operations and financial condition may be materially and adversely affected if our database infrastructure does not allow us to transmit accurate information, even for a short period of time. Even if we do not encounter these adverse effects, the design and implementation of the new ERP system may be much more costly than we anticipated. If we are unable to successfully design and implement the new ERP system as planned, our financial position, results of operations and cash flows could be negatively impacted.

We have experienced a number of challenges during the implementation of this project that have caused delays and affected our operations. Although these disruptions have not materially affected our financial results, further disruptions caused by the implementation of the new ERP system could have a material adverse effect on our financial position, results of operations and cash flows.

Our acquisition, divestiture and alliance activities could disrupt our ongoing business and subject us to significant risks.

We expect to continue to make investments in companies, products and technologies, either through acquisitions or investments or alliances. For example, we have purchased several companies in the past, including MySQL and StorageTek, and have also formed alliances, such as our strategic relationship with Fujitsu for the development, manufacturing and marketing of server products and our OEM relationship with Hitachi Data Systems for the collaboration on, and delivery of, a broad range of storage products and services. We also rely on IT services partners and independent software developers to enhance the value to our customers of our products and services. Acquisitions and alliance activities often involve risks, including: (1) difficulty in assimilating the acquired operations and employees; (2) difficulty in managing product co-development activities with our alliance partners; (3) retaining the key employees of the acquired operation; (4) disruption of our or the acquired company’s ongoing business; (5) inability to successfully integrate the acquired technology and operations into our business and maintain uniform standards, controls, policies and procedures; and (6) lacking the experience to enter into new product or technology markets.

From time to time, we evaluate our products and service offerings and may adjust our strategic priorities by reducing investment in or divesting certain business operations. Decisions to eliminate or divest certain business operations may involve a number of risks, including the diversion of management’s attention, significant costs and expenses, the assumption of contractual obligations, realization of losses, facility consolidation, the loss or disruption of customer relationships, the loss of employees, the elimination of revenues along with associated costs and the disruption of operations in the affected business or related businesses, any of which could cause our operating results to decline and may fail to yield the expected benefits.

Our reliance on single source suppliers could delay product shipments and increase our costs.

Most of our products and components are manufactured in whole or in part by third-party manufacturers. Further, there are some components that can only be purchased from a single vendor due to price, quality, technology or other business constraints. For example, we currently depend on Texas Instruments for the manufacture of our existing UltraSPARC

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microprocessors, Imation for tape media used in certain tape storage products and several other companies for custom integrated circuits. If we were unable to purchase any of these items from the respective single vendors on acceptable terms or experienced significant delays or quality issues in the delivery of necessary parts and/or components from a particular vendor and we had to find a new supplier for these parts and components, our new and existing product shipments could be delayed which could have a material adverse effect on our business, results of operations and financial condition.

Our future operating results depend on our ability to purchase a sufficient amount of components to meet the demands of our customers.

We depend heavily on our suppliers to design, develop, manufacture, and deliver on a timely basis the necessary components for our products. While many of the components we purchase are standard, we do purchase some components (standard or otherwise), including color monitors, custom power supplies, application specific integrated circuits (ASICs) and custom memory and graphics devices, that require long lead times to manufacture and deliver. Long lead times make it difficult for us to plan and procure appropriate component inventory levels to meet the customer demand for our products. In addition, in the past, we have experienced shortages in certain of our components (including, ASICs, dynamic random access memories (DRAMs) and static random access memories (SRAMs)). If a component delivery from a supplier is delayed, if we experience a shortage in one or more components, or if we are unable to provide for adequate levels of component inventory, our new and existing product shipments could be delayed and our business and operating results could be materially and adversely affected.

Because we may order components from suppliers in advance of receipt of customer orders for our products that include these components, we could face a material inventory risk.

As part of our component planning, we place orders with or pay certain suppliers for components in advance of receipt of customer orders. We occasionally negotiate supply commitments with vendors early in the manufacturing process of our microprocessors to make sure we have enough of these components for our products to meet anticipated customer demand. Because the design and manufacturing process for these components is very complicated it is possible that we could experience a design or manufacturing flaw that could delay or even prevent the production of the components for which we have previously committed to pay or need to fulfill orders from customers. We also face the risk of ordering too many components, or conversely, not enough components, since supply orders are generally based on forecasts of customer orders rather than actual customer orders. In addition, in some cases, we make non-cancelable order commitments to our suppliers for work-in-progress, supplier's finished goods, custom sub-assemblies and Sun unique raw materials that are necessary to meet our lead times for finished goods. If we cannot change or be released from supply orders, we could incur costs from the purchase of unusable components, either due to a delay in the production of the components or other supplies or as a result of inaccurately predicting supply orders in advance of customer orders. Our business and operating results could be materially and adversely affected as a result of these increased costs.

Our products may have quality issues that could adversely affect our sales and reputation.

In the course of conducting our business, we experience and address quality issues. Some of our hardware and software products contain defects, including defects in our engineering, design and manufacturing processes, as well as defects in third-party components included in our products, which may be beyond our control. Often defects are identified during our design, development and manufacturing processes and we are able to correct many of these. Sometimes defects are identified after introduction and shipment of new products or enhancements to existing products.

When a quality issue is identified, we work extensively with our customers (and our suppliers) to remedy such issues. We may test the affected product to determine the root cause of the problem and to determine appropriate solutions. We may find an appropriate solution (often called a "patch") or offer a temporary fix while a permanent solution is being determined. If we are unable to determine the root cause, find an appropriate solution or offer a temporary fix, we may delay shipment to customers. We may, however, ship products while we continue to explore a suitable solution if we believe the defect is not significant to the product's functionality. Defects in our products can harm our reputation, delay or prevent sales, result in significant expense and could materially and adversely affect our business.

Our international customers and operations subject us to a number of risks.

Currently, more than half of our revenues come from international sales. In addition, a portion of our operations consists of manufacturing and sales activities outside of the U.S. Our ability to sell our products and conduct our operations internationally is subject to a number of risks. Local economic, political and labor conditions in each country could adversely affect demand for our products and services or disrupt our operations in these markets. We may also experience reduced intellectual property protection or longer and more challenging collection cycles as a result of different customary business practices in certain

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countries where we do business which could have a material adverse effect on our business operations and financial results. Currency fluctuations could also materially and adversely affect our business in a number of ways. Although we take steps to reduce or eliminate certain foreign currency exposures that can be identified or quantified, we may incur currency translation losses as a result of our international operations. Further, in the event that currency fluctuations cause our products to become more expensive in overseas markets in local currencies, there could be a reduction in demand for our products or we could lower our pricing in some or all of these markets resulting in reduced revenue and margins. Alternatively, a weakening dollar could result in greater costs to us for our overseas operations. Changes to and compliance with a variety of foreign laws and regulations may increase our cost of doing business in these jurisdictions. Trade protection measures and import and export licensing requirements subject us to additional regulation and may prevent us from shipping products to a particular market, and increase our operating costs. In addition, we could be subject to regulations, fines and penalties for violations of import and export regulations. Although we implement policies and procedures designed to ensure compliance with these laws, there can be no assurance that all of our employees, contractors and agents, as well as those companies to which we outsource certain of our business operations, including those based in or from countries where practices which violate such United States laws may be customary, will not take actions in violation of our policies. These violations could result in penalties, including prohibiting us from exporting our products to one or more countries, and could materially and adversely affect our business.

Local laws and customs in many countries differ significantly from those in the U.S. We incur additional legal compliance costs associated with our international operations and could become subject to legal penalties in foreign countries if we do not comply with local laws and regulations, which may be substantially different from those in the United States. In many foreign countries, particularly in those with developing economies, it is common for local business people to engage in business practices that violate their local laws and that are prohibited by United States laws applicable to us such as the Foreign Corrupt Practices Act. We have implemented policies, training, internal controls and procedures designed to ensure compliance with these laws. However, there can be no assurance that all of our employees, contractors and agents, as well as our resellers and those companies to which we outsource certain of our business operations, will not engage in actions which violate local or U.S. law or our policies. Any such violation, even if prohibited by our policies, could have a material adverse effect on our business.

We have entered into, and intend to enter into several additional, joint ventures with distribution partners with the goal of increasing sales of our products and services in selected geographic markets. We have implemented policies, internal controls and procedures designed to ensure the joint venture partners and joint venture companies comply with our policies and relevant laws. However, entering into a joint venture subjects us to additional compliance and legal risks related to the actions of the joint venture partner and the joint venture company.

Our business may be adversely affected if our competitors acquire or enter into exclusive arrangements with companies with whom we do business or may do business in the future.

From time to time, our competitors may acquire or enter into exclusive arrangements with companies with whom we do business or may do business in the future. Reductions in the number of partners with whom we may do business in a particular context may reduce our ability to enter into critical alliances on attractive terms or at all, and the termination of an existing relationship or alliance by a business partner may disrupt our operations. As an example, HP recently acquired Electronic Data Systems Corporation (EDS), one of our customers, which may have the effect of reducing our business with EDS.

We face numerous risks associated with our strategic alliance with Fujitsu.

We have entered into a number of agreements with Fujitsu with respect to collaborative sales and marketing efforts and the joint development and manufacturing of server products known as the Advanced Product Line. The first group of APL server products was released in April 2007 and branded as the Sun SPARC Enterprise line of servers. Enhanced versions of the SPARC Enterprise M4000, M5000, M8000 and M9000 servers, with new quad-core SPARC64 VII processor technology, were released in July 2008. The APL server products are intended to eventually replace a portion of our server product portfolio. In addition, the agreements contemplate that Sun and Fujitsu dedicate substantial financial and human resources to this relationship. As a result, our future performance and financial condition may be impacted by the success or failure of this relationship.

Joint development and marketing of a complex new product line is an inherently difficult undertaking and is subject to numerous risks. If we fail to satisfy certain development or supply obligations under the agreements, or if we otherwise violate the terms of the agreements, we may be subject to significant contractual or legal penalties. Further, if Fujitsu encounters any of a number of potential problems in its business, such as intellectual property infringement claims, supply difficulties, or difficulties in meeting development milestones or financial challenges, these problems could impact our strategic relationship with them and could result in a material adverse effect on our business or results of operations. There can be no assurance that our strategic relationship with Fujitsu will be successful or that the economic terms of the agreements establishing the

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relationship will ultimately prove to be favorable to us. If any of these risks come to pass, they may have a material adverse effect on our business, results of operations or financial condition.

We are dependent on third parties for certain key business process functions such as IT services and the human resource function and for the provision of certain key manufacturing activities.

We continuously seek to make our cost structure more efficient and focus on our core strengths. We continue to develop and implement our global resourcing strategy and operating model, which includes activities that are focused on increasing workforce flexibility and scalability, and improving overall competitiveness by leveraging external talent and skills worldwide. We rely on partners or third party service providers for the provision of certain key business process functions, including IT services and the human resources function, and as a result, we may incur increased business continuity risks. We may no longer be able to exercise control over some aspects of the future development, support or maintenance of outsourced operations and processes, including the internal controls associated with those outsourced business operations and processes, which could adversely affect our business. If we are unable to effectively utilize or integrate and interoperate with external resources or if our partners or third party service providers experience business difficulties or are unable to provide business process services as anticipated, we may need to seek alternative service providers or resume providing these business processes internally, which could be costly and time consuming and have a material adverse effect on our operating and financial results.

We also rely on partners for the provision of key manufacturing activities. Texas Instruments indicated publicly that it will not be making UltraSPARC microprocessors for us on a foundry basis at the 45-nm node. Consequently, we are reviewing alternative foundry solutions, and are transitioning the 45/40-nm node and any subsequent nodes for foundry operations and supply chain to other potential vendors. If we are unable to effectively execute the transition, we may experience difficulty in delivering our 45/40-nm next generation microelectronics products and technologies, which could materially and adversely affect our business.

We are dependent upon our channel partners for a significant portion of our revenues.

Our channel partners include distributors, OEMs, independent software vendors, system integrators, service providers and resellers. We continue to see an increase in revenues via our reseller channel. We face ongoing business risks due to our reliance on our channel partners to maintain customer relationships and create customer demand with customers where we have a limited or no direct relationship, including with respect to our government business. Should our relationships with our channel partners or their effectiveness decline, we face risk of declining demand, which could affect our results of operations.

Adverse resolution of litigation may harm our operating results or financial condition.

We are a party to lawsuits in the normal course of our business. Litigation can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict. An unfavorable resolution of a particular lawsuit could have a material adverse effect on our business, operating results, or financial condition. We are currently involved in litigation with the General Services Administration (GSA). Additional information is provided in Note 11 to the Consolidated Financial Statements in Item 8.

Our business may suffer if it is alleged or found that we have infringed the intellectual property rights of others.

From time to time we have been notified that we may be infringing certain patents or other intellectual property rights of others. Responding to such claims, regardless of their merit, can be time consuming, result in costly litigation, divert management’s attention and resources and cause us to incur significant expenses. There are often several pending claims in various stages of evaluation at any particular time. From time to time, we consider the desirability of entering into licensing agreements in certain of these claims. The action we take with respect to such claims varies depending on our assessment of the nature of the particular claim. When we believe there is a substantial likelihood that one of our products, component parts, or activities may infringe a valid intellectual property right of another party, there are several steps we may take to address such possible infringement, including securing alternative non-infringing products, designing our products or activities such that they do not infringe, or seeking a license on commercially reasonable terms. No assurance can be given that such efforts to remediate any infringement will be successful or that licenses can be obtained on acceptable terms or that litigation will not occur. In the event there is a temporary or permanent injunction entered prohibiting us from marketing or selling certain of our products, or a successful claim of infringement against us requiring us to pay royalties to a third party, and we fail to license such technology on acceptable terms and conditions or to develop or license a substitute technology, our business, results of operations or financial condition could be materially adversely affected.

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Income tax laws and regulations subject us to a number of risks and could result in significant liabilities and costs.

As a multinational corporation, we are subject to income taxes in the U.S. and various foreign jurisdictions. Our domestic and foreign tax liabilities are subject to the allocation of revenues and expenses in different jurisdictions. Additionally, the amount of income taxes paid is subject to our interpretation of applicable tax laws in the jurisdictions in which we operate. We are regularly subject to audits by tax authorities. While we endeavor to comply with all applicable income tax laws, there can be no assurance that a governing tax authority will not have a different interpretation of the law than we do or that we will comply in all respects with applicable tax laws, which could result in additional taxes. We regularly review the likelihood of adverse outcomes resulting from tax audits to determine if additional income taxes, penalties and interest would be assessed. There can be no assurance that the outcomes from these audits will not have an adverse effect on our results of operations in the period in which the review is conducted.

Credit rating downgrades could adversely affect our business and financial condition.

Three credit rating agencies follow us. Fitch Ratings has rated us BBB-, which is an investment grade rating. Moody's Investor Services and Standard & Poor's have assigned us non-investment grade ratings of Ba1 and BB+, respectively. Fitch Ratings and Standard & Poor's have placed us on stable outlook. Moody's Investor Services recently changed its outlook from stable to negative. These ratings reflect those credit agencies' expectations regarding our financial and competitive condition. If we are downgraded by these ratings agencies, it could increase our costs of obtaining, or make it more difficult to obtain or issue, new debt financing. Any of these events could materially and adversely affect our business and financial condition.

We depend on key employees and face competition in hiring and retaining qualified employees.

Our employees are vital to our success, and our key management, engineering and other employees are difficult to replace. We generally do not have employment contracts with our key employees. Further, we do not maintain key person life insurance on any of our employees. Because our compensation packages include equity-based incentives, pressure on our stock price could affect our ability to offer competitive compensation packages to current employees. In addition, we must continue to motivate employees and keep them focused on our strategies and goals, which may be difficult due to morale challenges posed by our workforce reductions, global resourcing strategies and related uncertainties. Should these conditions continue, we may not be able to retain highly qualified employees in the future, which could adversely affect our business.

Our use of a self-insurance program to cover certain claims for losses suffered and costs or expenses incurred could negatively impact our business upon the occurrence of an uninsured event.

We maintain a program of insurance with third-party insurers for certain property, casualty and other risks. The policies are subject to deductibles and exclusions that result in our retention of a level of risk on a self-insurance basis. We retain risk with regard to certain loss events, such as California earthquakes, the indemnification or defense payments we may make to or on behalf of our directors and officers as a result of obligations under applicable agreements, our by-laws and applicable law and for potential liabilities that are not insured, and we sponsor a number of health and welfare insurance plans for our employees. The types and amounts of insurance obtained vary from time to time and from location to location, depending on availability, cost and our decisions with respect to risk retention. In the event that the frequency of losses experienced by us increased unexpectedly, the aggregate of such losses could materially increase our liability and adversely affect our financial condition, liquidity, cash flows and results of operations. In addition, because the insurance market continues to limit the availability of certain insurance products and because the costs of certain products continue to increase, we will continue to evaluate the types and magnitudes of claims we include in our self-insurance program. Additions and changes to this self insurance program may increase our risk exposure and therefore increase the risk of a material adverse effect on our financial condition, liquidity, cash flows and results of operations. In addition, we have made certain judgments as to the limits on our existing insurance coverage that we believe are in line with industry standards, as well as in light of economic and product availability considerations. Unforeseen catastrophic loss scenarios could prove our limits to be inadequate, and losses incurred in connection with the known claims we self-insure could be substantial. Either of these circumstances could materially adversely affect our financial and business condition.

Business interruptions could adversely affect our business.

Our operations and those of our suppliers are vulnerable to interruption by fire, earthquake, power loss, telecommunications failure, terrorist attacks and other events beyond our control. A substantial portion of our facilities, including our corporate headquarters and other critical business operations, are located near major earthquake faults. In addition, some of our facilities are located on filled land and, therefore, may be more susceptible to damage if an earthquake occurs. We generally do not carry earthquake insurance for direct earthquake-related losses. In addition, we do not carry business interruption insurance for, nor do we carry financial reserves against, business interruptions arising from earthquakes or certain other events. If a business interruption occurs, our business could be materially and adversely affected.

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Our failure to comply with contractual obligations may result in significant penalties.

We offer terms to some of our distributors and other customers that, in some cases, include complex provisions for pricing, data protection and other terms. In connection with these contracts, we are in some cases required to allow the customer to audit certain of our records to verify compliance with these terms. In particular, government agency customers audit and investigate government contractors, including us. These agencies review our performance under the applicable contracts as well as compliance with applicable laws, regulations and standards. The government also may review the adequacy of, and our compliance with, contractual obligations, our internal control systems and policies, including our purchasing, property, estimating, compensation, management information systems and data protection requirements. If an audit uncovers improper or illegal activities, we may be subject to claims for damages, penalties and other sanctions. With respect to claims by government agencies, sanctions may include treble damages, fines and possibly debarment or suspension from sales to the federal government. In addition, we may suffer serious harm to our reputation if allegations of impropriety were made against us. The federal government has intervened in a case filed in the United States District Court for the Eastern District of Arkansas alleging that we violated the Federal False Claims and Anti-Kickback Acts and breached our contracts with the GSA and certain other government customers, among other claims. These claims are based in part on certain audit reports prepared by the GSA Office of the Inspector General with respect to our prior GSA Multi-Award Schedule. Claims by the federal government pursuant to the lawsuit or otherwise in the administration of our contracts, and any judgment or settlement related thereto, could expose us to damages, penalties and other sanctions, up to and including debarment or suspension from federal sales, loss of sales opportunities, business interruption and damage to our reputation.

Some of our Restructuring Plans may not result in the anticipated cost saving and benefits.

Since March 2004, our Board of Directors and our management have approved a series of restructuring plans including the restructuring plan announced on May 1, 2008. Our ability to achieve the cost savings and operating efficiencies anticipated by these restructuring plans is dependent on our ability to effectively implement the workforce and excess capacity reductions contemplated. If we are unable to implement these initiatives effectively, we may not achieve the level of cost savings and efficiency benefits expected for fiscal 2009 and beyond.

Commercial real estate market conditions could affect our ability to sublease properties in our portfolio.

We implemented facility exit plans in each of the last six fiscal years as part of our ongoing efforts to consolidate excess facilities. The commercial real estate market conditions in the United States and in many of the countries in which we have significant leased properties have resulted in a surplus of business facilities making it difficult to sublease properties. We may be unable to sublease our excess properties, or we may not meet our expected estimated levels of sublease income, and, accordingly, our results of operations could be materially and adversely affected.

Environmental laws and regulations subject us to a number of risks and could result in significant liabilities and costs.

Some of our operations are subject to state, federal and international laws governing protection of the environment, human health and safety, and regulating the use of certain chemical substances. We endeavor to comply with these environmental laws, yet compliance with such laws could increase our operations and product costs; increase the complexities of product design, development, procurement and manufacture; limit our ability to manage excess and obsolete non-compliant inventory; limit our sales activities; and impact our future financial results. Any violation of these laws can subject us to significant liability, including fines, penalties, and possible prohibition of sales of our products into one or more states or countries, and result in a material adverse effect on our financial condition.

Currently, a significant portion of our revenues come from international sales. Recent environmental legislation within the European Union (EU), including the EU Directive on Waste Electrical and Electronic Equipment (WEEE) and the EU Directive on Restriction of Hazardous Substances (RoHS), as well as China's regulation on Management Methods for Controlling Pollution Caused by Electronic Information Products ("China RoHS"), may increase our cost of doing business internationally and impact our revenues from EU countries and China as we endeavor to comply with and implement these requirements.

In addition, similar environmental legislation has been or may be enacted in other jurisdictions, including the U.S. (under federal and state laws), Japan, Canada, Korea and certain Latin American countries, the cumulative impact of which could be significant. We are committed to offering products that are environmentally responsible and to complying with any current or future laws protecting the environment, human health and safety.

Our business may suffer if it is alleged or found that we or our contractors have violated data privacy or confidentiality obligations.

Compliance with a variety of domestic and foreign laws and regulations related to data privacy, as well as various contractual obligations related to confidentiality, increase our cost of doing business. Such obligations include regulations related to the

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protection of various types of data and information, such as personal healthcare information, personally identifiable information and other confidential information. Although we implement policies and procedures designed to ensure compliance with these obligations, there can be no assurance that all of our employees, contractors and agents, as well as those companies to which we outsource certain of our business operations, will not take actions in violation of our policies. Further, our ability to comply with these obligations may depend upon future investments in systems and processes, and such investments may have a material adverse effect on our business, operating results, or financial condition. Failure to comply with these obligations, or even allegations that we have failed to comply with these obligations, may also cause a material adverse effect on our business, operating results, or financial condition.

Our stock price can be volatile.

Our stock price, like that of other technology companies, continues to be volatile. For example, our stock price can be affected by many factors such as quarterly increases or decreases in our earnings, speculation in the investment community about our financial condition or results of operations and changes in revenue or earnings estimates, downgrades in our credit ratings, announcement of new products, technological developments, alliances, acquisitions or divestitures by us or one of our competitors or the loss of key management personnel. In addition, general macroeconomic and market conditions unrelated to our financial performance may also affect our stock price.

Internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations.

Pursuant to the Sarbanes-Oxley Act of 2002, we are required to provide a report by management on internal control over financial reporting, including management's assessment of the effectiveness of such control. Internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls, or fraud. Therefore, even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. In addition, projections of any evaluation of effectiveness of internal control over financial reporting to future periods are subject to the risk that the control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. If we fail to maintain the adequacy of our internal controls, including any failure to implement required new or improved controls, or if we experience difficulties in their implementation, our business and operating results could be harmed, we could fail to meet our reporting obligations, and there could be a material adverse effect on our stock price.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

At June 30, 2008, our worldwide facilities represented aggregate floor space of 12.8 million square feet both in the U.S. and in 47 other countries. We believe that our existing properties are in good condition and are suitable for the conduct of our business. In square feet, our properties consisted of (in millions):

	U.S.	Rest of the World	Total
Owned facilities	3.0	1.0	4.0
Leased facilities	5.2	3.6	8.8
Total facilities	8.2	4.6	12.8

At June 30, 2008, our owned properties consisted of:

Location	Square Footage of Facility
Broomfield, Colorado	1,079,636
Farnborough (Guillemount Park), England	440,024
Linlithgow, Scotland	437,498
Menlo Park, California	1,022,008
Ponce, Puerto Rico	83,105
Santa Clara, California	928,399
Total	3,990,670

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At June 30, 2008, we had approximately 193,000 square feet under construction and approximately 120,000 square feet of existing shell facilities available for future build-out. We continually evaluate our facility requirements in light of our business needs and stage the future construction accordingly. In addition, we own approximately 52 acres of undeveloped land in Colorado.

During fiscal 2008, we entered into a sale-leaseback transaction for our Louisville, Colorado facility. During fiscal 2007, we entered into sale-leaseback transactions for our Newark, California and Burlington, Massachusetts campuses. The total reduction in owned square footage as a result of these three transactions was approximately 3.8 million square feet.

Starting in fiscal 2001, we began to vacate properties in the U.S. and internationally. Of the properties that were vacated under all facility exit plans, 2.2 million square feet remain vacant or sub-leased, of which 1 million square feet are under sub-lease to non-Sun businesses and 1.2 million square feet are vacant.

Substantially all of our facilities are used jointly by our Product groups, Services groups, Global Sales and Services organization and other functions. Our manufacturing facilities are located in Ponce, Puerto Rico; Linlithgow, Scotland and Beaverton, Oregon.

ITEM 3. LEGAL PROCEEDINGS

We are involved in various claims, suits, investigations and legal proceedings that arise from time to time in the ordinary course of our business. Although we do not expect that the outcome in any of these legal proceedings, individually or collectively, will have a material adverse effect on our financial condition or results of operations, litigation is inherently unpredictable. Therefore, we could incur judgments or enter into settlements of claims that could adversely affect our operating results or cash flows in a particular period. For further information regarding items that we deem to be significant, please refer to Note 11 to the Consolidated Financial Statements in Item 8.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of our stockholders during the fourth quarter of fiscal 2008.

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PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock trades on The NASDAQ Global Select Market under the symbol "JAVA". Prior to August 27, 2007, our common stock traded under the symbol "SUNW". As of August 22, 2008, there were approximately 16,531 stockholders of record and the closing price of our common stock was $10.00 per share as reported by The NASDAQ Global Select Market.

On November 8, 2007, our stockholders approved a one-for-four reverse stock split, which became effective on November 12, 2007. All references to share and per-share data for all periods presented in this report have been adjusted to give effect to this reverse split.

The following table sets forth for the fiscal periods indicated the high and low sale prices for our common stock as reported by The NASDAQ Global Select Market:

	Fiscal 2008		Fiscal 2007	
	High	Low	High	Low
First Quarter: July 1 – September 30	$23.48	$18.00	$21.12	$15.28
Second Quarter: October 1 – December 30	25.04	18.01	22.92	19.88
Third Quarter: December 31 – March 30	18.19	14.20	26.56	22.16
Fourth Quarter: March 31 – June 30	16.37	10.76	23.80	19.68

No cash dividends were declared or paid in fiscal 2008 or 2007. We anticipate retaining available funds to finance future growth and have no present intention to pay cash dividends.

Shares Acquired Under Board Authorized Programs

The table below sets forth our purchases of our equity securities during each of the three months in our fiscal quarter ended June 30, 2008.

Period	Total # of Shares Purchased[1]	Average Price per Share	Total # of Shares Purchased Under Board Authorized Programs[2]	Maximum that may be purchased under current plan $ (millions)[2]
March 31, 2008 – April 30, 2008	9,125	$ 0.02	—	$ 500
May 1, 2008 – May 31, 2008	30,678,700	$ 13.04	30,670,143	$ 100
June 1, 2008 – June 30, 2008	5,011,685	$ 12.81	5,002,560	$ 36
Total	35,699,510	$ 13.01	35,672,703	$ 36

(1) The total number of shares repurchased includes those shares of our common stock that our employees surrender for tax withholding purposes in connection with vesting of restricted stock and shares of restricted stock that we repurchased from employees whose employment terminated before such shares vested. As of June 30, 2008, 71,114 shares are subject to repurchase by us.

(2) In May 2007, our Board of Directors authorized management to repurchase up to $3 billion of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent upon a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions, repayment of debt and our share price.

On July 31, 2008, our Board of Directors authorized management to repurchase up to $1 billion of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions, repayment of debt and our share price.

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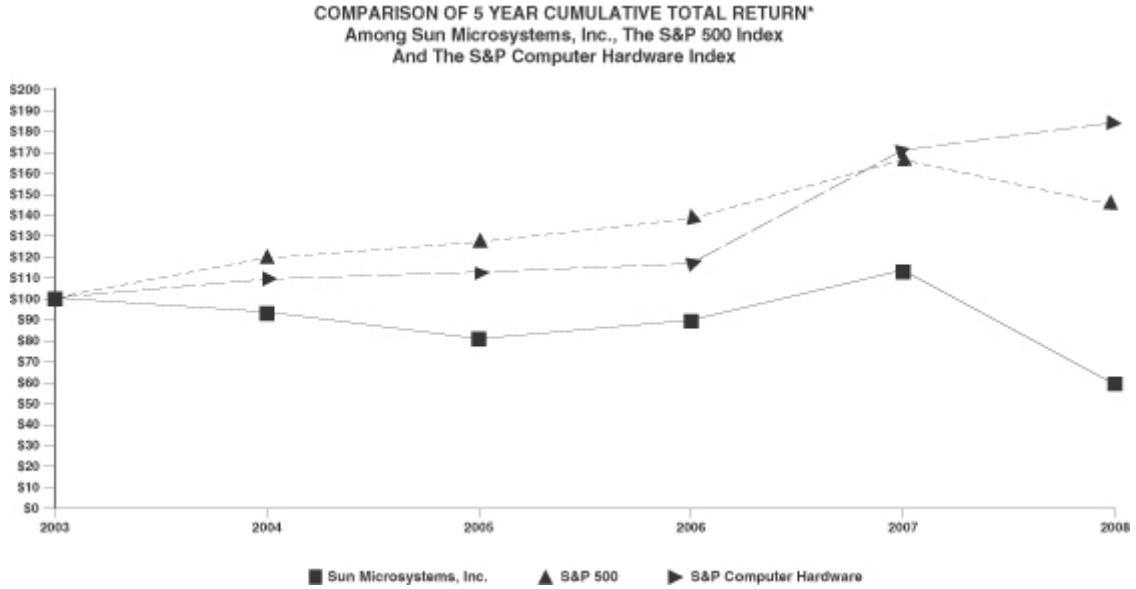
Stock Performance Graphs and Cumulative Total Return

The graph below compares the cumulative total stockholder return on our common stock with the cumulative total return on the S&P's 500 Index and the S&P Computer Hardware Index for each of the last five fiscal years ended June 30, assuming an investment of $100 at the beginning of such period and the reinvestment of any dividends. The comparisons in the graphs below are based upon historical data and are not indicative of, nor intended to forecast, future performance of our common stock.



	As of June 30,					
	2003	2004	2005	2006	2007	2008
Sun Microsystems, Inc.	100.00	93.12	80.22	89.25	113.12	58.49
S&P 500	100.00	119.11	126.64	137.57	165.90	144.13
S&P Computer Hardware	100.00	108.87	112.31	116.24	170.42	183.60

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ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data should be read in conjunction with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and our Consolidated Financial Statements included in "Item 8. Financial Statements and Supplementary Data."

	Fiscal Years Ended June 30,									
	2008		2007		2006[1][2]		2005		2004	
	Dollars	%	Dollars	%	Dollars	%	Dollars	%	Dollars	%
	(In millions, except percentages and per share amounts)									
Net revenues	$13,880	100.0%	$13,873	100.0%	$13,068	100.0%	$11,070	100.0%	$11,185	100.0%
Cost of sales	7,425	53.5	7,608	54.8	7,439	56.9	6,481	58.5	6,669	59.6
Gross margin	6,455	46.5	6,265	45.2	5,629	43.1	4,589	41.5	4,516	40.4
Operating expenses:										
Research and development	1,834	13.2	2,008	14.5	2,046	15.7	1,785	16.1	1,926	17.2
Selling, general and administrative	3,955	28.5	3,851	27.8	4,039	30.9	2,919	26.4	3,317	29.7
Restructuring charges and related impairment of long-lived assets	263	1.9	97	0.7	284	2.2	262	2.4	344	3.1
Impairment of goodwill and other intangible assets	—	—	—	—	70	0.5	—	—	49	0.4
Purchased in-process research and development	31	0.2	—	—	60	0.5	—	—	70	0.6
Total operating expenses	6,083	43.8	5,956	42.9	6,499	49.7	4,966	44.9	5,706	51.0
Operating income (loss)	372	2.7	309	2.2	(870)	(6.7)	(377)	(3.4)	(1,190)	(10.6)
Gain (loss) on equity investments, net	32	0.2	6	—	27	0.2	6	0.1	(64)	(0.6)
Interest and other income, net	161	1.2	214	1.5	114	0.9	133	1.2	94	0.8
Settlement income	45	0.3	54	0.4	54	0.4	54	0.5	1,597	14.3
Income (loss) before taxes	610	4.4	583	4.2	(675)	(5.2)	(184)	(1.7)	437	3.9
Provision (benefit) for income taxes	207	1.5	110	0.8	189	1.4	(77)	(0.7)	825	7.4
Net income (loss)	$ 403	2.9%	$ 473	3.4%	$ (864)	(6.6)%	$ (107)	(1.0)%	$ (388)	(3.5)%
Net income (loss) per common share — basic	$ 0.50		$ 0.54[3]		$ (1.01)[3]		$ (0.13)[3]		$ (0.47)[3]	
Net income (loss) per common share — diluted	$ 0.49		$ 0.52[3]		$ (1.01)[3]		$ (0.13)[3]		$ (0.47)[3]	
Shares used in the calculation of net income (loss) per common share — basic	809		883[3]		859[3]		842[3]		819[3]	
Shares used in the calculation of net income (loss) per common share — diluted	822		902[3]		859[3]		842[3]		819[3]	

	As of June 30,				
	2008	2007	2006	2005	2004
Cash, cash equivalents and marketable debt securities	$ 3,310	$ 5,942	$ 4,848	$ 7,524	$ 7,608
Total assets	$14,340	$15,838	$15,082	$14,190	$14,805
Long-term debt	$ 1,265	$ 1,264	$ 1,078[4]	$ 1,123	$ 1,432[4]
Other non-current obligations[5]	$ 1,136	$ 1,285	$ 1,492	$ 1,083	$ 1,460

(1) Includes the acquisitions of StorageTek and See Beyond
(2) Adoption of SFAS 123(R), Shared-Based Payment
(3) Amounts have been restated to reflect the one-for-four reverse stock split effective November 12, 2007.
(4) Includes approximately $503 million and $257 million classified as current portion of long-term debt as of June 30, 2006 and 2004, respectively.
(5) Includes deferred settlement income from Microsoft as of June 30, 2008, 2007 and 2006, long-term tax liabilities as of June 30, 2008, 2007 and 2006 and long-term restructuring liabilities for all periods presented.

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ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Executive Overview

We provide network computing infrastructure solutions that drive global network participation through shared innovation, community development and open source leadership. Guided by a singular vision, "The Network is the Computer", we provide a diversity of software, systems, storage, services and microelectronics that power everything from consumer electronics, to developer tools and the world's most powerful data centers. Our core brands include the Java technology platform, the Solaris Operating System, the MySQL database management system, Sun StorageTek storage solutions and the UltraSPARC processor. Our network computing platforms are used by nearly every sector of society and industry, and provide the infrastructure behind some of the world's best known search, social networking, entertainment, financial services, manufacturing, healthcare, retail, news, energy and engineering companies. By investing in research and development, we create products and services that address the complex information technology issues facing customers today, including increasing demands for network access, bandwidth and storage. We share these innovations in order to grow communities, in turn increasing participation on the network and building new market opportunities while maintaining partnerships with some of the most innovative technology companies in the world.

Summary of Results

For the quarter ended June 30, 2008, as compared to the quarter ended June 30, 2007:

- Total net revenue decreased by $55 million, or 1.4%, primarily as a result of decreased revenue in the U.S.
- U.S. net revenue decreased $148 million, or 9.4%.
- Computer Systems product revenue decreased by $131 million, or 7.1%.
- Gross margin as a percentage of net revenue decreased by 2.9 percentage points.
- We recorded a restructuring charge of $104 million as compared to $15 million in the fourth quarter of fiscal 2007.
- Cash flow from operations decreased from $564 million to $90 million.

For the fiscal year ended June 30, 2008, as compared to the fiscal year ended June 30, 2007:

- We improved operating income by $63 million primarily through increased gross margins and reduced research and development expenses.
- Our U.S. net revenue decreased $443 million, or 7.9%.
- We improved gross margin as a percentage of net revenue by 1.3 percentage points to 46.5% in part due to component cost reductions and other operational efficiencies.
- Research and development expenses decreased by $174 million, or 8.7%.
- Selling, general and administrative expenses increased by $104 million, or 2.7%.
- We recorded restructuring charges of $263 million as compared to $97 million in the prior year.
- We recorded $31 million in charges for purchased in-process research and development associated with our recent acquisitions as compared to no charges in the prior year.
- Products and Services deferred revenues increased by $213 million, or 7.9%.
- Interest and other income decreased by $53 million, or 24.8%.
- We ended the fiscal year 2008 with a cash and marketable debt securities balance of $3.3 billion and generated positive cash flow from operations of $1.3 billion.
- We repurchased approximately 151 million shares of common stock, at an average price of $18.30 for a total cost of approximately $2.76 billion under our 2007 Stock Repurchase Plan.
- We introduced next generation systems and storage solutions including the Sun SPARC Enterprise M8000 and M9000 servers based on the symmetric multiprocessing (SMP) architecture and utilizing the SPARC64 VI dual-core processor, specifically designed for high-volume, mission-critical computing. We introduced the Sun Netra T5220 based on the Ultra SPARC T2 processor, blades based on the UltraSPARC T2 processor and AMD Opteron processor the T5140 and T5240 CMT-based enterprise servers incorporating the UltraSPARC T2 Plus processor. Additionally, we introduced the T9840D enterprise tape drive and the Sun StorageTek VTL 2.0 Plus, an appliance that combines a server, disk storage and software in a single unit so that tape and disk storage resources can be deployed, managed, and monitored from a single point.

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Net Revenues
For the fiscal year ended June 30,
(dollars in millions, except revenue per employee dollars in thousands)

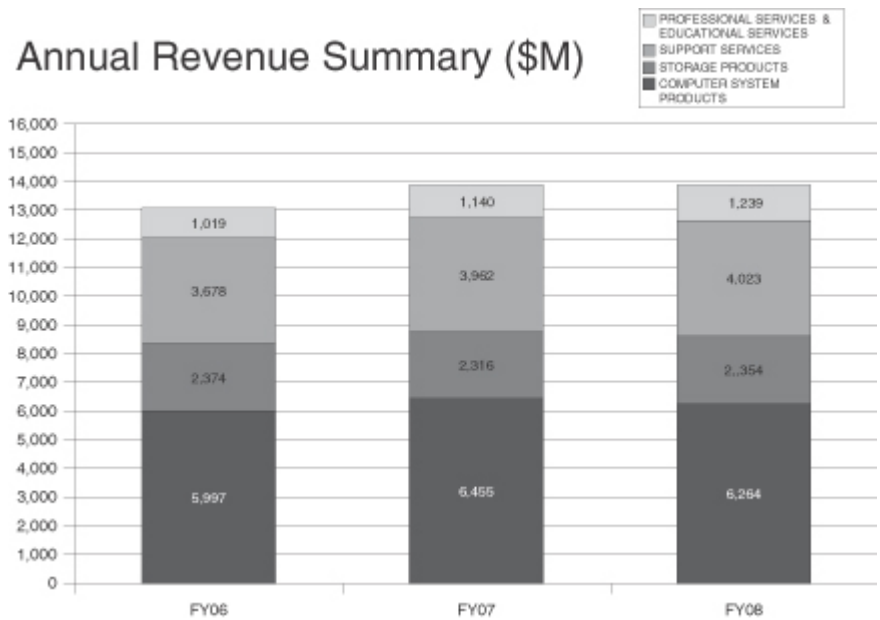
	2008	Change $	Change %	2007	Change $	Change %	2006
Computer Systems products	$ 6,264	$ (191)	(3.0)%	$ 6,455	$ 458	7.6%	$ 5,997
Storage products	2,354	38	1.6%	2,316	(58)	(2.4)%	2,374
Products net revenue	$ 8,618	$ (153)	(1.7)%	$ 8,771	$ 400	4.8%	$ 8,371
Percentage of total net revenues	62.1%		(1.1) pts	63.2%		(0.9) pts	64.1%
Support Services	$ 4,023	$ 61	1.5%	$ 3,962	$ 284	7.7%	$ 3,678
Professional Services and Educational Services	1,239	99	8.7%	1,140	121	11.9%	1,019
Services net revenue	$ 5,262	$ 160	3.1%	$ 5,102	$ 405	8.6%	$ 4,697
Percentage of total net revenues	37.9%		1.1 pts	36.8%		0.9 pts	35.9%
Total net revenues	$13,880	$ 7	0.1%	$13,873	$ 805	6.2%	$13,068
Revenue per employee (for twelve months ended)[1]	$ 406	$ 9	2.3%	$ 397	$ 57	16.8%	$ 340

(1) Revenue per employee is calculated by dividing the revenue during the period by the average number of employees during the period, including contractors. We use this as a measure of our productivity.

Foreign Currency Exchange Impact

Due to the generally weakened U.S. dollar during fiscal 2008 and fiscal 2007, as compared with fiscal 2007 and fiscal 2006, respectively, our total net revenues were favorably impacted by foreign currency exchange rates. The net foreign currency impact to our total net revenues is difficult to precisely measure due to pricing and hedging actions we take to mitigate the effect of foreign currency exchange rate fluctuations. Excluding the effect of these actions in fiscal 2008, the maximum impact related to foreign exchange rate changes during fiscal 2008, as compared with fiscal 2007, would be approximately 3% to Products net revenue and approximately 5% to Services net revenue. Excluding the effect of these actions in fiscal 2007, the maximum impact related to foreign exchange rate changes during fiscal 2007, as compared with fiscal 2006, would be approximately 2% to Products net revenue and approximately 3% to Services net revenue. Due to the imprecision of these calculations, we do not expect to provide quantitative estimates of the impact of foreign currency exchange rates in future periods.

Products Net Revenue



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Products net revenue consists of revenue generated from the sales of Computer Systems and Storage products.

We distribute our products to end users through a combination of direct sales through our Global Sales and Services organization and through our independent distributors. Beginning in the second quarter of fiscal 2008, we introduced programs in certain geographic markets entitling our distributors to a reduced price on hardware when sold to the end customer with a support services contract. Accordingly, in these cases, we are no longer able to meet the criteria for revenue recognition under U.S. generally accepted accounting principles at the time of sale to our distributors. We have deferred revenue on these sales until our distributors sell the hardware to the end customer. We introduced these programs in the U.S. and parts of Europe, the Middle East, Africa and Asia during fiscal 2008. As a result of these programs, our Products revenue was adversely impacted by approximately $150 million in fiscal 2008, as compared to fiscal 2007.

The decrease in Computer Systems products net revenue during fiscal 2008 of $191 million, as compared to fiscal 2007, was primarily due to the change to certain distributor programs described above. There was a corresponding increase in deferred products revenue over the same time period. In addition, we experienced decreased sales of our traditional volume SPARC-based server products, decreased sales of our x64-based rack server products and decreased sales of our mid-range server products. Decreased sales of our traditional volume SPARC-based server products were due to reduced customer demand as products are near their end of life (EOL). Decreased sales of our x64-based rack server products were primarily due to the delayed introduction of AMD quad core-based products. Decreased sales of our mid-range server products were primarily due to a partial shift to volume products and due to certain of our products nearing their EOL. These decreases were partially offset by increased sales of our CMT volume server products, increased sales of our blade server products and increased sales of our recently introduced Olympus Product Line (OPL) server products. Increased sales of our CMT volume server products and our blade server products were primarily the result of continued acceptance of our products based on the UltraSPARC T2 plus processor.

The increase in Storage products net revenue during fiscal 2008 of $38 million, as compared to fiscal 2007, was due to increased sales of enterprise and mid-range disk products, increased sales of connectivity products and increased sales of tape media. Increased sales of enterprise disk products were due to recent product introductions, including the SE9990 enterprise disk model. Increased sales of mid-range disk products were due to the improved functionality and scalability of the ST6140 and ST6150 product models and sales initiatives. Increased sales of our connectivity products were driven by increased sales of our enterprise and mid-range disk products. Increased sales of our tape media products were due to the increase in our installed base. These increases were partially offset by decreased sales of our enterprise and OEM tape drive products and Virtual Storage Manager (VSM) mainframe products. Decreased sales of our enterprise and OEM tape drive products were primarily due to delayed product introductions. Decreased sales of our VSM mainframe products were primarily due to the competitive and declining mainframe market.

The increase in Computer Systems products revenue during fiscal 2007 of $458 million, as compared to fiscal 2006, was due to increased sales of our CMT entry-level volume server products, increased sales of our x64-based server products and increased sales of our data center enterprise server products. These increases were partially offset by decreased sales of certain SPARC-based server products and decreased sales of our mid-range enterprise server products. During fiscal 2007, we drove down the worldwide level of product inventory at our channel partners. This reduction in channel inventory adversely impacted products revenue by approximately $90 million in fiscal 2007.

The decrease in Storage products revenue during fiscal 2007 of $58 million, as compared to fiscal 2006, was primarily due to decreased sales of data center and entry level disk storage products, decreased sales of our enterprise tape drive products and decreased sales of our virtual tape products. These decreases were partially offset by increased sales of high-end library tape products, mid-range disk storage products and the inclusion of StorageTek revenues for the full 2007 fiscal year. Declines in Storage revenues were generally due to product market competition and product age.

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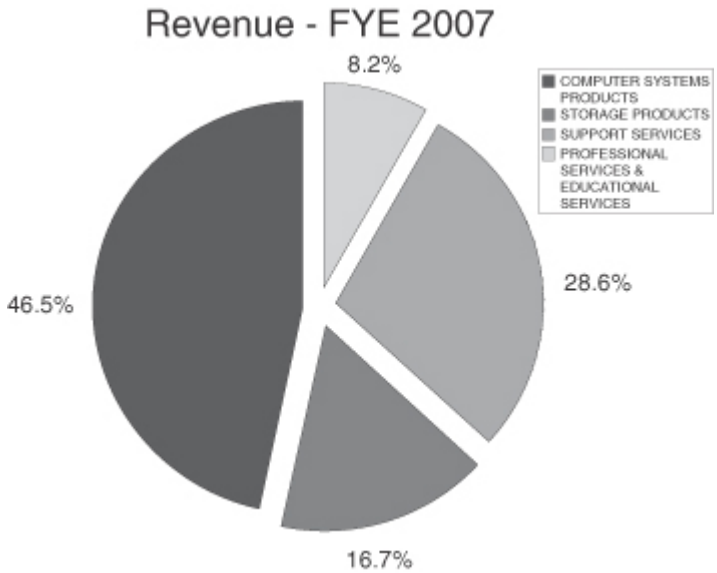
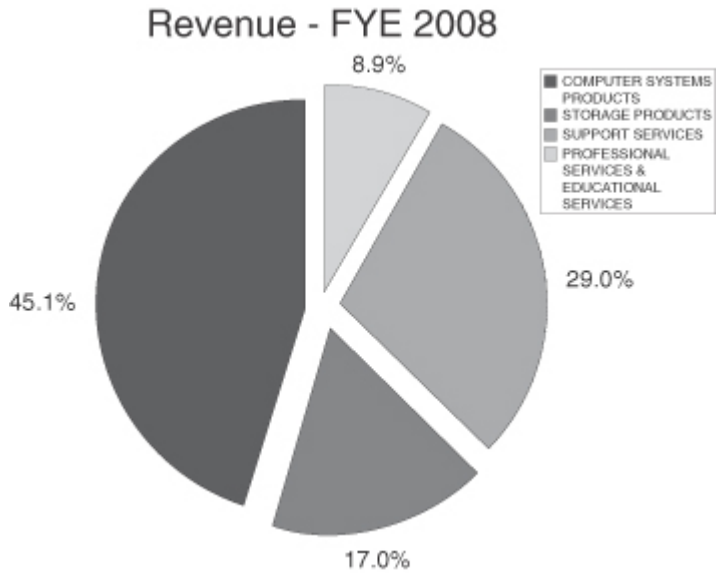
Services Net Revenue

Services net revenue consists of revenue generated from Support Services (Support Services and Managed Services) and Professional Services and Educational Services.





Support Services are services that offer customers technical support, software and firmware updates, online tools, product repair and maintenance and preventive services for system, storage and software products. Managed Services include on-site and remote monitoring and management for the components of their IT infrastructure, including operating systems, third-party and custom applications, databases, networks, security, storage and the web.

Support Services revenue consists primarily of maintenance contract revenue, which is recognized ratably over the contractual period and represented approximately 76%, 78% and 78% of Services net revenue in fiscal 2008, 2007 and 2006, respectively.

The increase in Support Services net revenue during fiscal 2008 of $61 million, as compared to fiscal 2007, was due to increased sales of our Managed Services and the favorable impact of foreign currency exchange movements. Increased sales of our Managed Services were primarily the result of increased demand for remote and managed site offerings and the shift to single supplier multi-vendor-support models which are displacing traditional maintenance support service models. We have experienced pricing pressure on maintenance contracts sold or renewed primarily due to customers choosing lower-cost solutions.

The increase in Support Services net revenue during fiscal 2007 of $284 million, as compared to fiscal 2006, was due to our focus on the maintenance and expansion of existing services with our largest customers and the impact of favorable movements in foreign currency exchange rates.

Professional Services are services that enable customers to reduce costs and complexity, improve operational efficiency and build or transform their IT infrastructure. Professional Services include IT assessments, architectural services, implementation services and consolidation and migration services. Educational Services include training and certification for individuals and teams.

The increase in Professional Services and Educational Services net revenue during fiscal 2008 of $99 million, as compared to fiscal 2007, was due to increased Professional Services revenue. Professional Services revenue increased due to demand for High Performance Computing (HPC), data management and specialized identity management projects. Additionally, we have experienced an increased demand for consolidation and virtualization project services, which use software applications to divide one physical server into multiple isolated environments creating greater efficiency in the use of servers. Increases in Educational Services revenue were primarily due to continued Solaris adoption and the related training needs.

The increase in Professional Services and Educational Services net revenue during fiscal 2007 of $121 million, as compared to fiscal 2006, was primarily due to more complex engagements that allowed us to sell additional service offerings as well as a strong demand for our certification services.

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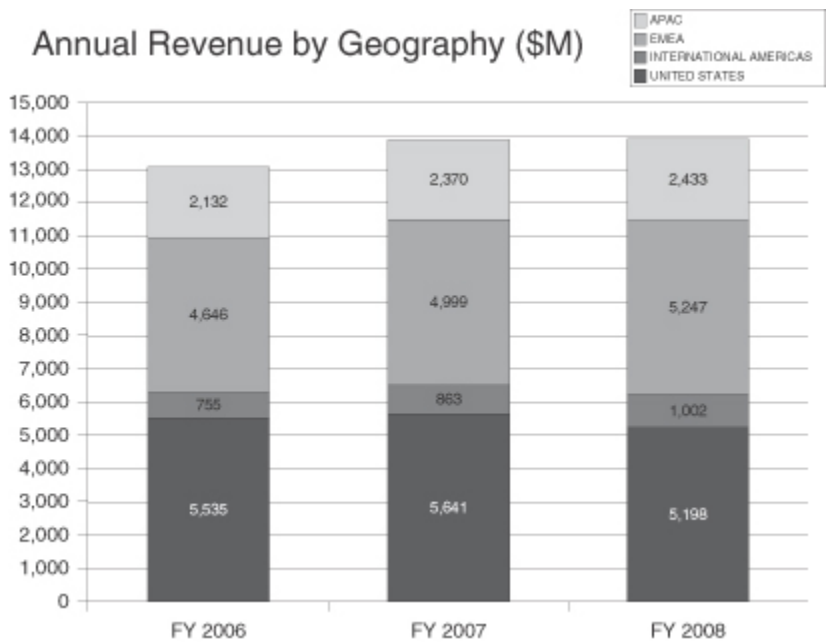
Net Revenues by Geographic Area*
For the fiscal year ended June 30,
(dollars in millions)

	2008	Change $	Change %	2007	Change $	Change %	2006
U.S.	$ 5,198	$ (443)	(7.9)%	$ 5,641	$ 106	1.9%	$ 5,535
Percentage of net revenues	37.4%		(3.3) pts	40.7%		(1.7) pts	42.4%
International revenues:							
International Americas (Canada and Latin America)	$ 1,002	$ 139	16.1%	$ 863	$ 108	14.3%	$ 755
Percentage of net revenues	7.2%		1.0 pts	6.2%		0.4 pts	5.8%
EMEA (Europe, Middle East and Africa)	$ 5,247	$ 248	5.0%	$ 4,999	$ 353	7.6%	$ 4,646
Percentage of net revenues	37.8%		1.8 pts	36.0%		0.4 pts	35.6%
APAC (Asia, Australia and New Zealand)	$ 2,433	$ 63	2.7%	$ 2,370	$ 238	11.2%	$ 2,132
Percentage of net revenues	17.6%		0.5 pts	17.1%		0.8 pts	16.3%
Total international revenues	$ 8,682	$ 450	5.5%	$ 8,232	$ 699	9.3%	$ 7,533
Percentage of net revenues	62.6%		3.3 pts	59.3%		1.7 pts	57.6%
Total net revenues	$13,880	$ 7	0.1%	$13,873	$ 805	6.2%	$13,068

* Geographic revenue reported for the fiscal year ended June 30, 2006 has been adjusted to reflect an immaterial correction in intercompany revenue to properly report country of origin.



United States (U.S.)

The decrease in U.S. net revenue of $443 million during fiscal 2008, as compared to fiscal 2007, was primarily due to decreased sales of our Computer Systems and Storage products, decreased sales of our Services and a change to certain distributor programs under which we are no longer able to meet certain criteria for revenue recognition at the time of sale in to our distributors. The change in certain distributor programs negatively impacted revenue in the U.S. by approximately $108 million. Decreased sales of Computer Systems products were due to decreased sales of our traditional SPARC volume products, data center and mid-range enterprise server products and x64-based rack server products. Decreased sales of our traditional volume SPARC-based server products were primarily due to reduced customer demand as products are near their EOL. Decreased sales of our data center and mid-range server products were due to a partial shift to volume products and certain products nearing their EOL. Decreased sales of our x64-based rack server products were primarily due to the delayed introduction of AMD quad core based products. These decreases were partially offset by increased sales of our CMT-based SPARC volume server products and blade server products. Increased sales of our CMT volume server products and our blade server products were the result of

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continued acceptance of our products based on the UltraSPARC T2 plus processor. Decreased sales of our Storage products were due to decreased sales of our enterprise and entry level disk products and decreased sales of our enterprise tape drive products due to weak demand in the first half of fiscal 2008 for these products. These decreases were partially offset by increased sales of tape media due to increases in our installed base. We experienced decreased Services revenue primarily due to a decrease in Support Services revenue. Decreased Support Services revenue was due to an increasingly competitive environment, particularly within the telecommunications sector due to recent acquisition and consolidation activity within the sector and increased competitive pressures. We have experienced increased competitive pressures in these markets and expect this will continue in the future.

The increase in U.S. net revenue of $106 million during fiscal 2007, as compared to fiscal 2006, was most significantly impacted by increased Computer Systems product sales and increased Services revenue. The increase in Computer Systems product net revenue was primarily due to increased sales of our CMT-based SPARC systems, x64-based systems and data center enterprise servers. These increases were partially offset by decreased sales of our Storage products. Computer Systems experienced growth in the telecommunications, government and financial services sectors. Partially offsetting these increases were weakness in certain areas of the energy and utility and insurance sectors.

International Revenues

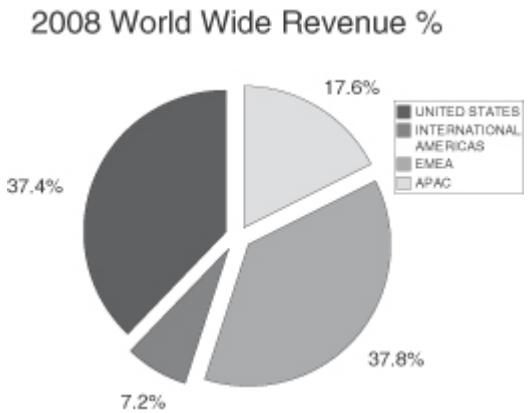
In fiscal 2009, we plan to utilize a new Emerging Market geographic grouping. The geographies that will be reported under this grouping primarily include India, China, Latin America, and Southern and Eastern Europe.

The following table sets forth net revenues in geographic markets contributing significantly to changes in international net revenues during the last three fiscal years ended June 30:

(dollars in millions)

	2008	Change $	Change %	2007	Change $	Change %	2006
Central and North EMEA(CNE)[1]	$1,463	$ 171	13.2%	$1,292	$ 180	16.2%	$1,112
United Kingdom	$1,155	$ 25	2.2%	$1,130	$ 19	1.7%	$1,111
Germany	$ 993	$ —	0.0%	$ 993	$ 80	8.8%	$ 913
Japan	$ 673	$ (70)	(9.4)%	$ 743	$ (20)	(2.6)%	$ 763

(1) CNE consists primarily of Switzerland, Russia, the Netherlands, Sweden and Belgium. Fiscal 2007 and fiscal 2006 revenues have been adjusted to reflect a change in the compilation of countries that make up CNE.



CNE

The increase in CNE net revenues of $171 million during fiscal 2008, as compared to fiscal 2007, was due to increased sales of Computer Systems products, increased sales of Services and the benefit of favorable foreign currency exchange rates. Increased sales of Computer Systems products were due to increased sales of data center server products, increased sales of CMT-based SPARC server products and increased sales of our blade server products. Increased sales of our data center server products were attributable to the introduction of our OPL product offering. Increased sales of our CMT volume server products and our blade server products were the result of the continued acceptance of our products based on the UltraSPARC T2 plus processor. Increased Services sales were due to increased Support Services sales. Increased Support Services sales were due to increased

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demand from the government and telecommunications sectors. These increases were partially offset by decreased sales of traditional volume SPARC-based server products. Decreased sales of our traditional volume SPARC-based server products were primarily due to reduced customer demand as products are near their EOL.

The increase in net revenues in CNE of $180 million during fiscal 2007, as compared to fiscal 2006, was primarily due to increased Computer Systems sales and increased Services revenue in a variety of sectors and across the majority of our products and services categories. Computer Systems products revenue was most significantly impacted by increased sales of our CMT volume server products, our high-end server products and a moderate increase in sales of our Storage products.

United Kingdom (U.K.)

The increase in U.K. net revenues of $25 million during fiscal 2008, as compared to fiscal 2007, was due to increased sales of Computer Systems products and the benefit of favorable foreign currency exchange rates. Increased sales of Computer Systems products were partially offset by decreased Services revenue. Increased sales of Computer Systems products were due to increased sales of CMT volume server products and increased sales of data center server products. Increased sales of our CMT volume server products were the result of the continued acceptance of our products based on the UltraSPARC T2 plus processor. Increased sales of our data center server products were primarily attributable to the introduction of our OPL product offering. These increases were partially offset by decreased sales of traditional volume SPARC-based server products. Decreased sales of our traditional volume SPARC-based server products were due to reduced customer demand as products are near their EOL. We experienced decreased Services sales as a result of decreased Support Services sales partially offset by increased Managed Services sales. The declines in Support Services sales were due to decreased spending on services within the governmental and financial services sectors. U.K. net revenues were negatively impacted as a result of the fourth quarter introduction of certain sales programs with our channel partners. We have experienced overall increased sales within the government, retail, education and manufacturing sectors, while financial services, telecommunications and energy/utility sector sales have experienced overall declines.

Net revenues in the U.K. were relatively unchanged during fiscal 2007, as compared to fiscal 2006. Favorable foreign currency exchange rates and increased Services revenue were offset by reduced product sales. Strong pricing pressure from market competitors was the primary cause of reduced sales of our products. Computer Systems revenue was most adversely impacted by decreased sales of our workstation products and Storage revenue was adversely impacted by decreased sales of our tape and enterprise disk products.

Germany

Net revenues in Germany were unchanged during fiscal 2008, as compared to fiscal 2007. Increased Computer Systems product sales and the benefit of favorable foreign currency exchange rates were offset by decreased Services revenue. Increased Computer Systems product sales were a result of increased sales of our data center enterprise server products and our Netra server products. Increased sales of our data center server products were primarily attributable to the introduction of our OPL product offering. Increased Netra server product sales were primarily due to increased demand within the telecommunications sector. Decreased Services sales were primarily due to decreased Professional Services sales due to decreased demand from the financial services sector.

The increase in Germany net revenues of $80 million during fiscal 2007, as compared to fiscal 2006, was due to the benefit of foreign currency exchange rates and increased sales of Computer Systems products and Support Services. The telecommunications sector remained a source of overall strength during fiscal 2007. These increases were partially offset by pricing pressures caused by increased competition, weak demand for our Storage products and a challenging economic environment.

Japan

The decrease in net revenues in Japan of $70 million during fiscal 2008, as compared to fiscal 2007, was due to decreased sales of our Computer Systems and Storage products caused by modified sales and marketing arrangements with key channel partners and continued competitive market conditions. These modified sales and marketing agreements allow us to improve sales of certain OPL and UltraSPARC-based Computer Systems products in a majority of other geographies, but negatively impact certain related licensing revenues in Japan. These decreases were offset by increased Services sales and favorable foreign currency exchange rates. Increased Services sales were due to increased sales of our Professional Services. The increase in Professional Services sales were due to increased demand for customized architectural services.

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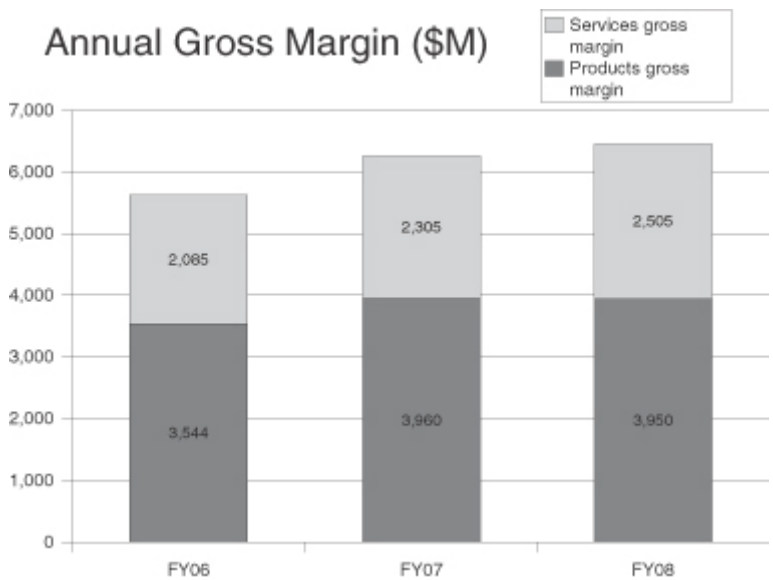
Net revenues in Japan decreased $20 million during fiscal 2007, as compared to fiscal 2006. Products net revenues decreased partially as a result of unfavorable foreign currency exchange rates the implementation of certain elements of our broad-based strategic alliance with Fujitsu and significant decreases in Storage product sales. Services revenue was relatively unchanged in fiscal year 2007 as compared to fiscal year 2006.

Gross Margin

For the fiscal year ended June 30,
(dollars in millions)

	2008	Change $	Change %	2007	Change $	Change %	2006
Products gross margin	$3,950	$ (10)	(0.3)%	$3,960	$ 416	11.7%	$3,544
Percentage of products net revenue	45.8%		0.7 pts	45.1%		2.8 pts	42.3%
Services gross margin	$2,505	$ 200	8.7%	$2,305	$ 220	10.6%	$2,085
Percentage of services net revenue	47.6%		2.4 pts	45.2%		0.8 pts	44.4%
Total gross margin	$6,455	$ 190	3.0%	$6,265	$ 636	11.3%	$5,629
Percentage of net revenues	46.5%		1.3 pts	45.2%		2.1 pts	43.1%

Products Gross Margin



Products gross margin percentage is influenced by numerous factors including product volume and mix, pricing, geographic mix, foreign currency exchange rates, the mix between sales to resellers and end-users, third-party costs (including both raw material and manufacturing costs), warranty costs and charges related to excess and obsolete inventory. Many of these factors influence, or are interrelated with, other factors. As a result, it is difficult to precisely quantify the impact of each item individually. Accordingly, the following quantification of the reasons for the change in the Products gross margin percentage is an estimate only.

Products gross margin increased by approximately one percentage point during fiscal 2008, as compared to fiscal 2007. Decreasing material costs and our supply chain restructuring efforts combined to increase gross margin by approximately ten percentage points. Offsetting this increase was the impact of pricing and discounting actions by approximately nine percentage points.

Products gross margin increased by approximately three percentage points during fiscal 2007, as compared to fiscal 2006. Products gross margin increased by five percentage points due to decreasing material costs (primarily memory components and our supply chain restructuring efforts) and two percentage points due to favorable changes in volume and mix including a higher percentage of software sales, offset by a four percentage point decrease due to pricing, discounting and other actions.

There can be no assurance that the current gross margin percentage will be maintained. In general, gross margins will remain under downward pressure due to the variety of factors listed above, especially continued industry wide global pricing pressures, a potential shift in product mix and increases in the cost and availability of components. We may continue to take pricing actions with regard to our products in response to the competitive environment. We do however believe that our gross margins will remain relatively stable for the fiscal 2009 period.

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Services Gross Margin

Services gross margin percentage is influenced by numerous factors including services mix, pricing, geographic mix, foreign currency exchange rates and third-party costs. Many of these factors influence, or are interrelated with, other factors. As a result, it is difficult to precisely quantify the impact of each item individually. Accordingly, the following quantification of the reasons for the change in the Services gross margin percentage is an estimate only.

Services gross margin increased by approximately two percentage points during fiscal 2008, as compared to fiscal 2007. Cost savings associated with better utilization rates and decreased costs associated with compensation benefitted gross margin by approximately three percentage points. This increase was partially offset by unfavorable changes in services mix of approximately one percentage point.

Services gross margin increased by one percentage point during fiscal 2007, as compared to fiscal 2006, primarily due to cost savings associated with better utilization rates and the positive impact of changes in services mix. These factors increased gross margin by approximately two percentage points. This increase was partially offset by the impact of other expenses, primarily compensation, by approximately one percentage point.

Operating Expenses

For the fiscal year ended June 30,
(dollars in millions)

	2008	Change $	Change %	2007	Change $	Change %	2006
Research and development	$1,834	$ (174)	(8.7)%	$2,008	$ (38)	(1.9)%	$2,046
Percentage of net revenues	13.2%		(1.3) pts	14.5%		(1.2) pts	15.7%
Selling, general and administrative	$3,955	$ 104	2.7%	$3,851	$ (188)	(4.7)%	$4,039
Percentage of net revenues	28.5%		0.7 pts	27.8%		(3.1) pts	30.9%
Restructuring charges and related impairment	$ 263	$ 166	171.1%	$ 97	$ (187)	(65.8)%	$ 284
Percentage of net revenues	1.9%		1.2 pts	0.7%		(1.5) pts	2.2%
Impairment of other intangible assets	$ —	$ —	$ —	$ —	$ (70)	N/M*	$ 70
Percentage of net revenues	—	—	—	—		(0.5) pts	0.5%
Purchased in-process research and development	$ 31	$ 31	—	$ —	$ (60)	N/M*	$ 60
Percentage of net revenues	0.2%		0.2 pts	—		(0.5) pts	0.5%
Total operating expenses	$6,083	$ 127	2.1%	$5,956	$ (543)	(8.4)%	$6,499

*N/M — Not meaningful

Total Operating Expenses

Fiscal 2008 total operating expenses when compared to fiscal 2007 increased by $127 million. The increase in the expense-to-revenue ratio of approximately one percentage point was due to increased restructuring expenses of approximately 1.2 percentage points, an increase to selling, general and administrative (SG&A) expenses of 0.7 percentage points and a 0.2 percentage point increase in expenses associated with IPRD. These increases were partially offset by a decrease in R&D expenses of approximately 1.3 percentage points. We expect aggregate SG&A and R&D expenses to increase slightly in fiscal 2009.

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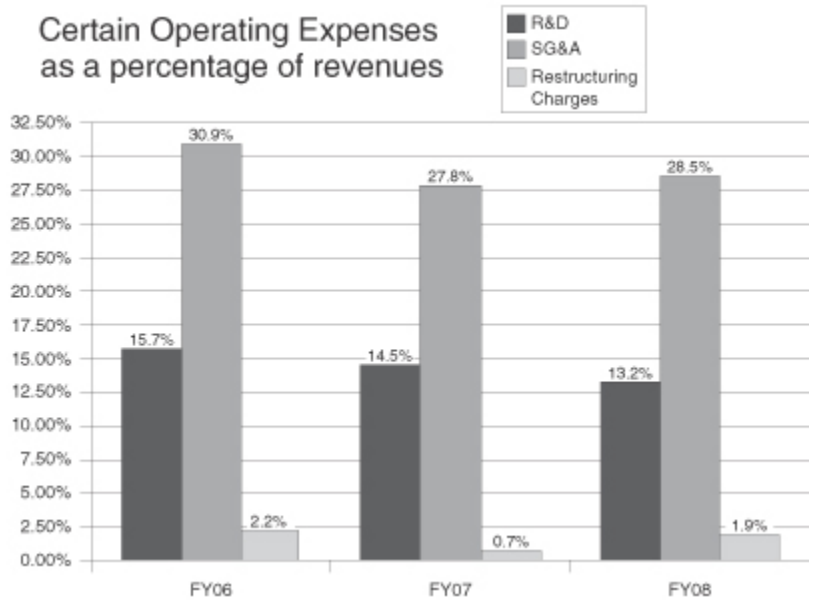
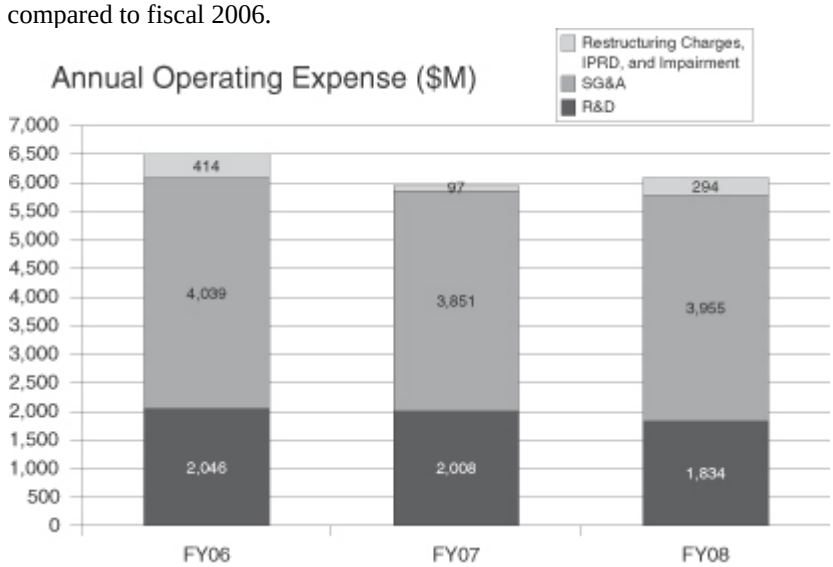
Fiscal 2007 total operating expenses when compared to fiscal 2006 decreased by $543 million. The decrease in the expense-to-revenue ratio of approximately seven percentage points was due to decreased restructuring expenses and impairment charges of approximately 2.0 percentage points, a decrease to SG&A expenses of 3.1 percentage points, decreased R&D expenses of approximately 1.2 percentage points, and a 0.5 percentage point decrease in expenses associated with IPRD.



Research and Development Expenses

During fiscal 2008, as compared to fiscal 2007, R&D expenses decreased by $174 million primarily attributable to a $151 million decrease in compensation and benefit expenses, including incentive based compensation, a $17 million decrease in prototype expenses associated with a new product introductions and an $11 million decrease in depreciation expense. These decreases were partially offset by a $5 million increase in expenses from outside service providers. R&D expenses, as a percentage of net revenue, decreased 1.3 percentage points to 13.2% in fiscal 2008 as compared to fiscal 2007.

The decrease in R&D expenses of $38 million during fiscal 2007, as compared to fiscal 2006, was primarily due to restructuring efforts. Included in the decrease was $136 million in headcount reductions, $41 million in outside services reductions, $17 million in depreciation, $13 million in prototype expenditure reductions and $10 million in stock based compensation. These decreases were predominantly offset by a $179 million increase in compensation for continuing employees. R&D expenses, as a percentage of net revenues, decreased 1.2 percentage points to 14.5% in fiscal 2007 as compared to fiscal 2006.



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Selling, General and Administrative Expenses

The increase to SG&A expenses during fiscal 2008, as compared to fiscal 2007, was primarily due to increased compensation and benefits expenses, increased marketing expenses and increased expenses associated with outside services and travel. The increase in SG&A expenses of $104 million was primarily a result of increased compensation and benefit expenses of $37 million associated with additional sales employees added to our high sales growth regions and additional employees from our recent acquisitions, increased marketing expenses of $32 million associated with equipment placement programs, increased service provider expenses of $31 million and increased travel expenses of approximately $24 million associated with our multi-year internal systems implementation effort. We experienced increased facilities and occupancy expense of approximately $14 million and expenses of $6 million related to a legal settlement. These increases were partially offset by a decrease in depreciation expenses of approximately $51 million.

The decrease in SG&A expenses during fiscal 2007, as compared to fiscal 2006, was primarily due to headcount reductions and other administrative efficiencies achieved through the integration of StorageTek and SeeBeyond. Included in the decrease was $182 million in headcount reductions, $44 million in decreases in marketing expenditures, $33 million in depreciation, $32 million in reductions in outside services and $6 million in stock based compensation. These decreases were partially offset by a $148 million increase in compensation for continuing employees. SG&A expenses, as a percentage of net revenues, decreased 3.1 percentage points to 27.8% in fiscal 2007, as compared to fiscal 2006.

We are continuing to focus our efforts on achieving additional operating efficiencies by reviewing and improving upon our existing business processes and cost structure.

Restructuring and Related Impairment of Long-lived Assets

In May 2008, we initiated a restructuring plan to further align our resources with our strategic business objectives through reducing our workforce by approximately 1,500 to 2,500 employees (Restructuring Plan VIII). Under this plan, we estimate in total that we will incur between $180 million to $230 million in severance and benefit costs. Through the end of fiscal year 2008, we recognized total related severance and benefit costs of $107 million. The remainder of the estimated costs under this restructuring plan are expected to be incurred during fiscal 2009.

Under our Restructuring Plan VII and through fiscal 2008, we notified approximately 1,500 employees of their termination and recognized total expenses relating to severance and benefits costs of $135 million. In fiscal 2008, 2007 and 2006, we recognized, under all of our workforce reduction and excess facility exit plans, restructuring charges of $263 million, $97 million and $284 million, respectively. The remaining cash expenditures relating to workforce reductions are expected to be paid over the next few quarters. We anticipate recording additional charges related to our workforce and facilities reductions over the next several quarters, the timing of which will depend upon the timing of notification of the employees leaving Sun as determined by local employment laws and as we exit facilities.

We will continue to emphasize productivity improvement initiatives that may result in additional restructurings. For further detail regarding our restructuring balances and historical activity, refer to Note 4 and Note 6 to the Consolidated Financial Statements in Item 8.

Purchased In-Process Research and Development (IPRD)

In fiscal 2008, we recorded an IPRD expense of $31 million, primarily related to our acquisition of MySQL. At the date of the acquisition, the projects associated with the IPRD efforts had not yet reached technological feasibility and the IPRD had no alternative future use. See Note 4 to the Consolidated Financial Statements in Item 8 for additional information regarding the acquisitions completed in fiscal 2008 and 2007.

Gain (Loss) on Equity Investments, Net

For the fiscal year ended June 30,
(dollars in millions)

	2008	Change $	Change %	2007	Change $	Change %	2006
Gain (loss) on equity investments, net	$32	$ 26	433.3%	$ 6	$ (21)	(77.8)%	$27

In fiscal 2008, our gain on equity investments, net, of $32 million, was comprised of approximately $13 million in gains on the sale of certain marketable equity investments in publicly held companies and $19 million in gains from private company investments.

In fiscal 2007, our gain on equity investments of $6 million was comprised of approximately $3 million in gains on the sale of certain equity investments in privately-held companies and $3 million in income and distributions from our joint ventures and venture fund investments.

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As of June 30, 2008, our equity investment portfolio of $53.4 million consisted of $20.8 million in marketable equity securities, $18.9 million in equity investments in privately-held companies and $13.7 million in investments in venture capital funds and joint ventures. The ongoing valuation of our investment portfolio may be subject to fluctuations based on whether we participate in additional investment activity or as a result of the occurrence of events outside of our control.

Interest and Other Income, Net

For the fiscal year ended June 30,
(dollars in millions)

	2008	Change $	Change %	2007	Change $	Change %	2006
Interest and other income, net	$161	$ (53)	(24.8)	$214	$ 100	87.7%	$114

The decrease in interest income, net, during fiscal 2008, as compared to fiscal 2007, was primarily due to lower interest rates and a lower average cash balance in fiscal 2008 resulting from the use of $2.76 billion of our cash for our stock repurchase program and the use of $797 million of cash to purchase MySQL in fiscal 2008.

The increase in interest income, net, during fiscal 2007, as compared to fiscal 2006, was primarily due to an increase in interest rates, a higher average cash balance and a decrease in interest expense due to the payment of our $500 million Senior Notes in the first quarter of fiscal 2007.

Our interest income and expense are sensitive primarily to changes in the general level of U.S. interest rates. In this regard, changes in U.S. interest rates affect the interest earned on our cash equivalents and marketable debt securities, which are predominantly short-term fixed income instruments. To better match the interest rate characteristics of our investment portfolio and our issued fixed-rate unsecured senior debt securities, we have entered into interest rate swap transactions so that the interest associated with these debt securities effectively becomes variable.

Income Taxes

For the fiscal year ended June 30,
(dollars in millions)

	2008	Change	2007	Change	2006
Provision for (benefit from) income taxes	$207	$ 97	$110	$ (79)	$189

During fiscal 2008, we recorded a tax expense of $207 million which was primarily related to taxes due on income generated in our foreign tax jurisdictions. The tax expense included a reduction in the U.S. valuation allowance that is credited to other balance sheet accounts and therefore did not benefit the income tax expense. The tax provision for fiscal 2008 was also impacted by a reduction in foreign tax expense as a result of repaying intercompany loans of certain international subsidiaries that occurred in the third quarter of fiscal 2007.

During fiscal 2007, we recorded a tax expense of $110 million which was primarily related to taxes due on income generated in our foreign tax jurisdictions. The foreign tax expense is net of a benefit of $14 million recorded for the reduction in accrued withholding taxes on unremitted foreign earnings as a result of restructuring of certain European subsidiaries as well as a benefit of $13 million due to a tax law change in Germany. The U.S. tax benefit reflects a benefit of $54 million primarily relating to the settlement of the Internal Revenue Service income tax audit for fiscal 2001 and 2002, and a benefit associated with adjusting estimated amounts to actual liabilities resulting from the filing of the FY06 U.S. tax return. This U.S. benefit was offset by the utilization of acquisition net operating losses, increases to various tax reserves, and foreign withholding taxes.

During fiscal 2006, we recorded a tax expense of $189 million, which was primarily related to taxes due on income generated in our foreign tax jurisdictions and in the U.S. associated with the repatriation of foreign earnings pursuant to the American Jobs Creation Act. The tax expense included a charge of approximately $20 million associated with corrections of previously filed tax returns, which was partially offset by a benefit associated with adjusting estimated amounts to actual liabilities resulting from the filing of prior years' tax returns. These adjustments were immaterial to our results of operations and financial condition for fiscal 2006 as well as the prior affected periods. A charge of $58 million was recorded in the fourth quarter of fiscal 2006 associated with our repatriation of $1,965 million in unremitted foreign earnings, of which $1,600 million was eligible to be taxed at a reduced effective tax rate under the Foreign Earnings Repatriation Provision of the American Jobs Creation Act.

U.S. income taxes have been provided for with respect to all undistributed earnings of our foreign subsidiaries. As of June 30, 2008, there are no earnings that are considered to be permanently invested in operations outside of the U.S. However, we may elect to permanently invest in operations outside of the U.S. in the future.

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We currently have provided a full valuation allowance on our U.S. deferred tax assets and a full or partial valuation allowance on certain overseas deferred tax assets. We intend to maintain this valuation allowance until sufficient positive evidence exists to support reversal of the valuation allowance. Likewise, the occurrence of negative evidence with respect to our foreign deferred tax assets could result in an increase to the valuation allowance. Our income tax expense recorded in the future will be reduced or increased to the extent of offsetting decreases or increases to our valuation allowance.

We have also provided adequate amounts for other anticipated tax audit adjustments in the U.S., state and foreign tax jurisdictions based on our estimate of whether, and the extent to which, additional taxes and interest may be due. In addition, although specific foreign country transfer pricing exposures have not been identified, the risk of potential adjustment exists. If our estimate of the federal, state and foreign income tax liabilities proves to be less than the ultimate assessment, a further charge to expense could result. If events occur which indicate payment of these amounts is unnecessary, the liabilities would be reversed, and any related tax benefits would be recognized in the period when we determine the liabilities are no longer necessary. Any reversals of assumed tax liabilities established by acquired companies will be recorded through a reallocation of the purchase price.

LIQUIDITY, CAPITAL RESOURCES AND FINANCIAL CONDITION

As of and for the fiscal year ended June 30,
(dollars in millions)

	2008	Change	2007	Change	2006
Cash and cash equivalents	$ 2,272	$ (1,348)	$ 3,620	$ 51	$3,569
Marketable debt securities	1,038	(1,284)	2,322	1,043	1,279
Total cash, cash equivalents and marketable debt securities	$ 3,310	$ (2,632)	$ 5,942	$ 1,094	$4,848
Percentage of total assets	23.1%	(14.4) pts	37.5%	5.4 pts	32.1%
Cash provided by operating activities	$ 1,329	$ 371	$ 958	$ 391	$ 567
Cash provided by (used in) investing activities	(66)	1,011	(1,077)	(1,729)	652
Cash provided by (used in) financing activities	(2,611)	(2781)	170	(129)	299
Net increase (decrease) in cash and cash equivalents	$(1,348)	$ (1,399)	$ 51	$(1,467)	$1,518

Changes in Cash Flow

During fiscal 2008, our cash from operating activities was significantly impacted by the following:

- Net income of $403 million included non-cash charges of approximately $965 million, which primarily included depreciation and amortization of $476 million, amortization of acquisition-related intangible assets of $310 million and stock-based compensation of $214 million; and
- Decreases in cash from operating assets and liabilities of $39 million was primarily due to increases in prepaid and other assets and inventory of $313 million which were partially offset by increases in other liabilities of $298 million.

During fiscal 2008, our cash used in investing activities of $66 million was primarily attributable to our purchase of MySQL and other acquisitions, net of cash received of $923 million, purchases of marketable debt securities of $1,333 million and purchases of property, plant and equipment of $520 million. This use of cash was predominantly offset by cash provided by the proceeds from sales and maturities of marketable debt securities of $2,608 million. Our cash used in financing activities of $2,611 million was primarily attributable to $2,764 million paid to purchase stock under our stock repurchase program.

During fiscal 2007, our operating activities generated cash flows of $958 million, $391 million higher than the cash flows provided by operating activities during fiscal 2006. The following items significantly impacted our cash provided by operating activities during fiscal 2007:

- Net income of $473 million included $1,121 million in non-cash charges, which were comprised primarily of $517 million in depreciation and amortization, $313 million in amortization of acquisition-related intangible assets, $214 million in stock-based compensation expense; and
- Payments of $345 million associated with severance and facilities restructuring liabilities.

During fiscal 2007, our cash used in investing activities of $1,077 million was primarily attributable to $1,028 million in purchases of marketable debt securities, net of proceeds from sales and maturities, offset by $37 million of purchases of property, plant and equipment, net of proceeds from the sales of property, plant and equipment and $23 million in cash used for

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acquisitions, net of cash acquired. Cash provided by financing activities of $170 million was primarily attributable to $692 million of proceeds from borrowings and other obligations, partially offset by principal payments on borrowings of $483 million and $83 million associated with the purchase of a hedge on our Convertible Notes. Specifically, we made a payment of $500 million to settle the then-current portion of our Senior Notes and received cash proceeds of approximately $213 million from the sale-leaseback of our Newark, California facility, $208 million associated with the sale-leaseback of our Burlington, Massachusetts facility and sold Convertible Notes for $700 million.

We have generated positive cash flow from operations for the last 19 fiscal years and anticipate being able to continue to generate positive cash flow from operations unless competition intensifies and we are unable to increase our revenues and gross margins faster than we are able to reduce our costs of operations. Based on our current plan of record, we expect to generate positive cash flow from operations for the fiscal year ending June 30, 2009, although there can be no assurance of this.

For the quarter ended June 30,
(dollars in millions)

	2008	Change	2007	Change	2006
Days sales outstanding (DSO)[1]	72	2	70	6	64
Days of supply in inventory (DOS)[2]	29	6	23	1	22
Days payable outstanding (DPO)[3]	(59)	2	(61)	(2)	(59)
Cash conversion cycle	42	10	32	5	27
Inventory turns-products only	7.8	(1.2)	9.0	(0.9)	9.9

(1) DSO measures the number of days it takes, based on a 90-day average, to turn our receivables into cash.
(2) DOS measures the number of days it takes, based on a 90-day average, to sell our inventory.
(3) DPO measures the number of days it takes, based on a 90-day average, to pay the balances of our accounts payable.

The cash conversion cycle is the duration between the purchase of inventories and services and the collection of the cash for the sale of our Products and Services and is a quarterly metric on which we have focused as we continue to try to efficiently manage our assets. The cash conversion cycle results from the calculation of DSO added to DOS, reduced by DPO. Inventory turns is annualized and represents the number of times product inventory is replenished during the year. For fiscal 2008, DOS negatively impacted our cash conversion cycle by six days primarily due to an increase in inventory associated with the introduction of certain distributor programs for which the criteria for revenue recognition could not be satisfied and due to an increase in inventory designed to ensure product availability and rapid delivery to customers.

At the end of fiscal 2007, DSO was worse by six days, compared to the end of fiscal 2006, primarily due to the timing of billings associated with service contract renewals. Our products inventory turn rate decreased by 0.9 points from June 30, 2006. DPO improved by two days, primarily due to cost savings in areas that reduced our cost of sales but had a lesser impact on the accounts payable balance.

Acquisitions

An active acquisition program is an important element of our corporate strategy. Typically, the significant majority of our integration activities related to an acquisition are substantially complete in the U.S. within six to twelve months after the closing of the acquisition. Integration activities for international operations, particularly in Europe, generally take longer. On February 25, 2008, we acquired all of the outstanding shares of MySQL AB (MySQL), a company based in Uppsala, Sweden, for approximately $904 million including $797 million in cash, assumed employee stock options with a fair value (using the Black-Scholes model) of approximately $102 million and transaction costs of $5 million. The options assumed in the acquisition were converted into options to purchase 11.9 million shares of our common stock. MySQL provides open source and proprietary database technology and software as well as services, to a wide range of customers in different industry segments and stages of growth. The results of operations of MySQL are included in the consolidated financial statements from the date of acquisition.

We expect to continue to acquire companies, products, services and technologies. See Note 4 to our Consolidated Financial Statements in Item 8 for additional information related to our recent acquisitions.

Stock Repurchases and Repurchase Plans

In May 2007, our Board of Directors authorized management to repurchase up to $3 billion of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and

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are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions, repayment of debt and our share price. During the fiscal year ended June 30, 2008 we repurchased approximately 151 million shares, or $2.76 billion, of common stock under this repurchase authorization.

During the fiscal year ended June 30, 2007 we repurchased approximately 9.7 million shares or $200 million of common stock under the May 2007 repurchase authorization. During fiscal year 2006, we did not repurchase common stock under our prior repurchase authorization announced in February 2001, which was canceled at the inception of the new plan.

All repurchases were made in compliance with Rule 10b-18 under the Securities Exchange Act of 1934, as amended.

On July 31, 2008, our Board of Directors authorized management to repurchase up to an additional $1 billion of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions, repayment of debt and our share price.

Contractual Obligations and Contingencies

The following table summarizes our contractual obligations at June 30, 2008 (in millions):

Contractual Obligations	Total	Payments Due in Less Than 1 Year	Payments Due in 1-3 Years	Payments Due in 4-5 Years	Payments Due After 5 Years
Senior Notes	$ 550	$ —	$ 550	$ —	$ —
Convertible Notes	700	—	—	350	350
Non-cancelable operating leases	762	188	278	153	143
Purchasing and manufacturing commitments	595	595	—	—	—
Outsourced services commitments	16	16	—	—	—
Interest on Senior and Convertible Notes	58	25	20	9	4
Defined benefit plans	308	8	20	28	252
Asset retirement obligations	42	8	18	6	10
Other obligations[(1)]	12	12	—	—	—
Total contractual obligations	$3,043	$ 852	$ 886	$ 546	$ 759

(1) Other obligations include uncertain tax positions. We are unable to reliably estimate the timing of future payments of $119 million of uncertain tax positions and therefore these have been excluded from the table.

Borrowings

In August 1999, we issued $1.5 billion of unsecured senior debt securities in four tranches (the Senior Notes) of which $550 million (due on August 15, 2009 and bearing interest at 7.65%) remain. Interest on the Senior Notes is payable semi-annually. We may redeem all or any part of the Senior Notes at any time at a price equal to 100% of the principal plus accrued and unpaid interest in addition to an amount determined by a quotation agent, representing the present value of the remaining scheduled payments. The Senior Notes are subject to compliance with certain covenants that do not contain financial ratios. We are currently in compliance with these covenants. In addition, we also entered into various interest-rate swap agreements to modify the interest characteristics of the Senior Notes so that the interest associated with the Senior Notes effectively becomes variable. For our publicly traded Senior Notes, estimates of fair value are based on market prices. For our other debt, fair value is calculated based on rates currently estimated to be available to us for debt with similar terms and remaining maturities.

Our Board of Directors has authorized our management to repurchase Senior Note debt from time to time in partial or in full tranches based on availability of cash and market conditions. As of June 30, 2008, we have not repurchased any debt.

In January 2007, we issued $350 million principal amount of 0.625% Convertible Senior Notes due February 1, 2012 and $350 million principal amount of 0.75% Convertible Senior Notes due February 1, 2014 (the Convertible Notes), to KKR PEI Solar Holdings, I, Ltd., KKR PEI Solar Holdings, II, Ltd. and Citibank, N.A. in a private placement. Each $1,000 of principal of the Convertible Notes is convertible into 34.6619 shares of our common stock (or a total of approximately 24 million shares), which is the equivalent of $28.85 per share, subject to adjustment upon the occurrence of specified events set forth under terms of the Convertible Notes. Concurrent with the issuance of the Convertible Notes, we entered into note hedge-transactions with a financial institution whereby we have the option to purchase up to 24 million shares of our common stock at a price of $28.85 per share and we sold warrants to the same financial institution whereby they have the option to purchase up to 24 million shares of our common stock. The separate note hedge and warrant transactions were structured to reduce the potential future share dilution associated with the conversion of the Convertible Notes.

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Other Commitments

We utilize several contract manufacturers to manufacture sub-assemblies for our products and to perform final assembly and test of finished products. These contract manufacturers acquire components and build product based on demand information supplied by us. We also obtain individual components for our products from a variety of individual suppliers. We acquire components through a combination of purchase orders, supplier contracts and open orders based on projected demand information. Such purchase commitments are based on our forecasted component and manufacturing requirements and typically provide for fulfillment within agreed-upon lead-times and/or commercially standard lead-times for the particular part or product. We estimate that these contractual obligations at June 30, 2008 were no more than $595 million and are due in less than one year from June 30, 2008. This amount does not include contractual obligations recorded on our balance sheet as current liabilities. Additionally, we have committed to purchase certain outsourced services where we would incur a penalty if the agreement was canceled prior to a contractual minimum term. We estimate that our contractual obligations associated with outsourced services at June 30, 2008 were no more than $16 million. The interest on our Senior Notes reflects the net interest payment after consideration of interest rate swap agreements that effectively makes the interest expense variable. Our variable interest rate calculation uses the three-month LIBOR rate of approximately 2.78% as of June 30, 2008. The interest rate on our Convertible Notes is mentioned above. Under our defined benefit plans we currently project our current obligation to be $308 million using a weighted average discount rate of 4.7%. Our asset retirement obligations arise from leased facilities where we have contractual commitments to remove leasehold improvements and return the property to a specified condition when the lease terminates. Other liabilities includes uncertain tax positions reduced U.S. deferred tax assets.

We maintain a program of insurance with third-party insurers for certain property, casualty and other risks. The policies are subject to deductibles and exclusions that result in our retention of a level of risk on a self-insurance basis. We retain risk with regard to (i) certain loss events, such as California earthquakes and the indemnification or defense payments we, as a company, may make to or on behalf of our directors and officers as a result of obligations under applicable agreements, our by-laws and applicable law, (ii) potential liabilities under a number of health and welfare insurance plans that we sponsor for our employees and (iii) other potential liabilities that are not insured. The types and amounts of insurance obtained vary from time to time and from location to location, depending on availability, cost and our decisions with respect to risk retention. Our worldwide risk and insurance programs are regularly evaluated to seek to obtain the most favorable terms and conditions. We reserve for loss accruals, which are primarily calculated using actuarial methods. These loss accruals include amounts for actual claims, claim growth and claims incurred but not yet reported. Actual experience, including claim frequency and severity as well as inflation, could result in different liabilities than the amounts currently recorded.

During the normal course of our business, we issue guarantees and letters of credit to numerous third-parties and for various purposes such as lease obligations, performance guarantees and state and local governmental agency requirements. At June 30, 2008, we had approximately $52 million of outstanding financial letters of credit.

In the normal course of business, we may enter into contractual arrangements under which we may agree to indemnify the third party to such arrangement from any losses incurred relating to the services they perform on our behalf or for losses arising from certain events as defined within the particular contract, which may include, for example, litigation or claims relating to past performance. Such indemnification obligations may not be subject to maximum loss clauses. Historically, payments made related to these indemnifications have not been material.

In addition, we have uncommitted lines of credit aggregating approximately $427 million. No amounts were drawn from these lines of credit as of June 30, 2008. Interest rates and other terms of borrowing under these lines of credit vary from country to country depending on local market conditions at the time of borrowing. There is no guarantee that the banks would approve our request for funds under these uncommitted lines of credit.

In fiscal 2005, the GSA began auditing our records under the agreements it had with us at that time. A lawsuit related to the audit and our performance under our GSA contract and other government contracts has been filed against us in the United States District Court for the District of Arkansas. It includes claims under the Federal False Claims and Anti-Kickback Acts, as well as breach of contract and other claims, including claims related to certain rebates, discounts and other payments or benefits provided by us to our resellers and technology integrators. The parties continue to discuss the nature of the government's current and potential claims on our GSA and other government sales. If this matter proceeds to trial, possible sanctions include an award of damages, including treble damages, fines, penalties and other sanctions, up to and including suspension or debarment from sales to the federal government. Although we are interested in pursuing an amicable resolution, we intend to present a vigorous factual and legal defense throughout the course of these proceedings.

As required by Statement of Financial Accounting Standards (SFAS) No. 5, "Accounting for Contingencies," we accrue for contingencies when we believe that a loss is probable and that we can reasonably estimate the amount of any such loss. We have made an assessment of the probability of incurring any such losses and such amounts are reflected in our condensed

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consolidated financial statements. Litigation is inherently unpredictable and it is difficult to predict the outcome of particular matters with reasonable certainty, and therefore, the actual amount of any loss may prove to be larger or smaller than the amounts reflected in our consolidated financial statements.

In fiscal 2006, as part of our service-based sales arrangement involving a governmental institution in Mexico, we were required to issue three guarantee bonds. The total amount of the bonds was approximately $41 million. The bonds were to be used as collateral guaranteeing our performance under the arrangement. The bonds required a security deposit of $41 million, paid to surety companies, which was classified as Other non-current assets, net, in our June 30, 2007 Consolidated Balance Sheet. In fiscal 2008, the security deposit of $41 million was returned to us and replaced with a cash secured letter of credit of $21 million. The deposit of $21 million used to secure the letter of credit is classified as Other non-current assets, net, in our June 30, 2008 Consolidated Balance Sheet.

Off-Balance-Sheet Arrangements

As of June 30, 2008, we did not have any off-balance-sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K that have or are reasonably likely to have a current or future effect on our financial condition, changes in our financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Capital Resources and Financial Condition

Our long-term strategy is to maintain a minimum amount of cash and cash equivalents in subsidiaries for operational purposes and to invest the remaining amount of our cash in interest bearing and highly liquid cash equivalents and marketable debt securities. At June 30, 2008, our cash and cash equivalents balance decreased to $2.3 billion. Our remaining investments of $1.0 billion were held in marketable debt securities. Our cash and marketable debt securities position at June 30, 2008, was approximately $3.3 billion.

We believe that the liquidity provided by existing cash, cash equivalents, marketable debt securities and cash generated from operations will provide sufficient capital to meet our requirements for at least the next 12 months. We believe our level of financial resources is a significant competitive factor in our industry and we may choose at any time to raise additional capital to strengthen our financial position, facilitate growth and provide us with additional flexibility to take advantage of business opportunities that arise.

Critical Accounting Policies

The accompanying discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the U.S. (U.S. GAAP). Note 2 to the Consolidated Financial Statements in Item 8 describes the significant accounting policies and estimates used in preparation of the Consolidated Financial Statements. Some of our accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. We base our estimates and judgments on historical experience and on various other assumptions that we believe are reasonable under the circumstances, however, to the extent there are material differences between these estimates, judgments or assumptions and our actual results, our financial statements will be affected. We believe the accounting policies discussed below reflect our more significant assumptions, estimates and judgments and are the most critical to aid in fully understanding and evaluating our reported financial results. Our senior management has discussed the development, selection and disclosure of these critical accounting policies and related disclosures with the Audit Committee of our Board of Directors.

Revenue Recognition

As discussed in Note 2 to our Consolidated Financial Statements in Item 8, we enter into agreements to sell hardware, software, services and multiple deliverable arrangements that include combinations of products and/or services. Additionally, while the majority of our sales transactions contain standard business terms and conditions, there are some transactions that contain non-standard business terms and conditions. As a result, significant contract interpretation is sometimes required to determine the appropriate accounting including: (1) whether an arrangement exists; (2) how the arrangement consideration should be allocated among the deliverables if there are multiple deliverables; (3) when to recognize revenue on the deliverables; and (4) whether undelivered elements are essential to the functionality of delivered elements. In addition, our revenue recognition policy requires an assessment as to whether collectibility is reasonably assured, which requires us to evaluate the creditworthiness of our customers. Changes in judgments on these assumptions and estimates could materially impact the timing of revenue recognition.

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We recognize revenue as work progresses on fixed price Professional Services contracts when we can reliably evaluate progress to completion. We perform periodic analyses of these contracts in order to determine if the applicable estimates regarding total revenue, total cost and the extent of progress toward completion require revision. For fixed price Professional Services contracts, when the current estimates of total contract revenue and contract cost indicate a loss, the estimated loss is recognized in the period the loss becomes evident. Changes in assumptions underlying these estimates and costs could materially impact the timing of revenue recognition and loss recognition.

Distributors selling our high-end products generally purchase our products at the time an end-user is identified. Distributors selling our higher-volume products may carry our products as inventory. We recognize revenue when we sell to our distributors only if all applicable revenue recognition criteria are met. These criteria include the price to the buyer being substantially fixed or determinable at the date of sale and the amount of future returns to be reasonably estimated. The revenue we recognize associated with channel sales transactions may require us to make estimates in several areas including: (1) the likelihood of returns; (2) the amount of credits we will give for subsequent changes in our price list (i.e., price protection); (3) the amount of credits we will give for additional discounts in certain competitive transactions (i.e., margin protection); (4) the amount of stock rotation; and (5) the creditworthiness of the distributors. When applicable, we reduce revenue in these areas using assumptions that are based on our historical experience. Changes in these assumptions could require us to make significant revisions to our estimates that could materially impact the amount of net revenue recognized.

Beginning in the second quarter of fiscal 2008, we introduced programs in certain geographic markets entitling our distributors to a reduced price on hardware when sold to the end customer with a support services contract. Accordingly, in these cases, we are no longer able to meet the criteria for revenue recognition under U.S. GAAP at the time of sale to our distributors. We have deferred revenue on these sales until our distributors sell the hardware to the end customer.

Business Combinations

In accordance with SFAS No. 141, “Business Combinations”, we are required to allocate the purchase price of acquired companies to the tangible and intangible assets acquired, liabilities assumed, as well as IPRD based on their estimated fair values. This valuation requires management to make significant estimates and assumptions, especially with respect to long-lived and intangible assets.

Critical estimates in valuing certain of the intangible assets include but are not limited to: relevant market sizes and growth factors, expected industry trends, the anticipated nature and timing of new product introductions by the company and our competitors, individual product sales cycles, the estimated lives of each of the products’ underlying technology, future expected cash flows from customer contracts, customer lists, distribution agreements and acquired developed technologies and patents; expected costs to develop the IPRD into commercially viable products and estimating cash flows from the projects when completed; the acquired company’s brand awareness and market position, as well as assumptions about the period of time the brand will continue to be used in the combined company’s product portfolio; and discount rates. Management’s estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable. Assumptions may be incomplete or inaccurate and unanticipated events and circumstances may occur.

To estimate restructuring liabilities, management utilized assumptions of the number of employees that would be involuntarily terminated and of costs associated with the disposition of duplicate or excess acquired facilities. Decreases to the estimates of currently approved acquisition related restructuring plans are recorded as an adjustment to goodwill indefinitely, whereas increases to the estimates are recorded as an adjustment to goodwill during the purchase price allocation period and as operating expenses thereafter.

Goodwill

Our methodology for allocating the purchase price relating to purchase acquisitions is determined through established valuation techniques in the high-technology industry. Goodwill is measured as the excess of the cost of the acquisition over the sum of the amounts assigned to tangible and identifiable intangible assets acquired less liabilities assumed. We review goodwill for impairment on an annual basis and whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. In testing for a potential impairment of goodwill, we: (1) allocate goodwill to our various businesses to which the acquired goodwill relates; (2) estimate the fair value of our businesses to which goodwill relates based on future expected discounted cash flows (income approach); and (3) determine the carrying value (book value) of those businesses, as some of the assets and liabilities related to those businesses, such as property and equipment and accounts receivable, are not held by those businesses but by functional departments (for example, our Global Sales and Services organization and Worldwide Operations organization). Prior to this allocation of the assets to the reporting units, we are required to assess long-lived assets for impairment in accordance with SFAS 144, “Impairment of Long-Lived Assets” (SFAS 144). Furthermore, if the estimated fair value is less than the carrying value for a particular business, then we are required to estimate the fair value of all

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identifiable assets and liabilities of the business, in a manner similar to a purchase price allocation for an acquired business. Only after this process is completed is the amount of any goodwill impairment determined.

We perform our goodwill impairment analysis at one level below the operating segment level as defined in SFAS 142. The process of evaluating the potential impairment of goodwill is subjective and requires significant judgment at many points during the analysis. In estimating the fair value of the businesses with recognized goodwill for the purposes of our annual or periodic analyses, we make estimates and judgments about the future cash flows of these businesses. Although our cash flow forecasts are based on assumptions that are consistent with the plans and estimates we are using to manage the underlying businesses, there is significant judgment in determining the cash flows attributable to these businesses over their estimated remaining useful lives. In addition, we make certain judgments about allocating shared assets such as accounts receivable and property and equipment to the balance sheet for those businesses. We also consider our market capitalization (adjusted for unallocated monetary assets such as cash, marketable debt securities and debt) on the date we perform the analysis.

At June 30, 2008, our goodwill had a carrying value of $3.2 billion. We performed our annual goodwill impairment analyses in the fourth quarter of each of fiscal 2008, 2007 and 2006. Based on our estimates of forecasted discounted cash flows as well as our market capitalization, at each of these dates, we concluded that goodwill impairment charges were not necessary in fiscal 2008, 2007 and 2006.

Other Long-lived Assets

SFAS 144 is the authoritative standard on the accounting for the impairment of other long-lived assets. In accordance with SFAS 144 and our internal accounting policy, we perform tests for impairment of intangible assets other than goodwill (Other Intangible Assets) semi-annually and whenever events or circumstances suggest that Other Intangible Assets may be impaired. This analysis differs from our goodwill analysis in that an impairment is only deemed to have occurred if the sum of the forecasted undiscounted future cash flows related to the assets are less than the carrying value of the intangible asset we are testing for impairment. If the forecasted cash flows are less than the carrying value, then we must write down the carrying value to its estimated fair value. We have estimated the fair value of other intangible assets using the income approach to value these identifiable intangible assets which are subject to amortization.

At June 30, 2008, we had Other Intangible Assets with a carrying value of approximately $580 million. These Other Intangible Assets consist of $565 million in acquisition-related intangible assets and $14 million in intangible assets primarily associated with patent licenses acquired through our settlement with Kodak. To evaluate potential impairment, SFAS 144 requires us to assess whether the future cash flows related to these assets will be greater than their carrying value at the time of the test. Accordingly, while our cash flow assumptions are consistent with the plans and estimates we are using to manage the underlying businesses, there is significant judgment in determining the cash flows attributable to our Other Intangible Assets over their respective estimated useful lives.

Restructuring and Impairment of Long-lived Assets

We have engaged and may continue to engage in restructuring actions and activities associated with productivity improvement initiatives and expense reduction measures, which are accounted for under SFAS 112, “Employers’ Accounting for Post Employment Benefits” (SFAS 112) and SFAS 146, “Accounting for Costs Associated with Exit or Disposal Activities” (SFAS 146). Our restructuring actions require us to make significant estimates in several areas including: 1) realizable values of assets made redundant, obsolete or excess; 2) expenses for severance and other employee separation costs; 3) the ability to generate sublease income, as well as our ability to terminate lease obligations at the amounts we have estimated; and 4) other exit costs. The amounts we have accrued represent our best estimate of the obligations we expect to incur in connection with these actions, but could be subject to change due to various factors including market conditions and the outcome of negotiations with third parties. Should the actual amounts differ from our estimates, the amount of the restructuring charges could be materially impacted.

Defined Benefit Pension Plans

We account for our defined benefit pension plans in accordance with SFAS 87, “Employers’ Accounting for Pensions” (SFAS 87) as amended by SFAS 158, “Employers’ Accounting for Defined Benefit Pension and other Postretirement Plans- An Amendment of FASB Statements No. 87, 88, 106, and 132(R)” (SFAS 158) which requires that amounts recognized in the financial statements be determined on an actuarial basis. This determination involves the selection of various assumptions, including an expected rate of return on plan assets and a discount rate.

A key assumption in determining our net pension expense in accordance with SFAS 87 is the expected long-term rate of return on plan assets. To determine the expected long-term rate of return on plan assets, we consider the current and expected asset allocations, as well as historical and expected returns on various categories of plan assets. We apply our expected rate of return

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to a market-related value of assets, which stabilizes variability in the amounts to which we apply that expected return. While we give appropriate consideration to recent fund performance and historical returns, the assumptions are primarily long term, prospective rates of return. Changes in the expected long-term rate could materially impact the expense and liabilities or assets recognized associated with our pension plans.

Another key assumption in determining our net pension expense is the assumed discount rate to be used to discount plan obligations. We set the discount rate assumption annually for each of our retirement-related benefit plans at their respective measurement dates to reflect the yield of a portfolio of high quality, fixed-income debt instruments that would produce cash flows sufficient in timing and amount to address projected future benefits. Changes in the expected long-term rate could materially impact the expense and liabilities or assets recognized association with our pension plans.

Income Taxes

On July 1, 2007, we adopted FIN 48. See Note 10 in the Notes to Consolidated Financial Statements in Item 8 of this Form 10-K for further discussion.

We must make certain estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of tax credits benefits and deductions and in the calculation of certain tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes, as well as the interest and penalties relating to these uncertain tax positions. Significant changes to these estimates may result in an increase or decrease to our tax provision in a subsequent period.

We must assess the likelihood that we will be able to recover our deferred tax assets. If recovery is not likely, we must increase our provision for taxes by recording a valuation allowance against the deferred tax assets that we estimate will not ultimately be recoverable. We currently have provided a full valuation allowance on our U.S. deferred tax assets and a full or partial valuation allowance on certain foreign deferred tax assets. We intend to maintain these valuation allowances until sufficient positive evidence exists to support the reversal of a valuation allowance in a specific taxing jurisdiction. Likewise, the occurrence of negative evidence with respect to certain of our foreign deferred tax assets could result in an increase to the valuation allowance. Our income tax expense recorded in the future will be reduced or increased to the extent of offsetting decreases or increases to our valuation allowances.

In addition, the calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax regulations. As a result of the implementation of FIN 48, we recognize liabilities for uncertain tax positions based on the two-step process prescribed within the interpretation. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step requires us to estimate and measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement. It is inherently difficult and subjective to estimate such amounts, as this requires us to determine the probability of various possible outcomes. We reevaluate these uncertain tax positions on a quarterly basis. This evaluation is based on factors including, but not limited to, changes in facts or circumstances, changes in tax law, effectively settled issues under audit and new audit activity. Such a change in recognition or measurement would result in the recognition of a tax benefit or an additional charge to the tax provision in the period.

Legal and Other Contingencies

We are currently involved in various claims and legal proceedings. Quarterly, we review the status of each significant matter and assess our potential financial exposure. If the potential loss from any claim or legal proceeding is considered probable and the amount can be reasonably estimated, we accrue a liability for the estimated loss. Significant judgment is required in both the determination of probability and the determination as to whether an exposure is reasonably estimable. Because of uncertainties related to these matters, accruals are based only on the best information available at the time. As additional information becomes available, we reassess the potential liability related to our pending claims and litigation and may revise our estimates. Such revisions in the estimates of the potential liabilities could have a material impact on our results of operations and financial position.

Stock-Based Compensation

We account for share-based payments to employees, including grants of employee stock awards and purchases under employee stock purchase plans in accordance with FASB Statement No. 123 (revised 2004), Share-Based Payment, which requires that share-based payments (to the extent they are compensatory) be recognized in our Consolidated Statements of Operations based on their fair values. In addition, we have applied the provisions of the SEC's Staff Accounting Bulletin No. 107 in our accounting for Statement 123(R).

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We are required to estimate the stock awards that we ultimately expect to vest and to reduce stock-based compensation expense for the effects of estimated forfeitures of awards over the expense recognition period. Although we estimate forfeitures based on historical experience, actual forfeitures in the future may differ. In addition, to the extent our actual forfeitures are different than our estimates, we record a true-up for the difference in the period that the awards vest, and such true-ups could materially affect our operating results.

As required by Statement 123(R), we recognize stock-based compensation expense for share-based payments issued or assumed after June 1, 2006 that are expected to vest. For all share-based payments granted or assumed beginning June 1, 2006, we recognize stock-based compensation expense on a straight-line basis over the service period of the award, which is generally four years. The fair value of the unvested portion of share-based payments granted prior to June 1, 2006 is recognized over the remaining service period using the accelerated expense attribution method, net of estimated forfeitures. In determining whether an award is expected to vest, we use an estimated, forward-looking forfeiture rate based upon our historical forfeiture rates. Stock-based compensation expense recorded using an estimated forfeiture rate is updated for actual forfeitures quarterly. We also consider, each quarter, whether there have been any significant changes in facts and circumstances that would affect our forfeiture rate.

We estimate the fair value of employee stock options using a Black-Scholes valuation model. The fair value of an award is affected by our stock price on the date of grant as well as other assumptions including the estimated volatility of our stock price over the term of the awards and the estimated period of time that we expect employees to hold their stock options. The risk-free interest rate assumption we use is based upon United States treasury interest rates appropriate for the expected life of the awards. We use the combination of historical volatility of our stock and implied volatility of our publicly traded, longest-term options in order to estimate future stock price trends as we believe that this combination is more representative of future stock price trends than historical or implied volatility on a stand-alone basis. In order to determine the estimated period of time that we expect employees to hold their stock options, we have used historical rates of employee groups by job classification. Our expected dividend rate is zero since we do not currently pay cash dividends on our common stock and do not anticipate doing so in the foreseeable future. The aforementioned inputs entered into the option valuation model we use to fair value our stock awards are subjective estimates and changes to these estimates will cause the fair value of our stock awards and related stock-based compensation expense we record to vary.

We record deferred tax assets for stock-based awards that result in deductions on our income tax returns, based on the amount of stock-based compensation recognized. In addition, differences between the deferred tax assets recognized for financial reporting purposes and the actual tax deduction reported on our income tax returns are recorded in additional paid-in capital. If the tax deduction is less than the deferred tax asset, such shortfalls reduce our pool of excess tax benefits. If the pool of excess tax benefits is reduced to zero, then subsequent shortfalls would increase our income tax expense.

To the extent we change the terms of our employee stock-based compensation programs or refine different assumptions in future periods such as forfeiture rates that differ from our estimates, the stock-based compensation expense that we record in future periods and the tax benefits that we realize may differ significantly from what we have recorded in previous reporting periods.

RECENT ACCOUNTING PRONOUNCEMENTS

See Note 2 to the Consolidated Financial Statements in Item 8 for a description of certain other recent accounting pronouncements including the expected dates of adoption and effects on our results of operations and financial condition.

NON-AUDIT SERVICES OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Our Audit Committee has pre-approved all non-audit services including tax compliance services.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk related to changes in interest rates, foreign currency exchange rates and equity security prices. To mitigate some of these risks, we utilize derivative financial instruments to hedge these exposures. We do not use derivative financial instruments for speculative or trading purposes. All of the potential changes noted below are based on sensitivity analyses performed on our financial position at June 30, 2008. Actual results may differ materially.

Interest Rate Sensitivity

Our debt investment portfolio consists primarily of fixed income instruments with an average duration of 0.16 years, 0.25 years and 0.21 years as of June 30, 2008, 2007 and 2006, respectively. The decrease in the average duration of our portfolio at June 30, 2008, as compared to June 30, 2007, was due to the decision to maintain short positions in anticipation of the stock

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repurchase program and due to the liquidation of securities in order to repatriate $1 billion of foreign earnings. The increase in the average duration of our portfolio at June 30, 2007, as compared to June 30, 2006, was due to the increase in our average cash and marketable debt security positions. The primary objective of our investments in debt securities is to preserve principal while maximizing yields, without significantly increasing risk. These available-for-sale securities are subject to interest rate risk. The fair market value of these securities may fluctuate with changes in interest rates. A sensitivity analysis was performed on this investment portfolio based on a modeling technique that measures the hypothetical fair market value changes (using a three month horizon) that would result from a parallel shift in the yield curve of plus 150 basis points (BPS). Based on this analysis, for example, a hypothetical 150 BPS increase in interest rates would result in an approximate $6 million decrease in the fair value of our investments in debt securities as of June 30, 2008, as compared with a $20 million decrease as of June 30, 2007.

We also entered into various interest-rate swap agreements to modify the interest characteristics of the Senior Notes so that the interest payable on the Senior Notes effectively becomes variable and thus matches the shorter-term rates received from our cash and marketable securities. Accordingly, interest rate fluctuations impact the fair value of our Senior Notes outstanding, which will be offset by corresponding changes in the fair value of the swap agreements. However, by entering into these swap agreements, we have a cash flow exposure related to the risk that interest rates may increase. For example, at June 30, 2008, a hypothetical 150 BPS increase in interest rates would result in an approximate $8 million increase in interest expense over a one-year period.

Foreign Currency Exchange Risk

Our revenue, expense and capital purchasing activities are primarily transacted in U.S. dollars. However, since a portion of our operations consist of manufacturing and sales activities outside the U.S., we enter into transactions in other currencies. We are primarily exposed to changes in exchange rates for the Euro, Japanese yen and British pound.

We are a net receiver of currencies other than the U.S. dollar and, as such, can benefit from a weaker dollar and can be adversely affected by a stronger dollar relative to major currencies worldwide. Accordingly, changes in exchange rates and in particular a strengthening of the U.S. dollar, may adversely affect our consolidated sales and operating margins as expressed in U.S. dollars. To minimize currency exposure gains and losses, we often borrow funds in local currencies, enter into forward exchange contracts, purchase foreign currency options and promote natural hedges by purchasing components and incurring expenses in local currencies. Currently, we have no plans to discontinue our hedging programs, however, we continually evaluate the benefits of our hedging strategies and may choose to discontinue them in the future.

Based on our foreign currency exchange instruments outstanding at June 30, 2008, we estimate a maximum potential one-day loss in fair value of approximately $2 million, as compared with $3 million as of June 30, 2007, using a Value-at-Risk (VAR) model. The VAR model estimates were made assuming normal market conditions and a 95% confidence level. We used a Monte Carlo simulation type model that valued foreign currency instruments against three thousand randomly generated market price paths. Anticipated transactions, firm commitments, receivables and accounts payable denominated in foreign currencies were excluded from the model. The VAR model is a risk estimation tool and as such is not intended to represent actual losses in fair value that will be incurred by us. Additionally, as we utilize foreign currency instruments for hedging anticipated and firmly committed transactions, a loss in fair value for those instruments is generally offset by increases in the value of the underlying exposure.

Equity Security Price Risk

We are exposed to price fluctuations on the marketable portion of equity securities included in our portfolio of equity investments. These investments are generally in companies in the high-technology industry sector, many of which are small capitalization stocks. We typically do not attempt to reduce or eliminate the market exposure on these securities. A 20% adverse change in equity prices would result in an approximate $6 million decrease in the fair value of our available-for-sale equity investments as of June 30, 2008, as compared with $5 million as of June 30, 2007. At June 30, 2008 and 2007, two equity securities represented substantially all of the $27 million and $37 million total fair value of the marketable equity securities, respectively. Refer to Note 2 to the Consolidated Financial Statements in Item 8 for additional discussion on our marketable equity securities.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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Schedules not listed above have been omitted since they are not applicable or are not required, or the information required to be set forth therein is included in the Consolidated Financial Statements or Notes thereto.

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PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

SUN MICROSYSTEMS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(in millions, except per share amounts)

	Fiscal Years Ended June 30,		
	2008	2007	2006
Net revenues:			
Products	$ 8,618	$ 8,771	$ 8,371
Services	5,262	5,102	4,697
Total net revenues	13,880	13,873	13,068
Cost of sales:			
Cost of sales-products	4,668	4,811	4,827
Cost of sales-services	2,757	2,797	2,612
Total cost of sales	7,425	7,608	7,439
Gross margin	6,455	6,265	5,629
Operating expenses:			
Research and development	1,834	2,008	2,046
Selling, general and administrative	3,955	3,851	4,039
Restructuring charges and related impairment of long-lived assets	263	97	284
Impairment of goodwill and other intangible assets	—	—	70
Purchased in-process research and development	31	—	60
Total operating expenses	6,083	5,956	6,499
Operating income (loss)	372	309	(870)
Gain on equity investments, net	32	6	27
Interest and other income, net	161	214	114
Settlement income	45	54	54
Income (loss) before income taxes	610	583	(675)
Provision for income taxes	207	110	189
Net income (loss)	$ 403	$ 473	$ (864)
Net income (loss) per common share-basic	$ 0.50	$ 0.54	$ (1.01)
Net income (loss) per common share-diluted	$ 0.49	$ 0.52	$ (1.01)
Shares used in the calculation of net income (loss) per common share-basic	809	883	859
Shares used in the calculation of net income (loss) per common share-diluted	822	902	859

See accompanying notes.

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SUN MICROSYSTEMS, INC.

CONSOLIDATED BALANCE SHEETS
(in millions, except for par value)

	June 30, 2008	June 30, 2007
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,272	$ 3,620
Short-term marketable debt securities	429	962
Accounts receivable (net of bad debt reserves of $64 and $81)[1]	3,019	2,964
Inventories	680	524
Deferred and prepaid tax assets	216	200
Prepaid expenses and other current assets, net	1,218	1,058
Total current assets	7,834	9,328
Property, plant and equipment, net	1,611	1,504
Assets held for sale	—	29
Long-term marketable debt securities	609	1,360
Goodwill	3,215	2,514
Other Acquisition-related intangible assets, net	565	633
Other non-current assets, net	506	470
	$14,340	$15,838
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt and short-term borrowings	$ —	$ 1
Accounts payable	1,387	1,380
Accrued payroll-related liabilities	734	842
Accrued liabilities and other	1,105	961
Deferred revenues	2,236	2,047
Warranty reserve	206	220
Total current liabilities	5,668	5,451
Long-term debt	1,265	1,264
Long-term deferred revenues	683	659
Other non-current obligations	1,136	1,285
Stockholders' equity:		
Preferred stock ($0.001 par value, 10 shares authorized; no shares issued and outstanding)	—	—
Common stock and additional paid-in-capital ($0.001 par value, 1,800 shares authorized; issued: 901 shares and 901 shares)[1]	7,391	6,987
Treasury stock, at cost (149 shares and 17 shares)[1]	(2,726)	(311)
Retained earnings	430	189
Accumulated other comprehensive income	493	314
Total stockholders' equity	5,588	7,179
	$14,340	$15,838

(1) As of June 30, 2008 and June 30, 2007, respectively.

See accompanying notes.

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SUN MICROSYSTEMS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in millions)

	Fiscal Year Ended June 30,		
	2008	2007	2006
Cash flows from operating activities:			
Net income (loss)	$ 403	$ 473	$ (864)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	476	517	575
Amortization of acquisition-related intangible assets	310	313	330
Stock-based compensation expense	214	214	225
Purchased in-process research and development	31	—	60
Gain on investments and other, net	(68)	(42)	(10)
Impairment of long-lived assets, net	—	16	155
Tax provisions for employee stock plans	—	29	—
Deferred taxes	2	74	(19)
Changes in operating assets and liabilities:			
Accounts receivable, net	(9)	(241)	(163)
Inventories	(148)	(6)	44
Prepaid and other assets	(165)	(191)	172
Accounts payable	(15)	(8)	130
Other liabilities	298	(190)	(68)
Net cash provided by operating activities	1,329	958	567
Cash flows from investing activities:			
Decrease (increase) in restricted cash	17	(5)	(69)
Purchases of marketable debt securities	(1,333)	(3,088)	(1,831)
Proceeds from sales of marketable debt securities	1,550	1,335	5,434
Proceeds from maturities of marketable debt securities	1,058	725	580
Proceeds from sales of equity investments, net	32	16	15
Purchases of property, plant and equipment, net	(520)	(488)	(315)
Proceeds from sales of property, plant and equipment	79	451	—
Payments for acquisitions, net of cash acquired	(949)	(23)	(3,162)
Net cash provided by (used in) investing activities	(66)	(1,077)	652
Cash flows from financing activities:			
Purchase of common stock call options	—	(228)	—
Sale of common stock warrants	—	145	—
Proceeds from exercise of options and ESPP purchases	177	244	249
Proceeds from issuance of convertible notes, net	—	692	—
Proceeds from (principal payments on) borrowings and other obligations	(24)	(483)	50
Purchases of common stock under 2007 Stock Repurchase Plan	(2,764)	(200)	—
Net cash provided by (used in) financing activities	(2,611)	170	299
Net increase (decrease) in cash and cash equivalents	(1,348)	51	1,518
Cash and cash equivalents, beginning of year	3,620	3,569	2,051
Cash and cash equivalents, end of year	$ 2,272	$ 3,620	$ 3,569
Supplemental Disclosures of Cash Flow Information:			
Interest Paid (net of interest received from swap agreements of $8, $13 and $34 in fiscal 2008, 2007 and 2006, respectively)	$ 39	$ 48	$ 46
Income taxes paid (net of refunds of $91, $76 and $196 in fiscal 2008, 2007 and 2006, respectively)	$ 87	$ 182	$ 74
Supplemental schedule of non-cash investing activities:			
Stock options issued in connection with the acquisitions	$ 102	$ —	$ 88
Net issuance of restricted stock awards	$ 196	$ 194	$ 183

See accompanying notes.

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SUN MICROSYSTEMS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in millions)

	Common Stock and Additional Paid-in-Capital		Treasury Stock		Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balances as of June 30, 2005	901	$6,490	(49)	$(1,411)	$ 1,387	$ 208	$ 6,674
Net loss	—	—	—	—	(864)	—	(864)
Change in unrealized gain on investments, net of taxes	—	—	—	—	—	(2)	(2)
Change in unrealized gain on derivative instruments and other, net of taxes	—	—	—	—	—	(22)	(22)
Translation adjustments	—	—	—	—	—	(4)	(4)
Total comprehensive loss	—	—	—	—	—	—	(892)
Issuance of stock, net of repurchases	—	—	24	1,029	(780)	—	249
Issuance of common stock and assumption of stock options in connection with acquisitions	—	88	—	—	—	—	88
Stock based compensation	—	225	—	—	—	—	225
Balances as of June 30, 2006	901	6,803	(25)	(382)	(257)	180	6,344
Net income	—	—	—	—	473	—	473
Change in unrealized gain on investments, net of taxes	—	—	—	—	—	2	2
Change in unrealized gain on derivative instruments and other, net of taxes	—	—	—	—	—	(11)	(11)
Translation adjustments	—	—	—	—	—	143	143
Total comprehensive income	—	—	—	—	—	—	607
Issuance of stock, net of repurchases	—	—	8	71	(27)	—	44
Purchases of Convertible Notes call options	—	(228)	—	—	—	—	(228)
Issuance of Convertible Notes warrants	—	145	—	—	—	—	145
Stock based compensation	—	214	—	—	—	—	214
Tax benefit from employee stock transactions and other	—	53	—	—	—	—	53
Balances as of June 30, 2007	901	6,987	(17)	(311)	189	314	7,179
Net income	—	—	—	—	403	—	403
Change in unrealized loss on investments, net of taxes	—	—	—	—	—	(24)	(24)
Change in unrealized loss on derivative instruments and other, net of taxes	—	—	—	—	—	(4)	(4)
Change in minimum pension obligation	—	—	—	—	—	38	38
Translation adjustments	—	—	—	—	—	169	169
Total comprehensive income	—	—	—	—	—	—	582
Cumulative effect of adoption of FIN 48	—	—	—	—	9	—	9
Issuance of stock, net of repurchases	—	—	(132)	(2,415)	(171)	—	(2,586)
Issuance of common stock and assumption of stock options in connection with acquisitions	—	102	—	—	—	—	102
Stock based compensation	—	214	—	—	—	—	214
Tax benefit from employee stock transactions and other	—	88	—	—	—	—	88
Balances as of June 30, 2008	901	$7,391	(149)	$(2,726)	$ 430	$ 493	$ 5,588

See accompanying notes.

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SUN MICROSYSTEMS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business

We provide network computing infrastructure solutions that include core brands such as the Java technology platform, the Solaris Operating System, the MySQL database management system, Sun StorageTek storage solutions and the UltraSPARC processor. Our network computing platforms are used by search, social networking, entertainment, financial services, manufacturing, healthcare, retail, news, energy and engineering companies. Our products and services address the complex information technology issues facing customers today, including increasing demands for network access, bandwidth and storage. We share these innovations with some of the most innovative technology companies in the world.

2. Summary of Significant Accounting Policies

Basis of Presentation

Our consolidated financial statements include our accounts and the accounts of our subsidiaries. Intercompany accounts and transactions have been eliminated. We completed our acquisition of MySQL on February 25, 2008 and have included these results in our consolidated financial statements since the acquisition date. We completed the acquisitions of StorageTek and SeeBeyond Technology Corporation (SeeBeyond) on August 31, 2005 and August 25, 2005, respectively. See Note 4 for further details.

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (U.S. GAAP). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts in the consolidated financial statements and accompanying notes. We base our estimates and judgments on historical experience and on various other assumptions that we believe are reasonable under the circumstances. These estimates are based on management's knowledge about current events and expectation about actions we may undertake in the future. Actual results could differ materially from those estimates.

Cash Equivalents

Cash equivalents consist primarily of highly liquid investments with insignificant interest rate risk and remaining maturities of three months or less at the date of purchase. We classify cash with restrictions as other current or non-current assets, depending on the nature of the underlying restriction unless the restriction is short-term in nature and is for a period of less than three months. At June 30, 2008 and 2007, "Prepaid expense and other current assets, net" included $15 million and $13 million, respectively, of restricted cash. At June 30, 2008 and 2007, "Other non-current assets, net" included $102 million and $124 million of long-term deposits and restricted cash, respectively.

Investments

We invest in marketable debt securities, marketable equity securities and other investments.

Marketable Debt Securities

Investments in marketable debt securities consist primarily of corporate notes and bonds, asset and mortgage backed securities and U.S. government notes and bonds with remaining maturities beyond three months at the date of purchase. Short-term investments are marketable debt securities with maturities of one year or less from the balance sheet date (except cash equivalents), while long-term investments represent all other marketable debt securities. All marketable debt securities are held in our name and deposited with one major financial institution. Our policy is to protect the value of our investment portfolio and minimize principal risk by earning returns based on current interest rates. We only invest in marketable debt securities with a minimum rating of BBB- or above from a nationally recognized credit rating agency. At June 30, 2008 and 2007, all of our marketable debt securities were classified as available-for-sale and were carried at fair market value. The unrealized gains (losses) on available-for-sale securities, net of taxes, are recorded in "Accumulated other comprehensive income" in the Consolidated Statements of Stockholders' Equity. See Note 7 for further detail.

We monitor our investment portfolio for impairment on a periodic basis. In the event that the carrying value of an investment exceeds its fair value and the decline in value is determined to be other-than-temporary, an impairment charge is recorded and a new cost basis for the investment is established. In order to determine whether a decline in value is other-than-temporary, we evaluate, among other factors: the earning performance, credit rating and asset quality of the investee; the duration and extent to which the fair value has been less than the carrying value; our financial condition and business outlook, including key

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operational and cash flow metrics, current market conditions and future trends in our industry; our relative competitive position within the industry; and our intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery in fair value.

Marketable Equity Securities

Investments in marketable equity securities consist of equity holdings in public companies. Marketable equity securities are initially recorded at fair value upon acquisition and are classified as available-for-sale when there are no restrictions on our ability to liquidate such securities within 12 months. Fair value is determined using quoted market prices for those securities. Investments in marketable equity securities were $21 million and $27 million at June 30, 2008 and 2007, respectively. At June 30, 2008, all marketable equity investments were classified as available-for-sale and are included in "Other non-current assets, net" in the Consolidated Balance Sheets. Changes in the fair value of these securities are recognized in "Accumulated Other Comprehensive Income," in the Consolidated Statements of Stockholders' Equity. Net unrealized gains on marketable equity investments were $7 million, $13 million and $20 million at June 30, 2008, 2007 and 2006, respectively. Marketable equity securities at June 30, 2008 and 2007 were (in millions):

	Adjusted Cost	Gross Unrealized Gains	Fair Value
Fiscal 2008 Marketable equity securities	$ 14	$ 7	$ 21
Fiscal 2007 Marketable equity securities	$ 14	$ 13	$ 27

Realized gains on sales of marketable equity securities were $13 million, $0 million and $11 million in fiscal 2008, 2007 and 2006, respectively and are recognized in "Gain on equity investments, net" in the Consolidated Statements of Operations. In addition, we review all marketable equity securities for other than temporary declines in fair value. In doing so, we evaluate the length of time and the extent to which the market value has been less than cost, the financial condition and near-term prospects of the portfolio company and our intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery in market value. We consider circumstances where, as of the end of any quarter, the carrying value of a marketable equity security has been greater than its market value for the last six consecutive months, to be de-facto evidence of other than temporary impairment. We perform our evaluation of other than temporary impairment on a quarterly basis. Based on our evaluation, if a security is considered to be other than temporarily impaired, an impairment charge is recognized in "Gain on equity investments, net" in the Consolidated Statements of Operations. There was no impairment charge recorded in fiscal 2008, 2007 or 2006.

Other Investments

Other investments include equity investments in privately-held companies that develop products, markets and services that are strategic to us, investments in venture capital funds and other joint ventures, securities lent under our securities lending program and the cash surrender value of life insurance policies.

Our equity investments in privately-held companies are generally made in connection with a round of financing with other third-party investors. As our investments in privately-held companies do not permit us to exert significant influence or control over the entity in which we are investing, the recorded amounts generally represent our cost of the investment less any adjustments we make when we determine that an investment's carrying value is other-than-temporarily impaired. These investments totaled $19 million and $15 million at June 30, 2008 and 2007, respectively, and were included in "Other non-current assets, net" in the Consolidated Balance Sheets.

The process of assessing whether a particular equity investment's fair value is less than its carrying cost requires a significant amount of judgment due to the lack of a mature and stable public market for these securities. In making this judgment among other factors, we consider the investee's most recent financial results, cash position, recent cash flow data, projected cash flows (both short and long-term), financing needs, recent financing rounds, most recent valuation data, the current investing environment, management or ownership changes and competition. This process is based primarily on information that we request and receive from these privately-held companies and is performed on a quarterly basis. Although we evaluate all of our privately-held equity investments for impairment based on the criteria established above, each investment's fair value is only estimated when events or changes in circumstances have occurred that may have a significant effect on its fair value (because the fair value of each investment is not readily determinable). Where these factors indicate that the equity investment's fair value is less than its carrying cost and where we consider such reduction in value to be other than temporary, we record an impairment charge to reduce such equity investment to its estimated net realizable value. We recognized gains on sales, net of impairment charges, related to our investments in privately-held companies of $19 million, $3 million and $10 million for fiscal 2008, 2007 and 2006, respectively, which was reflected in "Gain on equity investments, net".

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Investments in venture capital funds and other joint ventures totaled $14 million and $19 million at June 30, 2008 and 2007, respectively, and were accounted for using the equity method of accounting and included in "Other non-current assets, net" in the Consolidated Balance Sheets. We recorded income of $0 million, $3 million and $6 million for fiscal 2008, 2007 and 2006, respectively, related to these investments which was reflected in "Gain on equity investments, net."

From time to time, we enter into securities lending agreements with financial institutions to enhance investment income. Selected securities are loaned and are secured by collateral equal to an average of 102% of the fair market value of the securities. Collateral is in the form of cash or securities issued and our securities lending agent has provided us with counterparty indemnification in the event of borrower default. Loaned securities continue to be classified as investment assets on the Consolidated Balance Sheets. Cash collateral is recorded as an asset with a corresponding liability. For lending agreements collateralized by securities, no accompanying asset or liability is recorded as we are not permitted to sell or repledge the associated collateral. The maximum amount loaned under our securities lending program in fiscal 2008 was $256 million. As of June 30, 2008, there were no outstanding securities lending transactions.

Bad Debt Reserves

We evaluate the collectibility of our accounts receivable based on a combination of factors. In cases where we are aware of circumstances that may impair a specific customer's ability to meet its financial obligations to us, we record a specific allowance against amounts due to us and thereby reduce the net recognized receivable to the amount we reasonably believe will be collected. For all other customers, we record allowances for doubtful accounts based on the length of time the receivables are past due, the current business environment and our historical experience. For the years ended June 30, 2008, 2007 and 2006, our bad debt reserve activity was as follows (in millions):

	Fiscal Years June 30,		
	2008	2007	2006
Beginning bad debt reserve balance	$ 81	$ 81	$86
Bad debt expense	10	12	3
Amounts written-off and other adjustments	(27)	(12)	(8)
Ending bad debt reserve balance	$ 64	$ 81	$81

Inventories

Inventories are stated at the lower of cost (first in, first out) or market (net realizable value). Inventory in-transit (included in finished goods) consists of products shipped but not recognized as revenue because they did not meet the revenue recognition criteria. We evaluate our ending inventories for estimated excess quantities and obsolescence. This evaluation includes analyses of sales levels by product and projections of future demand within specific time horizons (generally six months or less). Inventories in excess of future demand are reserved. In addition, we assess the impact of changing technology on our inventory-on-hand and we write-off inventories that are considered obsolete.

Long-lived Assets

Property, Plant and Equipment, net

Property, plant and equipment, net, is stated at cost less accumulated depreciation. Depreciation is provided principally on the straight-line method over the estimated useful lives of the assets. The estimated useful lives for machinery and equipment range from one to ten years, buildings and building improvements range from five to thirty-five years and furniture and fixtures range from five to ten years. Leasehold improvements are depreciated over the life of the lease or the assets, whichever is shorter. Land is not depreciated.

Intangible Assets Other than Goodwill

Long-lived assets, such as property, plant and equipment and purchased identifiable intangible assets with finite lives, are evaluated for impairment semi-annually in accordance with our policy and whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable in accordance with Statement of Financial Accounting Standards (SFAS) No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS 144). We assess the recoverability of long-lived assets (other than goodwill) by comparing the estimated undiscounted cash flows associated with the related asset or group of assets against their respective carrying amounts. The amount of an impairment, if any, is calculated based on the excess of the carrying amount over the fair value of those assets.

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As a consequence of product-line rationalization decisions taken as part of our restructuring action in the fourth quarter of fiscal 2006 and resulting reductions in estimates of forecasted undiscounted cashflows, we concluded that an impairment charge of $67 million was necessary to reduce certain StorageTek acquisition-related intangible asset balances to their estimated fair value. In addition, during the fourth quarter of fiscal 2006, as a result of operating shortfalls and budget cuts which impacted our ability to realize the expected future benefits of developed technology assets acquired as part of our January 2004 acquisition of Nauticus, we recorded non-cash impairment charges of $3 million in our Product group segment.

Goodwill

We test goodwill for impairment on an annual basis (or whenever events occur which may indicate possible impairment) in accordance with SFAS No. 142, “Goodwill and Other Intangible Assets” (SFAS 142). We perform the impairment analysis at one level below the operating segment level (see Note 15) as defined in SFAS 142. This analysis requires management to make a series of critical assumptions to: (1) evaluate whether any impairment exists and (2) measure the amount of impairment.

In testing for a potential impairment of goodwill, SFAS 142 requires us to: (1) allocate goodwill to our various businesses to which the acquired goodwill relates; (2) estimate the fair value of those businesses to which goodwill relates; and (3) determine the carrying value (book value) of those businesses, as some of the assets and liabilities related to those businesses, such as accounts receivable and property, plant and equipment, are not held by those businesses but by functional departments (for example, our Global Sales and Services organization and Worldwide Operations organization). Prior to this allocation of the assets to the reporting units, we are required to assess long-lived assets for impairment in accordance with SFAS 144. Furthermore, if the estimated fair value is less than the carrying value for a particular business, then we are required to estimate the fair value of all identifiable assets and liabilities of the business in a manner similar to a purchase price allocation for an acquired business. This can require independent valuations of certain internally generated and unrecognized intangible assets such as in-process research and development and developed technology. Only after this process is completed can the goodwill impairment be determined, if any.

In estimating the fair value of the businesses with recognized goodwill for the purposes of our annual or periodic analyses, we make estimates and judgments about the future cash flows of these businesses. Our cash flow forecasts are based on assumptions that are consistent with the plans and estimates we are using to manage the underlying businesses. In addition, we make certain judgments about allocating shared assets such as accounts receivable and property, plant and equipment to the estimated balance sheet for those businesses. We also consider our market capitalization (adjusted for unallocated monetary assets such as cash, marketable debt securities and debt) on the date we perform the analysis.

Capitalized Software

Costs related to internally-developed software and software purchased for internal use, which are required to be capitalized pursuant to Statement of Position (SOP) No. 98-1, “Accounting for Costs of Computer Software Developed or Obtained for Internal Use,” are included in property, plant and equipment under machinery and equipment. As of June 30, 2008 and 2007, we had a net balance of $378 million and $237 million, respectively, of capitalized software. At June 30, 2008 and 2007, we had approximately $214 million and $152 million of capitalized software that was not yet in use and, as such, was not yet being amortized. Of this $214 million, $186 million is related to our multi-year internal systems implementation effort.

Concentration of Credit Risk

Cash deposits in foreign countries of approximately $565 million are subject to local banking laws and may bear higher or lower risk than cash deposited in the United States. As part of our cash and investment management processes, we perform periodic evaluations of the credit standing of the financial institutions and we have not sustained any credit losses from instruments held at these financial institutions.

Financial instruments that potentially subject us to concentrations of credit risk consist principally of trade receivables, marketable securities, foreign exchange contracts and interest rate instruments. The counterparties to the agreements relating to our investments, foreign exchange contracts and interest rate instruments consist of various major corporations and financial institutions with high credit standing and accordingly we do not believe there is significant risk related to non-performance by these counterparties due to credit risk. With regard to our investment portfolio, we generally limit our exposure to any investment of no more than 5% of our total portfolio excluding U.S. government and agency securities. Our trade receivables are derived primarily from sales of our products and services to end-user customers in diversified industries, as well as various resellers. We perform ongoing credit evaluations of our customers’ financial condition and limit the amount of credit extended when deemed necessary, but generally require no collateral.

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Revenue Recognition

We enter into revenue arrangements to sell products (hardware and software) and services in which we are obligated to deliver to our customers multiple products and/or services (multiple deliverables). Revenue arrangements with multiple deliverables are evaluated to determine if the deliverables (items) can be divided into more than one unit of accounting. An item can generally be considered a separate unit of accounting if all of the following criteria are met:

- The delivered item(s) has value to the customer on a standalone basis;
- There is objective and reliable evidence of the fair value of the undelivered item(s); and
- If the arrangement includes a general right of return relative to the delivered item(s), delivery or performance of the undelivered item(s) is considered probable and substantially in our control.

Items that do not meet these criteria are combined into a single unit of accounting. If there is objective and reliable evidence of fair value for all units of accounting, the arrangement consideration is allocated to the separate units of accounting based on their relative fair values. In cases where there is objective and reliable evidence of the fair value of the undelivered item(s) in an arrangement but no such evidence for the delivered item(s), the residual method is used to allocate the arrangement consideration. For units of accounting which include more than one deliverable, we generally defer all revenue for the unit of accounting until the period over which the last undelivered item is delivered. The revenue policies described below are then applied to each unit of accounting.

We recognize revenue when the following criteria are met: 1) persuasive evidence of an arrangement exists; 2) delivery has occurred or services have been rendered; 3) the sales price is fixed or determinable; and 4) collectibility is reasonably assured. Our standard agreements generally do not include customer acceptance provisions. However, if there is a customer acceptance provision or there is uncertainty about customer acceptance, the associated revenue is deferred until we have evidence of customer acceptance.

Products Revenue

Products revenue for sales to end-user customers, resellers and distributors (Channel Partners) is recognized upon the passage of title only if all other applicable revenue recognition criteria are met. These criteria include the price to the buyer being substantially fixed or determinable at the date of sale and the amount of future returns to be reasonably estimated. Our program offerings to certain of our Channel Partners provide for the limited right to return our product for stock rotation. When applicable, we reduce revenue for rights to return our product based upon our historical experience. End-user customers generally do not have return rights. In accordance with contractual provisions, we offer price protection to certain of our Channel Partners and margin protection on certain transactions. When applicable under these contractual provisions, we reduce revenue based upon announced price adjustments and historical experience. In accordance with contractual provisions we may offer cooperative marketing funds based on a fixed dollar percentage of product sales to certain of our Channel Partners. We record such amounts as a reduction to revenue or, if we have evidence of fair value of the advertising benefit received, as marketing expense.

In addition, we sell products to leasing companies that, in turn, lease these products to end-users. In transactions where the leasing companies have no recourse to us in the event of default by the end-user, we recognize revenue at point of shipment or point of delivery, depending on the shipping terms and if all the other revenue recognition criteria have been met. In arrangements where the leasing companies have full recourse to us in the event of default by the end-user (defined as recourse leasing), we recognize both the product revenue and the related cost of the product as the payments are made to the leasing company by the end-user, generally ratably over the lease term. We had deferred revenue and related deferred costs of $12 million and $5 million at June 30, 2008 and $10 million and $4 million, at June 30, 2007, respectively, related to recourse leases which will be recognized in future periods.

For revenue arrangements with multiple deliverables that include or represent software products and services as well as any non-software deliverables for which a software deliverable is essential to its functionality, we apply the accounting guidance in SOP 97-2, “Software Revenue Recognition” in determining the timing of revenue recognition. The criteria assessed include the following: 1) the functionality of the delivered element(s) is not dependent on the undelivered element; 2) there is Sun-specific objective evidence of fair value of the undelivered element(s) and 3) delivery of the delivered element(s) represents the culmination of the earnings process for those element(s). If these criteria are not met, revenue is deferred until such criteria are met or until the last element is delivered. For arrangements within the scope of SOP 97-2, revenue is recognized ratably only in situations where one of the limited exceptions described in paragraph 12 of SOP 97-2 is met, such as where we agree to deliver unspecified additional software products in the future.

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Beginning in the second quarter of fiscal 2008, we introduced programs in certain geographic markets entitling our distributors to a reduced price on hardware when sold to the end customer with a support services contract. Accordingly, in these cases, we are no longer able to meet the criteria for revenue recognition under U.S. generally accepted accounting principles at the time of sale to our distributors. We have deferred revenue on these sales until our distributors sell the hardware to the end customer.

Services Revenue

Maintenance contract revenue is generally recognized ratably over the contractual period. Educational Services revenue is recognized as the services are rendered. Time and material and fixed price Professional Services contract revenue is recognized as the Professional Services are rendered, or upon completion of the services contract. If we can reliably evaluate progress to completion (based on total projected hours to be incurred as compared with hours already incurred), we recognize the revenue as the services are rendered and recognize the related costs as they are incurred. In instances where we cannot reliably estimate the total projected hours, we recognize revenue and the associated costs upon completion of the services contract. For fixed price Professional Services contracts when the current estimates of total contract revenue and contract cost indicate a loss, the estimated loss is recognized in the period the loss becomes evident.

Research and Development Expenditures

Costs related to the research, design and development of products are charged to research and development expenses as incurred. Software development costs are capitalized beginning when a product's technological feasibility has been established and ending when a product is available for general release to customers. Generally, our products are released soon after technological feasibility has been established. As a result, costs subsequent to achieving technological feasibility have not been significant and all software development costs have been expensed as incurred.

Shipping Costs

Our shipping and handling costs for product sales are included in cost of sales for all periods presented.

Advertising Costs

Advertising costs consist of development and placement costs of our advertising campaigns and are charged to expense when incurred. Advertising expense was $32 million, $25 million and $47 million for fiscal 2008, 2007 and 2006, respectively.

Self-Insurance

We maintain a program of insurance with third-party insurers for certain property, casualty and other risks. The policies are subject to deductibles and exclusions that result in our retention of a level of risk on a self-insurance basis. We retain risk with regard to (i) certain loss events, such as California earthquakes and the indemnification or defense payments we, as a company, may make to or on behalf of our directors and officers as a result of obligations under applicable agreements, our by-laws and applicable law, (ii) potential liabilities under a number of health and welfare insurance plans that we sponsor for our employees and (iii) other potential liabilities that are not insured. The types and amounts of insurance obtained vary from time to time and from location to location, depending on availability, cost and our decisions with respect to risk retention. Our worldwide risk and insurance programs are regularly evaluated to seek to obtain the most favorable terms and conditions. We reserve for loss accruals, which are primarily calculated using actuarial methods. These loss accruals include amounts for actual claims, claim growth and claims incurred but not yet reported. Actual experience, including claim frequency and severity as well as inflation, could result in different liabilities than the amounts currently recorded.

Computation of Net Income (Loss) per Common Share

Basic net income (loss) per common share is computed using the weighted-average number of common shares outstanding (adjusted for treasury stock and common stock subject to repurchase activity) during the period. Diluted net income (loss) per common share is computed using the weighted-average number of common and dilutive common equivalent shares outstanding during the period. Common equivalent shares are anti-dilutive when their conversion would increase earnings per share. Dilutive common equivalent shares consist primarily of stock options and restricted stock awards (restricted stock and restricted stock units that are settled in stock).

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On November 8, 2007, our stockholders approved a one-for-four reverse stock split, which became effective on November 12, 2007. All references to share and per-share data for all periods presented have been adjusted to give effect to this reverse split.

The following table sets forth the computation of basic and diluted income (loss) per share for each of the past three fiscal years (in millions, except per share amounts):

	Fiscal Years Ended June 30,		
	2008	2007	2006
Basic earnings per share			
Net income (loss)	$ 403	$ 473	$ (864)
Basic weighted average shares outstanding	809	883	859
Net Income (loss) per common share-basic	$ 0.50	$ 0.54	$ (1.01)
Diluted earnings per share			
Net income (loss)	$ 403	$ 473	$ (864)
Diluted weighted average shares outstanding	822	902	859
Net income (loss) per common share-diluted	$ 0.49	$ 0.52	$ (1.01)

For the fiscal years ended June 30, 2008 and 2007, we added 13 million and 19 million common equivalent shares, respectively, to our basic-weighted-average shares outstanding to compute the diluted weighted-average shares outstanding. We are required to include these dilutive shares in our calculations of net income per share for fiscal 2008 because we earned a profit. As a result of our net loss for the fiscal year ended June 30, 2006, all potentially dilutive shares were anti-dilutive and therefore excluded from the computation of diluted net loss per share.

Shares used in the diluted net income per share calculations exclude anti-dilutive common equivalent shares, consisting of stock options, restricted stock awards, written call options and shares associated with convertible notes. These anti-dilutive common shares totaled 113 million shares, 89 million shares and 137 million shares for the fiscal years ending June 30, 2008, 2007 and 2006, respectively. While these common equivalent shares are currently anti-dilutive, they could be dilutive in the future.

Foreign Currency Translation

We translate the assets and liabilities of our international non-U.S. dollar functional currency subsidiaries into dollars at the rates of exchange in effect at the balance sheet date. Revenue and expenses are translated using rates that approximate those in effect during the period. Translation adjustments are included in stockholders' equity in the Consolidated Balance Sheets caption "Accumulated other comprehensive income." Currency transaction gains (losses), net of our hedging activities (see Note 8), derived from monetary assets and liabilities stated in a currency other than the functional currency, are recognized in current operations and were $14 million, $6 million and $(13) million in fiscal 2008, 2007 and 2006, respectively. The effect of foreign currency rate changes on cash and cash equivalents is not material.

Recent Pronouncements

Income Taxes: In June 2006, the Financial Accounting Standards Board (FASB) issued Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — An Interpretation of FASB Statement No. 109" (FIN 48), which became effective for us on July 1, 2007. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes". FIN 48 also prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return that results in a tax benefit. Additionally, FIN 48 provides guidance on de-recognition, income statement classification of interest and penalties, accounting in interim periods and disclosure. Additionally, in May 2007, the FASB published FASB Staff Position (FSP) No. FIN 48-1, "Definition of Settlement in FASB Interpretation No. 48" (FSP FIN 48-1). It clarifies how an enterprise should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. FSP FIN 48-1 was effective upon the initial adoption of FIN 48. Our policy is to recognize interest and penalty expense associated with uncertain tax positions as a component of income tax expense in the consolidated statements of operations. Refer to Footnote 10 of our consolidated financial statements for further information regarding the impact of this pronouncement.

Fair Value Measurements: In September 2006, the FASB issued Statement No. 157, "Fair Value Measurements" (SFAS 157). SFAS 157 defines fair value, establishes a framework and gives guidance regarding the methods used in measuring fair value and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years and we are required to adopt the pronouncement in the first quarter of our fiscal 2009. On February 12, 2008, the FASB issued No. SFAS 157-2, "Effective Date of FASB Statement No. 157" (FSP SFAS 157-2). FSP SFAS 157-2 amends SFAS No. 157, to delay the effective date of SFAS

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157 for nonfinancial assets and nonfinancial liabilities, except for the items that are recognized or disclosed at fair value in the financial statements on a recurring basis. For items within its scope, FSP SFAS 157-2 defers the effective date of SFAS 157 to fiscal years beginning after November 15, 2008 and interim periods within those fiscal years and we are required to adopt the pronouncement in our first quarter of our fiscal 2010. We do not expect the adoption of SFAS 157 and FSP SFAS 157-2 to have a material impact on our consolidated financial statements.

Fair Value Option For Financial Assets and Financial Liabilities: In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities-including an amendment of FASB Statement No. 115" (SFAS 159). SFAS 159 allows an entity the irrevocable option to elect fair value for the initial and subsequent measurement of certain financial assets and liabilities on an instrument-by-instrument election. Subsequent measurements for the financial assets and liabilities an entity elects to fair value will be recognized in earnings. SFAS 159 also establishes additional disclosure requirements. This standard is effective for fiscal years beginning after November 15, 2007 and we are required to adopt the pronouncement in our first quarter of fiscal 2009. We do not expect the adoption of SFAS 159 to have a material impact on our consolidated financial statements.

Accounting For Advanced Payments For Future Research and Development: In June 2007, the FASB ratified Emerging Issues Task Force (EITF) 07-03, "Accounting for Nonrefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities" (EITF 07-03). EITF 07-03 requires that nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities be deferred and capitalized and recognized as an expense as the goods are delivered or the related services are performed. EITF 07-3 is effective, on a prospective basis, for fiscal years beginning after December 15, 2007 and we are required to adopt the pronouncement in our first quarter of fiscal 2009. We are currently evaluating the impact that the adoption of EITF 07-03 will have on our consolidated financial statements.

Collaborative Arrangements: In November 2007, the FASB ratified EITF 07-01, "Accounting for Collaborative Arrangements" (EITF 07-01). EITF 07-01 requires collaborators to present the result of activities for which they act as the principal on a gross basis and report any payments received from (made to) other collaborators based on other applicable GAAP or, in the absence of other applicable GAAP, based on analogy to authoritative accounting literature or a reasonable, rational and consistently applied accounting policy election. In addition, a participant in a collaborative arrangement should provide the following disclosures separately for each collaborative arrangement: (a) the nature and purpose of the arrangement, (b) its rights and obligations under the collaborative arrangement, (c) the accounting policy for the arrangement in accordance with APB Opinion 22, "Disclosure of Accounting Policies," and (d) the income statement classification and amounts arising from the collaborative arrangement between participants for each period an income statement is presented. EITF 07-01 will be effective for annual periods beginning after December 15, 2008 and we are required to adopt the pronouncement in our first quarter of fiscal 2010. We are currently evaluating the impact that the adoption of EITF 07-01 will have on our consolidated financial statements.

Business Combinations: In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations" (SFAS 141(R)) and SFAS No. 160, "Non-Controlling Interests in Consolidated Financial Statements, an Amendment of ARB No. 51" (SFAS 160). These new standards will significantly change the accounting for and reporting for business combination transactions and non-controlling interests in consolidated financial statements. SFAS 141(R) and SFAS 160 are required to be adopted simultaneously and are effective for the first annual reporting period beginning on or after December 15, 2008 and we are required to adopt the pronouncement in the first quarter of our fiscal 2010. We are currently evaluating the impact that the adoption of SFAS 141(R) and SFAS 160 will have on our consolidated financial statements.

Derivative Instruments and Hedging Activities Disclosures: In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities — An Amendment of FASB Statement No. 133" (SFAS 16). SFAS 161 expands the disclosure requirements for derivative instruments and hedging activities. This Statement specifically requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows. SFAS 161 is effective for fiscal years and interim periods beginning after November 15, 2008 and we are required to adopt the pronouncement in our first quarter of fiscal 2010. We are currently evaluating the impact that the adoption of SFAS 161 will have on our consolidated financial statements.

Intangibles: In April 2008, FASB issued FSP 142-3, which amends the factors that must be considered in developing renewal or extension assumptions used to determine the useful life over which to amortize the cost of a recognized intangible asset under FASB Statement No. 142, "Goodwill and Other Intangible Assets" (FSP 142-3). The FSP requires an entity to consider its own assumptions about renewal or extension of the term of the arrangement, consistent with its expected use of the asset. The FSP also requires that we disclose the weighted-average period prior to the next renewal or extension for each major intangible asset class, our accounting policy for the treatment of costs incurred to renew or extend the term of a recognized intangible assets and for intangible assets renewed or extended during the period, if we capitalize renewal or extension costs, the costs incurred to

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renew or extend the asset and the weighted-average period prior to the next renewal or extension for each major intangible asset class. The FSP is effective for financial statements for fiscal years beginning after December 15, 2008 and we are required to adopt the pronouncement in our first quarter of fiscal 2010.

Accounting For Convertible Debt: In May 2008, the FASB issued FSP APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion", (FSP APB 14-1). The FSP will require us to separately account for the liability and equity components of the instrument in a manner that reflects our nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The FSP will require bifurcation of a component of the debt, classification of that component in equity and then accretion of the resulting discount on the debt as part of interest expense being reflected in the income statement. In addition, the FSP will require certain additional disclosures that were not included in the original proposal. The FSP will be effective for fiscal years beginning after December 15, 2008 and we are required to adopt the FSP in our first quarter of fiscal 2010. The FSP will not permit early application and will require retrospective application to all periods presented. We are currently evaluating the impact that the adoption of the FSP will have on our consolidated financial statements.

3. Balance Sheet Details

Inventories

At June 30, Inventories consisted of the following (in millions):

	2008	2007
Raw materials	$154	$125
Work in process	90	95
Finished goods	436	304
	$680	$524

As of June 30, 2008 and 2007, our inventory balances were net of reserves of approximately $88 million and $76 million, respectively.

Prepaid Expenses and Other Current Assets, Net

At June 30, Prepaid expenses and other current assets, net, consisted of the following (in millions):

	2008	2007
Receivables — other	$ 351	$ 454
Other prepaid expenses and other current assets, net	867	604
	$1,218	$1,058

Property, Plant and Equipment, Net

On January 25, 2008, we sold our Louisville, Colorado facility which included buildings, leasehold improvements and land, in a sale-leaseback transaction for $58.5 million in cash, net of $1.5 million of closing costs. As of June 30, 2007, these assets totalling approximately $29 million, were classified as Assets Held for Sale. We recognized the entire gain of $28 million in our fiscal year ended June 30, 2008, as an offset to our selling, general and administrative expenses in our Consolidated Statements of Operations. Cash received from the transaction was netted against purchases of property, plant and equipment in our Consolidated Statements of Cash Flow. In conjunction with the transaction, we entered into a lease for the same facility. Under the terms of the agreement, we will lease certain portions of the facility until December 31, 2008. We have not retained more than a minor portion of the property as the present value of the rental for this leaseback represents less than ten percent of the fair value of the asset sold. Accordingly, we have recognized the entire gain on disposal in the financial statements for our fiscal year ended June 30, 2008.

We committed to the closure of our Newark, California facility as a result of the restructuring plan during fiscal 2006. Management estimated the fair value of these assets using either available market prices or third-party appraisals and adjusted the carrying value of the facility to its fair value less costs to sell. These adjustments resulted in a $80 million impairment loss for Newark recorded in fiscal 2006. During fiscal 2007, we entered into sale-leaseback transactions for our Newark, California and Burlington, Massachusetts campuses. In July 2006, we sold our Newark facility for approximately $213 million, net of $1 million in closing costs. In June 2007, we sold our Burlington, Massachusetts, facility which included buildings, leasehold improvements and land, in a cash transaction for $212 million, net of $3 million of closing costs and entered into a lease for the same facilities. Under the terms of the agreement, we will lease a majority of the properties until fiscal 2014 and shall have the right to extend the term for two successive periods of five years each, with respect to all of the premises. Of the $90 million gain

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on the Burlington, Massachusetts transaction, we recognized $39 million in our fiscal year ended June 30, 2007, as an offset to our selling, general and administrative expenses and deferred the remaining $51 million (see *Other non-current obligations* below).

At June 30, Property, plant and equipment, net consisted of the following (in millions):

	2008	2007
Machinery and equipment	$ 2,429	$ 2,716
Land, buildings and building improvements	1,084	1,070
Capitalized software	624	512
Leasehold improvements	521	512
Furniture and fixtures	222	267
	4,880	5,077
Less accumulated depreciation and amortization	(3,269)	(3,573)
	$ 1,611	$ 1,504

Depreciation expense was $377 million, $407 million and $441 million for fiscal 2008, 2007 and 2006, respectively.

Accrued Liabilities and Other

At June 30, Accrued liabilities and other consisted of the following (in millions):

	2008	2007
Restructuring liabilities	$ 173	$ 81
Acquisition-related restructuring liabilities	17	42
Other accrued liabilities	915	838
	$1,105	$961

Warranty Reserve

We accrue for our product warranty costs at the time of shipment. These product warranty costs are estimated based upon our historical experience and specific identification of product requirements and may fluctuate based on product mix.

The following table sets forth an analysis of warranty reserve activity (in millions):

Balance at June 30, 2006	$ 261
Charged to costs and expenses	295
Utilized	(336)
Balance at June 30, 2007	$ 220
Charged to costs and expenses	290
Utilized	(304)
Balance at June 30, 2008	$ 206

Other Non-Current Obligations

At June 30, Other non-current obligations, consisted of the following (in millions):

	2008	2007
Income taxes liabilities, net	$ 316	$ 373
Restructuring liabilities	163	194
Deferred settlement income from Microsoft	352	352
Other non-current obligations	305	366
	1,136	$1,285

In connection with the sale-leaseback of our Burlington, Massachusetts, facility we deferred $51 million of the gain on sale in fiscal year 2007. Of the initial amount deferred, $6 million remains in Accrued liabilities and other and $38 million remains in Other non-current obligations at June 30, 2008. The amounts deferred will be amortized as an offset to selling, general and administrative expenses over the remaining lease term. In fiscal year 2008 we recognized $6 million of the deferred gain as an offset to our selling, general and administrative expenses.

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Accumulated Other Comprehensive Income

At June 30, the components of Accumulated other comprehensive income, reflected in the Consolidated Statements of Stockholders' Equity consisted of the following (in millions):

	2008	2007	2006
Unrealized gains (losses) on investments, net	$ (13)	$ 11	$ 9
Unrealized losses on derivative instruments and other, net	(9)	(5)	(7)
Unrealized gains (losses) on pensions	12	(26)	(13)
Cumulative translation adjustments	503	334	191
	$493	$314	$180

At June 30, the net change in unrealized gains (losses) on investments consisted of the following (in millions):

	2008	2007	2006
Net unrealized gains (losses)	$(14)	$ 9	$ (9)
Add (gains) losses:			
Included in net income (loss) for the period	(10)	(9)	7
Written off due to impairment	—	2	—
Net change in unrealized gains (losses) on investments	$(24)	$ 2	$ (2)

4. Business Combinations

A summary of our acquisitions for the fiscal years ended June 30, 2008, 2007 and 2006 is included in the following table (in millions):

Entity Name and Description of Acquisition	Date	Form of Consideration		Goodwill	Developed Technology	Other Intangible Assets	Net Tangible Assets (Liabilities) and Unearned Compensation	IPRD
Fiscal 2008 Acquisitions								
MySQL	02/08	$ 797	Cash paid	$ 711	$ 82	$ 103	$ (20)	$ 28
Database Software		102	Fair value of options assumed					
		5	Cash paid for acquisition costs					
		$ 904						
Other fiscal 2008 acquisitions[1]	Various	$ 160	Cash paid	$ 103	$ 21	$ 36	$ —	$ 3
		—	Fair value of options assumed					
		3	Cash paid for acquisition costs					
		$ 163						
Fiscal 2007 Acquisitions								
Fiscal 2007 acquisitions[1]	Various	$ 23	Cash paid	$ 7	$ 15	$ 2	$ —	$ —
		—	Fair value of options assumed					
		1	Cash paid for acquisition costs					
		$ 24						
Fiscal 2006 Acquisitions								
Storage Technology Corporation[2]	08/05	$3,987	Cash paid	$ 1,886	$ 507	$ 606	$ 1,034	$ 49
Data storage hardware & software		80	Fair value of options assumed					
		15	Cash paid for acquisition costs					
		$4,082						
SeeBeyond Technology Corporation[2]	08/05	$ 362	Cash paid	$ 252	$ 34	$ 53	$ 25	$ 11
Business integration software		8	Fair value of options assumed					
		5	Cash paid for acquisition costs					
		$ 375						
Other fiscal 2006 Acquisitions	Various	$ 37	Cash paid	$ 31	$ 11	$ 5	$ (8)	$ —
Patch management application, Software to		—	Fair value of options assumed					
access and manage information, data and applications		2	Cash paid for acquisition costs					
		$ 39						

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(1) In accordance with SFAS 141 "Business Combinations," some of these acquisitions were accounted for as a purchase of assets as defined by EITF Issue No. 98-3 "Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business" rather than as a business combination. Accordingly, no goodwill was recorded from these acquisitions, as consideration in excess of the fair value of identified assets was allocated pro-rata to the identified intangible assets.
(2) Net tangible assets acquired included acquisition-related restructuring liabilities of $172 million (StorageTek) and $11 million (SeeBeyond).

MySQL

On February 25, 2008, we acquired all of the outstanding shares of MySQL, a company based in Uppsala, Sweden, for approximately $904 million including $797 million in cash, assumed employee stock options with a fair value (estimated using the Black-Scholes model) of approximately $102 million and transaction costs of $5 million. The options assumed in the acquisition were converted into options to purchase 11.9 million shares of our common stock. MySQL provides open source and proprietary database technology and software as well as services, to a wide range of customers in different industry segments and stages of growth. The results of operations of MySQL are included in the Consolidated Statement of Operations from the date of acquisition.

Purchase Price Allocation

The total purchase price of approximately $904 million was allocated as follows (in millions):

Goodwill	$711
Other intangible assets:	
Customer base	71
Developed technology	82
Trademarks	32
Tangible assets acquired and net liabilities assumed	(20)
In-process research and development (IPRD)	28
Total	$904

Other Acquisitions in Fiscal 2008

During fiscal 2008, we acquired three other companies and purchased certain technology and development assets for a total purchase price of approximately $163 million. We recorded approximately $103 million of goodwill, $57 million of identifiable intangible assets and $3 million of in-process research and development in connection with these acquisitions. We have included the effects of these transactions in our results of operations prospectively from the respective dates of the acquisitions. Projects that qualify for treatment as IPRD have not yet reached technological feasibility and have no alternative use.

Pro forma results of operations have not been presented for MySQL or our other acquisitions because the effects of these acquisitions were not material to our consolidated results of operations on either an individual or on an aggregate basis.

Acquisitions Prior to Fiscal 2008

SeeBeyond

On August 25, 2005, we acquired all of the outstanding shares of SeeBeyond, a publicly held company based in Monrovia, California (NASDAQ: SBYN). Under the terms of the agreement, SeeBeyond stockholders received $4.25 per share in cash for each SeeBeyond share and certain SeeBeyond stock option holders received cash equal to the difference between $4.25 per share and the exercise price of such stock options. In addition, certain other outstanding options to purchase SeeBeyond common stock were converted into options to purchase shares of our stock. SeeBeyond provided business integration software via its Integrated Composite Application Network (ICAN) suite (now part of Sun's Java CAPS products), which enables the real-time flow of information within the enterprise and among customers, suppliers and partners. This acquisition strengthened our software portfolio and created a complete offering for the development, deployment and management of enterprise applications and Service Oriented Architectures.

StorageTek

On August 31, 2005, we acquired all of the outstanding shares of StorageTek, a publicly held company based in Louisville, Colorado (NYSE: STK). Under the terms of the agreement, StorageTek stockholders received $37 per share in cash for each

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StorageTek share and certain holders of StorageTek stock options received cash equal to the difference between $37 per share and the exercise price of such options. In addition, certain other outstanding options to purchase StorageTek common stock were converted into options to purchase shares of our stock. We acquired StorageTek in order to offer customers a complete range of products, services and solutions for securely managing mission-critical data assets.

During fiscal 2008 and 2007, we recorded adjustments of approximately $79 million and $100 million, respectively, to decrease goodwill and increase net tangible assets acquired as a result of adjustments to acquired deferred tax assets, resolution of certain pre-acquisition tax contingencies and decreases to estimates of costs associated with restructuring activities.

Pro forma results

The unaudited financial information in the table below summarizes the combined results of operations of Sun and StorageTek, on a pro forma basis, as though the companies had been combined as of the beginning of our fiscal year ended June 30, 2006. Sun's results of operations for the year ended June 30, 2006 included the results of StorageTek since August 31, 2005, the date of acquisition. The unaudited pro forma financial information for the year ended June 30, 2006 combines Sun's results for this period with the results for StorageTek for the period from July 2, 2005 to August 30, 2005. The pro forma financial information presented below is for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place at the beginning of our fiscal year ended June 30, 2006 (in millions, except for per share amounts):

	June 30, 2006
Revenues	$13,265
Net loss	$ (915)
Net loss per share — basic and diluted	$ (1.07)

Acquisition-related Restructuring Costs

As a result of our acquisition of StorageTek, we recorded acquisition-related restructuring costs associated with the costs of integrating operating locations and activities of StorageTek with those of Sun and eliminating duplicative activities. U.S. GAAP (EITF 95-3, "Recognition of Liabilities in Connection with Purchase Business Combinations") requires that these acquisition-related restructuring costs, which are not associated with the generation of future revenues and have no future economic benefit, be recorded as assumed liabilities in the allocation of the purchase price. As a result, during the year ended June 30, 2006, we recorded approximately $172 million of restructuring costs in connection with the StorageTek acquisition, which were based upon plans committed to by management. To estimate restructuring liabilities, management utilized assumptions of the number of employees that would be involuntarily terminated and of costs associated with the disposition of duplicate or excess acquired facilities. Decreases to the estimate of costs associated with executing the approved acquisition-related restructuring plans are recorded as adjustments to goodwill indefinitely, whereas increases to the estimates are recorded as adjustments to goodwill during the purchase price allocation period and as operating expenses thereafter. Accordingly, during the year ended June 30, 2008, decreases to the provision totaling $4 million were recorded as a reduction to goodwill. The following table sets forth an analysis of the components of the acquisition-related restructuring liabilities (in millions):

	Severance and Benefits	Facilities Related	Termination of Contract	Total
Balance as of June 30, 2006	$ 73	$ 45	$ 27	$145
Cash paid	(56)	(18)	(18)	(92)
Provision adjustments	—	6	(8)	(2)
Balance as of June 30, 2007	$ 17	$ 33	$ 1	$ 51
Cash paid	(10)	(14)	—	(24)
Provision adjustments	(3)	—	(1)	(4)
Balance as of June 30, 2008	$ 4	$ 19	$ 0	$ 23

As of June 30, 2008 and 2007, our estimated sublease income to be generated from sublease contracts not yet negotiated approximated $4 million and $5 million, respectively.

IPRD

For all of our acquisitions, the amounts allocated to purchased IPRD were determined through established valuation techniques in the high-technology industry and were expensed upon acquisition because technological feasibility had not been established and no future alternative uses existed. Technological feasibility is defined as being equivalent to a beta-phase working prototype

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in which there is no remaining risk relating to the development. Research and development costs to bring the products from the acquired companies to technological feasibility are not expected to have a material impact on our future results of operations or cash flows.

The value assigned to IPRD was determined by considering the importance of each project to the overall development plan, estimating costs to develop the purchased IPRD into commercially viable products, estimating the resulting net cash flows from the projects when completed and discounting the net cash flows to their present value. The revenue estimates used to value the purchased IPRD were based on estimates of the relevant market sizes and growth factors, expected trends in technology and the nature and expected timing of new product introductions.

The rates utilized to discount the net cash flows to their present values were based on weighted-average cost of capital. The weighted-average cost of capital was adjusted to reflect the difficulties and uncertainties in completing each project and thereby achieving technological feasibility, the percentage of completion of each project, anticipated market acceptance and penetration, market growth rates and risks related to the impact of potential changes in future target markets. Based on these factors, discount rates that generally range from 12% to 22% were deemed appropriate for valuing the purchased IPRD.

The estimates used in valuing IPRD were based upon assumptions believed to be reasonable but which are inherently uncertain and unpredictable. Assumptions may be incomplete or inaccurate, and unanticipated events and circumstances may occur. Accordingly, actual results may differ from the projected results.

5. Goodwill and Other Acquisition-related Intangible Assets, Net

Information regarding our goodwill by operating segment is as follows (in millions):

	Product Group	Services Group	Total
Balance as of June 30, 2006	$1,321	1,289	2,610
Goodwill acquired during the period	—	7	7
Adjustment to acquired companies' tax and restructuring reserves	(43)	(60)	(103)
Balance as of June 30, 2007	$1,278	$1,236	$2,514
Goodwill acquired during the period	609	205	814
Adjustment to acquired companies' tax and restructuring reserves	(59)	(54)	(113)
Balance as of June 30, 2008	$1,828	$1,387	$3,215

Information regarding our other acquisition-related intangible assets is as follows (in millions):

	Gross Carrying Amount			Accumulated Amortization			Net
	June 30, 2007	Additions	June 30, 2008	June 30, 2007	Additions	June 30, 2008	June 30, 2008
Developed technology	$ 904	$ 103	$1,007	$ (612)	$ (141)	$ (753)	$ 254
Customer base	651	80	731	(361)	(162)	(523)	208
Trademark	63	34	97	(14)	(5)	(19)	78
Acquired workforce and other	95	25	120	(93)	(2)	(95)	25
	$1,713	$ 242	$1,955	$(1,080)	$ (310)	$(1,390)	$ 565

	Gross Carrying Amount				Accumulated Amortization				Net
	June 30, 2006	Additions	Impairment	June 30, 2007	June 30, 2006	Additions	Impairment	June 30, 2007	June 30, 2007
Developed technology	$ 889	$ 15	$ —	$ 904	$ (471)	$ (141)	$ —	$ (612)	$ 292
Customer base	650	1	—	651	(204)	(157)	—	(361)	290
Trademark	63	—	—	63	(10)	(4)	—	(14)	49
Acquired workforce and other	94	1	—	95	(82)	(11)	—	(93)	2
	$1,696	$ 17	$ —	$1,713	$ (767)	$ (313)	$ —	$(1,080)	$ 633

Amortization expense of other acquisition-related intangible assets was $310 million and $313 million for the fiscal years ended June 30, 2008 and June 30, 2007. Our acquisition-related intangible assets are amortized generally over periods ranging between one and five years on a straight-line basis.

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Estimated amortization expense for other acquisition-related intangible assets on our June 30, 2008 balance sheet for the fiscal years ending June 30, is as follows (in millions):

2009	$ 294
2010	103
2011	55
2012	46
2013 and thereafter	67
	$ 565

As a result of our Phase VI restructuring activities, we exited certain acquired StorageTek product lines and recorded impairment charges of $67 million during fiscal 2006. These product line exits were not part of our acquisition integration plan and were conducted to meet our fiscal 2006 operating goals. The impairment charge related to acquired StorageTek developed technology and was recorded in our Product group segment. As a result of the product line exit plans, we do not expect future cash flows from these acquired technologies. The full amount of the remaining intangible asset balances for these product lines were written off as an impairment charge during fiscal 2006.

During the fourth quarter of fiscal 2006, as a result of operating shortfalls and budget cuts which impacted our ability to realize the expected future benefits of developed technology assets acquired as part of our January 2004 acquisition of Nauticus, we recorded non-cash impairment charges of $3 million in our Product group segment.

6. Restructuring Charges and Related Impairment of Long-Lived Assets

In accordance with SFAS 112, “Employers’ Accounting for Post Employment Benefits” (SFAS 112) and SFAS 146, “Accounting for Costs Associated with Exit or Disposal Activities” (SFAS 146**)**, we recognized a total of $263 million, $97 million and $284 million in restructuring and related impairment of long-lived assets for the fiscal years ended June 30, 2008, 2007 and 2006, respectively. The determination of when we accrue for severance costs and which standard applies depends on whether the termination benefits are provided under a one-time benefit arrangement as defined by SFAS 146 or under an on-going benefit arrangement as described in SFAS 112.

We estimated the cost of exiting and terminating our facility leases or acquired leases by referring to the contractual terms of the agreements and by evaluating the current real estate market conditions. In addition, we have estimated sublease income by evaluating the current real estate market conditions or, where applicable, by referring to amounts being negotiated. Our ability to generate this amount of sublease income, as well as our ability to terminate lease obligations at the amounts we have estimated, is highly dependent upon the commercial real estate market conditions in certain geographies at the time we perform our evaluations or negotiate the lease termination and sublease arrangements with third parties. The amounts we have accrued represent our best estimate of the obligations we expect to incur and could be subject to adjustment as market conditions change.

Restructuring Plan VIII

In May 2008, we initiated a restructuring plan to further align our resources with our strategic business objectives through reducing our workforce by approximately 1,500 to 2,500 employees. Under this plan, we estimate in total that we will incur between $130 million to $220 million in severance and benefit costs. Through the end of fiscal year 2008, we recognized total related severance and benefit costs of $107 million. The remainder of the estimated costs under this restructuring plan are expected to be incurred during fiscal 2009.

Restructuring Plan VII

In August 2007, we initiated a restructuring plan to further align our resources with our strategic business objectives (Restructuring Plan VII). Through the end of fiscal year 2008, we notified approximately 1,450 employees of their termination and recognized total related severance and benefit costs of $135 million. Additionally, we incurred $6 million in expenses related to facilities other restructuring related charges.

Restructuring Plan VI

In May 2006, we implemented a plan to better align our resources with our strategic business objectives (Restructuring Plan VI). This plan included reducing our workforce across certain business functions, operating units and geographic regions as well as implementing other expense reduction measures. Through the end of fiscal year 2008, excluding natural attrition and acquisition-related restructuring activity, we reduced our workforce by approximately 2,150 employees and recognized cumulative expenses relating to severance and benefit costs of $192 million, primarily in workforce reduction charges associated with Restructuring Plan VI.

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Restructuring Plans Prior to Phase VI

Prior to the initiation of Restructuring Plans VI, VII and VIII, we implemented certain workforce reduction and facilities exit actions. All employees to be terminated under these plans have been notified and all facilities relating to the amounts accrued under these restructuring plans have been exited.

The following table sets forth an analysis of our restructuring accrual activity for the months ended June 30, 2008 (in millions):

	Restructuring Plans					
	VIII	VII		VI	Prior to VI	
	Severance and Benefits	Severance and Benefits	Facilities Related and Other	Severance, Benefits, Facilities Related, and Other	Severance, Benefits, Facilities Related, and Other	Total
Balance as of June 30, 2005	—	—	—	—	470	470
Severance and benefits	—	—	—	133	61	194
Accrued lease costs	—	—	—	—	12	12
Property and equipment impairment	—	—	—	5	80	85
Provision adjustments	—	—	—	—	(7)	(7)
Total restructuring charges	—	—	—	138	146	284
Cash paid	—	—	—	(1)	(208)	(209)
Non-cash	—	—	—	(5)	(80)	(85)
Balance as of June 30, 2006	—	—	—	132	328	460
Severance and benefits	—	—	—	68	—	68
Property and equipment impairment	—	—	—	19	—	19
Provision adjustments	—	—	—	(2)	12	10
Total restructuring charges	—	—	—	85	12	97
Cash paid	—	—	—	(162)	(91)	(253)
Non-cash	—	—	—	(26)	(3)	(29)
Balance as of June 30, 2007			—	29	246	275
Severance and benefits	107	141	—	—	—	248
Property and equipment impairment and other	—	—	6	—	—	6
Provision adjustments	—	(6)	—	—	15	9
Total restructuring charges	$ 107	$ 135	$ 6	$ —	$ 15	$ 263
Cash paid	—	(115)	(4)	(24)	(56)	(199)
Non-Cash	—	—	—	(3)	—	(3)
Balance as of June 30, 2008	$ 107	$ 20	$ 2	$ 2	$ 205	$ 336

The restructuring charges are based on estimates that are subject to change. Changes to the previous estimates have been reflected as “Provision adjustments” on the above table in the period the changes in estimates were determined. As of June 30, 2008, our estimated sublease income to be generated from sublease contracts not yet negotiated approximated $13 million. Accrued lease costs include accretion expense associated with the passage of time.

The remaining cash expenditures relating to workforce reductions are expected to be paid over the next several quarters. Our accrual as of June 30, 2008, for facility-related leases (net of anticipated sublease proceeds), will be paid over their respective lease terms through fiscal 2024. As of June 30, 2008, of the total $336 million accrual for workforce reductions and facility-related leases, $173 million was classified as current accrued liabilities and other and the remaining $163 million was classified as other non-current obligations.

We anticipate recording additional charges related to our workforce and facilities reductions over the next several quarters, the timing of which will depend upon the timing of notification of the employees leaving as determined by local employment laws and as we exit facilities.

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7. Fair Value of Financial Instruments

Cash equivalents and accounts receivable are carried at cost as this approximates fair value due to their short term nature. For short-term and long-term marketable debt securities, estimates of fair value are based on market prices. At June 30, the fair values of our short-term and long-term marketable debt securities were as follows (in millions):

	2008				
	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Fair Value of Securities with Unrealized Losses
Corporate notes and bonds	$ 543	$ —	$ (7)	$ 536	$ 452
Asset and mortgage-backed securities	448	1	(19)	430	274
U.S. government notes and bonds	70	1	—	71	15
Certificates of deposit (<90 days)	22	—	—	22	—
Commercial paper (<90 days)	244	—	—	244	—
Government agency (<90 days)	256	—	—	256	—
Money market securities	1,097	—	—	1,097	—
Total marketable securities	$ 2,680	$ 2	$ (26)	$ 2,656	$ 741
Less cash equivalents				(1,618)	
Total marketable debt securities				1,038	
Less short-term portion				(429)	
Total long-term marketable debt securities				$ 609	

	2007				
	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Fair Value of Securities with Unrealized Losses
Corporate notes and bonds	$ 1,164	$ —	$ —	$ 1,164	$ 320
Asset and mortgage-backed securities	889	1	(4)	886	589
U.S. government notes and bonds	259	—	(2)	257	180
Commercial paper (<90 days)	139	—	—	139	—
Government agency (<90 days)	9	—	—	9	—
Money market securities	2,800	—	—	2,800	—
Other	15	—	—	15	15
Total marketable securities	$ 5,275	$ 1	$ (6)	$ 5,270	$ 1,104
Less cash equivalents				(2,948)	
Total marketable debt securities				2,322	
Less short-term portion				(962)	
Total long-term marketable debt securities				$ 1,360	

We only invest in debt securities with a minimum rating of BBB- or above from a nationally recognized credit rating agency. At June 30, 2008, we had investments in debt instruments of three issuers equal to or exceeding 2% of the fair market value of our marketable debt securities, including cash equivalents, of $2,656 million. At June 30, 2008, investment concentration by issuer was as follows (dollars in millions):

Issuer	Fair Value ($)	Fair Value (%)
Federal Home Loan Bank	$ 193	7.27%
Federal National Mortgage Association (Fannie Mae)	84	3.16%
Federal Home Loan Mortgage Corporation (Freddie Mac)	55	2.07%
All others[1]	2,324	87.50%
	$ 2,656	100.00%

(1) Investments in all other issuers were, individually, less than $53 million or 2% of the fair market value of our marketable debt securities of $2,656 million.

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Net realized losses before taxes on marketable debt securities totaled $4 million, $0 million and $15 million in fiscal 2008, 2007 and 2006, respectively, and were recorded in Interest and other income, net. The cost of securities sold during the year was determined based on the specific identification method. On April 27, 2006, our Chief Executive Officer and Board of Directors approved our domestic reinvestment plan. As a result, we repatriated $2 billion in unremitted foreign earnings during the fourth quarter of fiscal 2006 and realized a loss of $14 million associated with the liquidation of a portion of our marketable debt securities portfolio.

The following table summarizes the fair value and gross unrealized losses related to available-for-sale securities, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, as of June 30, 2008 (in millions):

	Less Than 12 Months			12 Months or Greater			Total		
	Adjusted Cost	Gross Unrealized Losses	Fair Value	Adjusted Cost	Gross Unrealized Losses	Fair Value	Adjusted Cost	Gross Unrealized Losses	Fair Value
Corporate Notes and Bonds	$ 349	$ (4)	$345	$ 110	$ (3)	$107	$ 459	$ (7)	$452
Asset and Mortgage Backed Securities	206	(14)	192	87	(5)	82	293	(19)	274
U.S. Government Notes and Bonds	15	—	15	—	—	—	15	—	15
Total Marketable Securities with Unrealized Losses	$ 570	$ (18)	$552	$ 197	$ (8)	$189	$ 767	$ (26)	$741

Corporate Notes and Bonds

The unrealized losses were caused by interest rate fluctuations. All of the securities are rated investment grade or better by Standard & Poors or Moody's. Because the decline in market value is attributed to changes in interest rates and not credit quality, and because we have the ability to hold those investments until recovery of fair value, which may be at maturity, we do not consider those investments to be other-than-temporarily impaired at June 30, 2008.

Asset Backed and Mortgage Backed Securities

Our unrealized loss on investments in asset backed and mortgage backed securities were caused by interest rate fluctuations. All of these securities are rated investment grade by Standard & Poors or Moody's. Because the decline in market value is attributed to changes in interest rates and not credit quality and because we have the ability to hold those investments until recovery of fair value, which may be at maturity, we do not consider those investments to be other-than-temporarily impaired at June 30, 2008.

U.S. Government Notes and Bonds

The unrealized losses were caused by interest rate fluctuations. These securities are direct obligations of the U.S. Treasury or U.S. Government Agency. Because we have the ability to hold those investments until a recovery, which may be maturity, we do not consider those investments to be other-than-temporarily impaired at June 30, 2008.

At June 30, 2008, the cost and estimated fair values of short-term and long-term marketable debt securities (excluding cash equivalents) by contractual maturity were as follows (in millions):

	Cost	Fair Value
Less than one year	$ 432	$ 429
Mature in 1-2 years	282	276
Mature in 3-5 years	189	186
Mature after 5 years	159	147
Total	$1,062	$ 1,038

Asset and mortgage-backed securities were allocated based on their contractual maturity.

Foreign Exchange and Interest Rate Contracts

Foreign currency forward contracts, interest-rate swap agreements and foreign currency option contracts are financial instruments with carrying values that approximate fair value. The fair value of foreign currency forward contracts is based on the estimated amount at which they could be settled based on market exchange rates. The fair value of the interest-rate swap agreements and the foreign currency option contracts is obtained from dealer quotes and represents the estimated amount we would receive or pay to terminate the agreements. However, analysis of market data is required to develop these estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that we could realize in a current market exchange.

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The fair value of our foreign currency forward contracts and foreign currency options contracts were as follows (in millions):

	Fair Value 2008 Asset	Fair Value 2007 Asset
Foreign currency forward contracts	$ 9	$ 22
Foreign currency option contracts	4	4
Total	$ 13	$ 26

Liabilities

Accounts payable, other accrued expenses and short-term debt are financial liabilities with carrying values that approximate the fair value. For our publicly traded Senior Notes, estimates of fair value are based on a calculation that uses market prices of similar instruments. For other debt, fair value is estimated based on rates currently available to us for debt with similar terms and remaining maturities. See Note 9, "*Borrowing Arrangements*" for details.

8. Derivative Financial Instruments

We enter into foreign exchange forward and option contracts that are designated and qualify as cash flow hedges under SFAS 133 "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133). Changes in the fair value of the effective portion of these outstanding forward and option contracts are recognized in Other Comprehensive Income (OCI). These amounts are reclassified from OCI and recognized in earnings when either the forecasted transaction occurs or it becomes probable that the forecasted transaction will not occur. Gains or losses resulting from changes in forecast probability were not material during fiscal 2008, 2007 and 2006.

Changes in the ineffective portion of a derivative instrument are recognized in earnings (classified in selling, general and administrative expense) in the current period. Effectiveness for forward cash flow hedge contracts is measured by comparing the fair value of the forward contract to the change in the forward value of the anticipated transaction. Changes in the fair value of the hedged exposure are captured using a hypothetical derivative whose critical terms reflect the anticipated transaction. Hedge ineffectiveness during fiscal 2008, 2007 and 2006 was not significant.

We do not use derivative financial instruments for speculative or trading purposes, nor do we hold or issue leveraged derivative financial instruments.

Foreign Exchange Exposure Management.

We have significant international sales and purchase transactions denominated in foreign currencies. As a result, we purchase currency option and forward contracts as cash flow hedges to reduce or eliminate certain foreign currency exposures that can be identified and quantified. These contracts generally expire within 12 months.

Our hedging contracts are primarily intended to protect against changes in the value of the U.S. dollar. Accordingly, for forecasted transactions, U.S. dollar functional subsidiaries hedge foreign currency revenues and non-U.S. dollar functional subsidiaries selling in foreign currencies hedge U.S. dollar inventory purchases. Gains and losses are reclassified from OCI as an adjustment to revenue or cost of sale in the same period that the underlying revenue and cost of sale is recognized in the Consolidated Statement of Operations. Most values reported in OCI at June 30, 2008, are expected to be reclassified to earnings within 12 months.

We also enter into foreign currency forward contracts to hedge against changes in the fair value of monetary assets and liabilities denominated in a non-functional currency. These derivative instruments are not designated as hedging instruments; therefore, changes in the fair value of these contracts are recognized immediately in selling, general and administrative expense as an offset to the changes in the fair value of the monetary assets or liabilities being hedged.

Interest Rate Risk Management.

We are exposed to interest rate risk from both investments and debt. We have hedged against the risk of changes in fair value associated with our fixed rate Senior Notes (See Note 9) by entering into fixed-to-variable interest rate swap agreements, designated as fair value hedges, of which four are outstanding, with a total notional amount of $550 million as of June 30, 2008. We assume no hedge ineffectiveness as each interest rate swap meets the short-cut method requirements under SFAS 133 for fair value hedges of debt instruments. As a result, changes in the fair value of the interest rate swaps are offset by changes in the fair value of the debt, both are reported in interest and other income and no net gain or loss is recognized in earnings.

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Accumulated Derivative Gains or Losses.

The following table summarizes activity in OCI related to foreign exchange derivatives held by us during the fiscal years ended June 30, (in millions):

	2008	2007	2006
Unrealized gain (loss), net, on derivative instruments, at beginning of period	$ (5)	$ (7)	$ 11
Decrease in fair value of derivatives	(45)	(24)	(17)
Losses (gains) reclassified from OCI:			
Revenues	31	27	5
Cost of sales	10	(1)	(6)
Unrealized loss, net, on derivative instruments, at end of period	$ (9)	$ (5)	$ (7)

9. Borrowing Arrangements

As of June 30, 2008 and 2007, the balance of long-term debt is as follows (in millions):

	Maturities	June 30, 2008	June 30, 2007
7.65% Senior Notes	2009	$ 550	$ 550
0.625% Convertible Notes	2012	350	350
0.75% Convertible Notes	2014	350	350
Interest rate swap agreements		21	17
Other		(6)	(2)
Total borrowing arrangements		$1,265	$1,265
Less: current maturities		—	(1)
Total carrying value long-term borrowing arrangements		$1,265	$1,264
Total fair value of long-term borrowings arrangements		$1,165	$1,233

In August 1999, we issued $1.5 billion of unsecured senior debt securities in four tranches (the Senior Notes) of which $550 million (due on August 15, 2009 and bearing interest at 7.65%) remain. Interest on the Senior Notes is payable semi-annually. We may redeem all or any part of the Senior Notes at any time at a price equal to 100% of the principal plus accrued and unpaid interest in addition to an amount determined by a quotation agent, representing the present value of the remaining scheduled payments. The Senior Notes are subject to compliance with certain covenants that do not contain financial ratios. We are currently in compliance with these covenants. If we failed to be in compliance with these covenants, the trustee of the Senior Notes or holders of not less than 25% in principal amount of the Senior Notes would have the ability to demand immediate payment of all amounts outstanding. In addition, we also entered into various interest-rate swap agreements to modify the interest characteristics of the Senior Notes so that the interest associated with the Senior Notes effectively becomes variable. For our publicly traded Senior Notes, estimates of fair value are based on market prices. For our other debt, fair value is calculated based on rates currently estimated to be available to us for debt with similar terms and remaining maturities.

Interest expense on our Senior Notes, including the effect of related interest rate swap agreements was $30 million, $39 million and $55 million in fiscal 2008, 2007 and 2006, respectively.

In January 2007, we issued $350 million principal amount of 0.625% Convertible Senior Notes due February 1, 2012 and $350 million principal amount of 0.75% Convertible Senior Notes due February 1, 2014 (the Convertible Notes), to KKR PEI Solar Holdings, I, Ltd., KKR PEI Solar Holdings, II, Ltd. and Citibank, N.A. in a private placement. We received proceeds of $700 million from the Convertible Notes and incurred net transaction costs of approximately $9 million, which were allocated proportionately to the 2012 Notes and the 2014 Notes. The net transaction costs of $9 million included: $8 million paid to Kohlberg Kravis Roberts & Co., L.P. (the sponsor) and recorded as a discount on debt in Long-term debt, and $1 million of other costs recorded in Other non-current assets, net. The net transaction costs are being amortized to interest expense ratably over five years for the 2012 Notes and seven years for the 2014 Notes. The Convertible Notes are being carried at cost less unamortized discount. The 2012 Notes and 2014 Notes were each issued at par and bear interest at 0.625% and 0.75% per annum, respectively. Interest is payable semi-annually in arrears on February 1 and August 1, beginning August 1, 2007.

Each $1,000 of principal of the Convertible Notes was initially convertible into 34.6619 shares of our common stock (or a total of approximately 24 million shares), which is the equivalent of $28.85 per share, subject to adjustment upon the occurrence of specified events set forth under terms of the Convertible Notes. Upon conversion, we would pay the holder the cash value of the applicable number of shares of our common stock, up to the principal amount of the note. Amounts in excess of the principal

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amount, if any, may be paid in cash or in stock, at our option. Holders may convert their Convertible Notes into common stock on a net settlement basis prior to the close of business on the business day immediately preceding the maturity date as follows:

- During any calendar quarter, and only during such calendar quarter, if the closing price of our common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter exceeds 130% of the conversion price per share of common stock on the last day of such preceding calendar quarter;
- During the five business day period immediately after any five consecutive trading day period (the Measurement Period) in which the trading price per $1,000 principal amount of notes for each day of such Measurement Period was less than 98% of the product of the closing price of the common stock on such date and the conversion rate on such date;
- If we elect to distribute to all holders of common stock (i) rights or warrants entitling all holders of our common stock to subscribe for or purchase, for a period expiring within 60 days after the record date for such distribution, shares of our common stock at less than the average of the closing prices of our common stock for the five consecutive trading days ending on the date immediately preceding the first public announcement of the distribution, or (ii) cash, debt securities (or other evidences of debt) or other assets (excluding certain dividends or distributions), which distribution, together with all other distributions within the preceding twelve months, has a per share value exceeding 10% of the average of the closing prices of our common stock for the five consecutive trading days ending on the date immediately preceding the first public announcement of the distribution;
- If a change in control occurs or if we are a party to a consolidation, merger, binding share exchange or transfer or lease of all or substantially all of our assets, pursuant to which our common stock would be converted into cash, securities or other assets; or
- At any time from January 1, 2012 (for the 2012 Notes) and January 1, 2014 (for the 2014 Notes) until the close of business on the business day immediately preceding their maturity dates.

Holders who convert their Convertible Notes in connection with a change in control may be entitled to a make-whole premium in the form of an increase in the conversion rate. In addition, upon a change in control, liquidation, dissolution or de-listing, the holders of the Convertible Notes may require us to repurchase for cash all or any portion of their Convertible Notes for 100% of the principal amount. As of June 30, 2008, none of the conditions allowing holders of the Convertible Notes to convert or requiring us to repurchase the Convertible Notes had been met.

Under the terms of the Convertible Notes, we filed a shelf registration statement regarding the Convertible Notes with the Securities and Exchange Commission. In addition, we must maintain the effectiveness of the shelf registration statement until such time as all of the Convertible Notes or underlying shares of our common stock have been sold under the shelf registration statement or Rule 144 under the Securities Act of 1933, as amended (the Securities Act), or are eligible for sale under Rule 144(k). If we fail to meet these terms, we will be required to pay additional interest on the Convertible Notes in the amount of 0.25% per annum.

Concurrent with the issuance of the Convertible Notes, we entered into note hedge transactions with a financial institution whereby we have the option to purchase up to 24 million shares of our common stock at a price of $28.84 per share, and we sold warrants to the same financial institution whereby they have the option to purchase up to 24 million shares of our common stock. The separate note hedge and warrant transactions were structured to reduce the potential future share dilution associated with the conversion of the Convertible Notes.

The note hedge transactions include an option for us to purchase 12.1 million shares expiring on February 1, 2012, and an option to purchase 12.1 million shares expiring on February 1, 2014. The options may be settled in net shares or cash, at our option. The cost of the note hedge transactions to us was approximately $103 million for the five-year call option and $125 million for the seven-year call option, and has been accounted for as an equity transaction in accordance with EITF No. 00-19, “Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company’s Own Stock” (EITF No. 00-19). The warrants were issued in two tranches, one to purchase 12.1 million shares expiring in May 2012 with a strike price of $36.92, and one to purchase 12.1 million shares expiring in May 2014 with a strike price of $40.40. The warrants may be settled on a net exercise basis, either in shares of stock or cash, at our option. We received approximately $145 million in cash proceeds from the sale of these warrants. The value of the warrants has been classified as equity because they meet all of the equity classification criteria within EITF No. 00-19.

In accordance with SFAS No. 128, *Earnings Per Share* (SFAS 128), the Convertible Notes will have no impact on diluted earnings per share, or EPS, until the price of our common stock exceeds the conversion price (initially $28.84 per share) because the principal amount of the Convertible Notes will be settled in cash upon conversion. Prior to conversion we will include the effect of the additional shares that may be issued if our common stock price exceeds the conversion price, using the treasury stock method.

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Also, in accordance with SFAS 128, the warrants sold in connection with the hedge transactions will have no impact on EPS until our share price exceeds $36.92 for the warrants that expire on May 1, 2012 and $40.40 for the warrants that expire on May 1, 2014. Prior to exercise, we will include the effect of additional shares that may be issued using the treasury stock method. The call options purchased as part of the note hedge transactions are anti-dilutive and therefore will have no impact on EPS.

As discussed in Note 2, in May 2008, the FASB issued FSP APB 14-1. The FSP will require us to separately account for the liability and equity components of the instrument in a manner that reflects our nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The FSP will require bifurcation of a component of the debt, classification of that component in equity and then accretion of the resulting discount on the debt as part of interest expense being reflected in the income statement. In addition, the FSP will require certain additional disclosures that were not included in the original proposal. The FSP will be effective for fiscal years beginning after December 15, 2008 and we are required to adopt the FSP in our first quarter of fiscal 2010. The FSP will not permit early application and will require retrospective application to all periods presented.

Uncommitted lines of credit

At June 30, 2008 and June 30, 2007, we and our subsidiaries had uncommitted lines of credit aggregating approximately $427 million and $386 million, respectively. No amounts were drawn from these lines of credit as of June 30, 2008 and June 30, 2007. Interest rates and other terms of borrowing under these lines of credit vary from country to country depending on local market conditions at the time of borrowing. There is no guarantee that the banks would approve our request for funds under these uncommitted lines of credit.

10. Income Taxes

Income tax expense is based on pretax financial accounting income. Deferred tax assets and liabilities are determined based on the difference between the U.S. GAAP financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse.

In the fiscal years ended June 30, income (loss) before income taxes and the provision for (benefit from) income taxes consisted of the following (in millions):

	2008	2007	2006
Income (loss) before income taxes:			
United States	$ 155	$129	$(1,097)
Foreign	455	454	422
Total income (loss) before income taxes	$ 610	$583	$ (675)
Provision for (benefit from) income taxes:			
Current:			
United States federal	$(113)	$ (42)	$ 77
State	5	(9)	(5)
Foreign	154	126	143
Total current income taxes	46	75	215
Deferred:			
United States federal	220	33	1
State	(23)	3	—
Foreign	(36)	(1)	(27)
Total deferred income taxes	161	35	(26)
Provision for (benefit from) income taxes	$ 207	$110	$ 189

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

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Significant components of our deferred tax assets and liabilities, at June 30, were as follows (in millions):

	2008	2007
Deferred tax assets:		
Inventory valuation	$ 35	$ 41
Reserves and other accrued expenses	195	222
Compensation not currently deductible	155	187
Net operating loss carryforwards	321	725
Deferred revenue	259	333
Tax credits carryforward	716	711
Investment impairments	57	101
Restructuring liability	114	97
Acquisition-related intangibles	89	93
Tax credits on unremitted earnings of foreign subsidiaries	380	588
Fixed assets	227	294
Convertible notes	72	85
Other	70	96
Gross deferred tax assets	2,690	3,573
Valuation allowance	(1,642)	(2,373)
Realizable deferred tax assets	1,048	1,200
Deferred tax liabilities:		
Net unremitted earnings of foreign subsidiaries	(644)	(887)
Acquisition-related intangibles	(56)	(115)
Other	(58)	(49)
Gross deferred tax liabilities	(758)	(1,051)
Net deferred tax assets	$ 290	$ 149

The following table presents an analysis of our valuation allowance activity (in millions):

	Total
Balance at June 30, 2006	$(2,416)
Changes to income tax provision	18
Changes to other accounts	25
Balance at June 30, 2007	$(2,373)
Changes to income tax provision	572
Changes to other accounts	159
Balance at June 30, 2008	$(1,642)

The provision for (benefit from) income taxes differs from the amount computed by applying the statutory federal income tax rate to income before income taxes. The sources and tax effects of the difference, for fiscal years ended June 30, were as follows (in millions):

	2008	2007	2006
Expected tax rate at 35%	$214	$204	$(236)
State income taxes, net of federal tax benefit	6	5	3
Foreign income taxes	(40)	(29)	(31)
Acquired in-process research and development	—	—	21
Repatriation of foreign earnings	—	(14)	58
General business tax credits	(22)	(91)	(29)
Valuation allowance	59	82	393
U.S. tax settlements	(4)	(39)	—
Other	(6)	(8)	10
Provision (benefit) for income taxes	$207	$110	$ 189

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U.S. income taxes have been provided on all undistributed earnings of our foreign subsidiaries. As of June 30, 2008, there are no earnings that are considered to be permanently invested in operations outside of the U.S. However, we may elect to permanently invest in operations outside of the U.S. in the future. During the fourth quarter of fiscal 2006, we repatriated $2 billion of foreign earnings, the majority of which was eligible to be taxed at a reduced effective tax rate under the Foreign Earnings Repatriation Provision of the American Jobs Creation Act.

As of June 30, 2008, we had aggregate federal net operating loss carryforwards of $88 million. If not utilized, these carryforwards will expire in fiscal years 2012 through 2026. The use of the federal net operating loss carryforwards in any one fiscal year is limited due to prior changes in ownership incurred by acquired companies. As of June 30, 2008, we had aggregate state net operating loss carryforwards of $995 million. If not utilized, these carryforwards will expire in fiscal years 2009 through 2027.

As of June 30, 2008, we had aggregate foreign net operating loss carryforwards of $937 million. Foreign net operating loss carryforwards of $52 million, if unused, will expire in fiscal years 2011 through 2018. The remaining foreign operating loss carryforwards of $885 million have an indefinite life.

As of June 30, 2008, we had federal and state tax credit carryforwards for income tax purposes of $555 and $370 million, respectively. If not utilized, the federal credits of $550 million will expire in fiscal years 2011 through 2028. The remaining federal tax credit carryforwards of $5 million have an indefinite life. State tax credit carryforwards of $55 million will expire in fiscal years 2009 through 2026. The remaining state tax credit carryforwards of $315 million have an indefinite life.

For fiscal 2008 and 2007, the provision includes a reduction in income taxes payable in the U.S. of $3 million and $24 million, respectively, from deductions associated with our various stock option plans with a credit to stockholders' equity. The provision for fiscal 2006 does not reflect the tax savings resulting from deductions associated with our various stock option plans.

Deferred tax assets of approximately $5 million pertain to certain deductible temporary differences and net operating loss carryforwards acquired in certain purchase business combinations. When realized, the reversal of the valuation allowance will be accounted for as a credit to existing goodwill or other long-term intangibles of the acquired entity rather than as a reduction of the period's income tax provision. If no goodwill or long-term intangible assets remain, the credit would reduce the income tax provision in the current period.

In connection with our fiscal 2008 acquisitions, we recorded $814 million of goodwill. Of that total amount, approximately $686 million is expected to be deductible for tax purposes over 15 years. None of the goodwill recorded for our fiscal 2007 and 2006 acquisitions is expected to be deductible. Refer to Footnote 4 of our consolidated financial statements for further information regarding business combinations.

Deferred tax assets of approximately $72 million relate to convertible debt. When realized, the reversal of the valuation allowance will be accounted for as a credit to stockholders' equity rather than as a reduction to the income tax provision.

We believe it is more likely than not that $290 million of deferred tax assets will be realized in the foreseeable future. Realization of our net deferred tax assets is dependent upon our generation of sufficient taxable income in future years in appropriate tax jurisdictions to obtain benefit from the reversal of temporary differences, net operating loss carryforwards, and from tax credit carryforwards. The amount of deferred tax assets considered realizable is subject to adjustment in future periods if estimates of future taxable income are reduced.

In evaluating our ability to recover our deferred tax assets, we consider all available positive and negative evidence including our past operating results, the existence of cumulative losses in the most recent fiscal years and our forecast of future taxable income. In determining future taxable income, we are responsible for assumptions utilized including the amount of state, federal and international pre-tax operating income, the reversal of temporary differences and the implementation of feasible and prudent tax planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates we are using to manage the underlying businesses.

On July 1, 2007, we adopted FIN 48. As a result of the implementation of FIN 48, we increased the liability for net unrecognized tax benefits by $204 million. The cumulative effect of the change in accounting principle resulted in an increase in retained earnings of $9 million. In addition, the requirements of the adoption of FIN 48 resulted in adjustments to other balance sheet accounts of $213 million, principally related to the reclassification of a portion of the valuation allowance on our deferred tax assets. The total amount of gross unrecognized tax benefits at the date of adoption was $410 million, including interest and penalties of $35 million.

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The aggregate changes in the balance of gross unrecognized tax benefits were as follows (in millions):

	2008
Balance at July 1, 2007 (date of adoption)	$ 375
Increases related to tax positions of the current year	10
Increases related to tax positions of prior years	30
Reductions for tax positions of prior years	(135)
Lapse of statute of limitations	(51)
Settlements	—
Balance at June 30, 2008	$ 229

The total amount of gross unrecognized tax benefits was $229 million as of June 30, 2008. Of this amount, $117 million would benefit our tax provisions if realized and the remaining $112 million which relates to acquisition-related reserves, would adjust goodwill if realized.

Our policy is to recognize interest and penalty expense associated with uncertain tax positions as a component of income tax expense in the consolidated statements of operations. During fiscal 2008, interest and penalties included in income tax expense was not material. We had $35 million of accrued interest and penalties related to unrecognized tax benefits as of June 30, 2008 and as of the date of adoption.

During fiscal 2008, we settled the Internal Revenue Service income tax audits for fiscal 2003 through 2005. As a result of the settlement of these IRS audits, we reduced our liability for net unrecognized tax benefits by $132 million, of which $4 million resulted in a tax benefit, $27 million resulted in an increase to additional-paid-in-capital and the remainder was offset by utilization of our net operating loss carryovers and reversal of the valuation allowance.

We have been notified that the IRS intends to examine our tax returns filed for fiscal years 2006 and 2007. Although the ultimate outcome is unknown, we have reserved for potential adjustments that may result from the upcoming examination and we believe that the final outcome will not have a material affect on our results of operations.

We conduct business globally and, as a result, file income tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions. In the normal course of business, we are subject to examination by taxing authorities throughout the world, including such major jurisdictions as Australia, Canada, France, Germany, Japan, the Netherlands, United Kingdom and the United States. With few exceptions, we are no longer subject to U.S. federal, state, local, and non-U.S. income tax examinations for fiscal years before 2001.

Although the timing of the resolution and/or closure on audits is highly uncertain, it is reasonably possible that the balance of gross unrecognized tax benefits could significantly change within the next 12 months. We believe it is reasonably possible that there could be a reduction in our tax liabilities up to $88 million within the next 12 months.

11. Commitments and Contingencies

Operating Lease Commitments

We lease certain facilities and equipment under non-cancelable operating leases. During fiscal 2008, 2007 and 2006, we elected to exit certain building leases and building projects, but still have obligations on these particular facilities. See Note 6 for further detail.

At June 30, 2008, the future minimum annual lease payments for all occupied and exited facility leases were approximately (in millions):

	Non-cancelable Operating Leases	Non-cancelable Subleases	Net Payments
Fiscal 2009	$ 188	$ (16)	$ 172
Fiscal 2010	155	(16)	139
Fiscal 2011	123	(13)	110
Fiscal 2012	88	(11)	77
Fiscal 2013	65	(9)	56
Thereafter	143	(26)	117
	$ 762	$ (91)	$ 671

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Rent expense under the non-cancelable operating leases was $180 million, $186 million and $155 million in fiscal 2008, 2007 and 2006, respectively.

Asset Retirement Obligations and Environmental Liabilities

We have asset retirement obligations primarily resulting from certain leased facilities where we have contractual commitments to remove leasehold improvements and return the property to a specified condition when the lease terminates. At June 30, 2008 and 2007, the net present value of these obligations was $42 million and $32 million, respectively, and were primarily classified in other non-current obligations. At June 30, 2008 and 2007, the asset balances related to our asset retirement obligations approximated $14 million and $6 million, respectively. The amount of amortization of the associated leasehold assets and accretion expense associated with our asset retirement obligations have not been material.

Guarantees, Letters of Credit and Indemnification Obligations

In the normal course of our business, we issue guarantees and letters of credit to numerous third-parties and for various purposes such as lease obligations, performance guarantees and state and local governmental agencies, requirements. At June 30, 2008, we had approximately $52 million of outstanding financial letters of credit.

In the normal course of business, we may enter into contractual arrangements under which we may agree to indemnify the third party to such arrangement from any losses incurred relating to the services they perform on our behalf or for losses arising from certain events as defined within the particular contract, which may include, for example, litigation or claims relating to past performance. Such indemnification obligations may not be subject to maximum loss clauses. Historically, payments made related to these indemnifications have not been material.

We utilized several contract manufacturers to manufacture sub-assemblies for our products and to perform final assembly and test of finished products. These contract manufacturers acquire components and build product based on demand information supplied by us. We also obtain individual components for our products from a variety of individual suppliers. We acquire components through a combination of purchase orders, supplier contracts and open orders based on projected demand information. Such purchase commitments are based on our forecasted component and manufacturing requirements and typically provide for fulfillment within agreed-upon lead-times and/or commercially standard lead-times for the particular part or product. We estimate that these contractual obligations at June 30, 2008 were no more than $595 million and were primarily due in less than one year from June 30, 2008. This amount does not include contractual obligations recorded on the Consolidated Balance Sheets as current liabilities. Additionally, we have committed to purchase certain outsourced services where we would incur a penalty if the agreement was canceled prior to a contractual minimum term. We estimate that our contractual obligations associated with outsourced services at June 30, 2008 were no more than $16 million. Our asset retirement obligations arise from leased facilities where we have contractual commitments to remove leasehold improvements and return the property to a specified condition when the lease terminates.

In fiscal 2006, as part of our service-based sales arrangement involving a governmental institution in Mexico, we were required to issue three guarantee bonds, with the total amount of approximately $41 million, as collateral guaranteeing our performance under the arrangement. The bonds required a security deposit of $41 million, paid to surety companies, which was classified as Other non-current assets, net, in our June 30, 2007 Consolidated Balance Sheet. In fiscal 2008, the security deposit of $41 million was returned to us and replaced with a cash secured letter of credit of $21 million. The deposits of $21 million used to secure the letter of credit is classified as Other non-current assets, net, in our June 30, 2008 Consolidated Balance Sheet, respectively.

Litigation and Other Contingencies

In fiscal 2005, the GSA began auditing our records under the agreements it had with us at that time. A lawsuit related to the audit and our performance under our GSA contract and other government contracts has been filed against us in the United States District Court for the District of Arkansas. It includes claims under the Federal False Claims and Anti-Kickback Acts, as well as breach of contract and other claims, including claims related to certain rebates, discounts and other payments or benefits provided by us to our resellers and technology integrators. The parties continue to discuss the nature of the government’s current and potential claims on our GSA and other government sales. If this matter proceeds to trial, possible sanctions include an award of damages, including treble damages, fines, penalties and other sanctions, up to and including suspension or debarment from sales to the federal government. Although we are interested in pursuing an amicable resolution, we intend to present a vigorous factual and legal defense throughout the course of these proceedings.

As required by SFAS 5, we accrue for contingencies when we believe that a loss is probable and that we can reasonably estimate the amount of any such loss. We have made an assessment of the probability of incurring any such losses and such

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amounts are reflected in our Consolidated Financial Statements. Litigation is inherently unpredictable and it is difficult to predict the outcome of particular matters with reasonable certainty and, therefore, the actual amount of any loss may prove to be larger or smaller than the amounts reflected in our Consolidated Financial Statements.

12. Settlement Income

On March 8, 2002, we filed suit against Microsoft Corporation (Microsoft), pursuant to United States and State of California antitrust and other laws. In February 2003, Microsoft filed four counterclaims against us. The presiding judge dismissed two of the four Microsoft counterclaims.

On April 1, 2004, we entered into several agreements with Microsoft including an agreement to settle all pending litigation between the two companies. Pursuant to the settlement agreement, Microsoft agreed to pay to us the amount of $700 million.

Pursuant to a patent covenant and stand-still agreement, the parties agreed not to sue each other for past damages for patent infringement with respect to the other party's products and technologies (the Covenant Not to Sue for Damages). Each year until 2014, Microsoft has the option of extending the Covenant Not to Sue for Damages to apply to the preceding year in exchange for an annual extension payment, so long as Microsoft has made all previous annual extension payments and so long as Microsoft has not sued us or authorized licensees of our commercial products for patent infringement prior to such time. At the end of the ten-year term, if Microsoft has made all such payments and not brought any such suits, then each party will automatically grant to the other party irrevocable, non-exclusive, perpetual licenses under all of its patents and patent applications existing at the end of such period in order to allow such other party to continue to commercialize its products shipping at the end of such period. Microsoft also agreed to pay to us the amount of $900 million under this patent covenant and standstill agreement.

Pursuant to a technical collaboration agreement, each party agreed to provide the other party with access to aspects of its desktop and server-based technology for use in developing interoperable server products. Microsoft also agreed to pay to us the amount of $350 million as a prepaid nonrefundable royalty under this technical collaboration agreement.

Based on the agreements with Microsoft described above, we recognized $45 million, $54 million and $54 million in settlement income in the fiscal years ended 2008, 2007 and 2006, respectively, and will maintain a deferred gain of approximately $352 million, primarily related to the prepaid nonrefundable royalty paid by Microsoft under the technical collaboration agreement, as other non-current obligations until the earlier of usage of the royalties by Microsoft or such time as all our obligations have been met.

13. Stockholders' Equity

Stockholders' Rights Plan

Effective May 31, 2006, our Board of Directors voted to terminate our Stockholders' Rights Plan, which was originally scheduled to expire on July 25, 2012.

Authorized Preferred Stock

We are authorized to issue up to 10 million shares of preferred stock, with preferences to be determined at the discretion of the Board of the Directors at the time of the issuance. As of June 30, 2008, we have no preferred stock issued and outstanding.

Common Stock Repurchase Programs

In May 2007, our Board of Directors authorized management to repurchase up to $3 billion of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions, repayment of debt and our share price. During the fiscal years ended June 30, 2008 and 2007, we repurchased approximately 151 million shares or $2.8 billion, and 9.7 million shares or $200 million, respectively, of common stock under this repurchase authorization. During fiscal years 2007 and 2006, we did not repurchase common stock under our prior repurchase authorization announced in February 2001, which was canceled at the inception of the new plan. All repurchases were made in compliance with Rule 10b-18 under the Securities Exchange Act of 1934, as amended.

When treasury shares are reissued, any excess of the acquisition costs of the shares, determined on a first-in-first-out basis, over the proceeds from reissuance is charged to additional paid-in-capital to the extent of previous credits on similar transactions, with any remaining amounts charged to retained earnings.

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14. Employee Benefit Plans

Stock-based compensation

We have a stock-based compensation program that provides our Board of Directors broad discretion in creating employee equity incentives. This program includes incentive and non-statutory stock options and restricted stock-based awards, including restricted stock units, performance-based restricted stock units and restricted stock awards . These awards are granted under our 2007 Omnibus Incentive Plan, which was approved by our stockholders on November 8, 2007. Stock options and restricted stock unit awards are generally time-based, vesting 25% on each annual anniversary of the grant date over four years. Stock options generally expire eight years from the date of grant. Performance-based restricted stock unit awards generally vest as to 25% on the date of determination of the satisfaction of the performance criteria and as to an additional 25% on each anniversary of such determination date. Restricted stock awards are generally time-based and vest 50% in two tranches within a five year period from the grant date. We use the straight line attribution method for recognizing the expense associated with these grants. Under the 2007 Omnibus Incentive Plan, a newly elected, non-employee member of our Board of Directors who is not a partner, officer, director or affiliate of an entity having an equity investment in us is granted a restricted stock unit award on the date he or she becomes a member of our Board of Directors. In addition, on the date of each annual meeting of stockholders, each non-employee director who is re-elected and has served on our Board of Directors for at least six months is automatically granted a restricted stock unit award. The restricted stock unit awards granted to the non-employee members of our Board of Directors are generally time-based, vesting as to 20% on each annual anniversary of the grant date over five years. Additionally, we have an Employee Stock Purchase Plan (ESPP) that allows employees to purchase shares of common stock at 85% of the fair market value at the date of purchase. Shares issued as a result of stock option exercises, restricted stock-based awards and our ESPP are generally first issued out of treasury stock. As of June 30, 2008, we had approximately 112 million shares of common stock reserved for future issuance under these plans.

On July 1, 2005, we adopted the provisions of SFAS No. 123(R), “Shared-Based Payment” (SFAS 123(R)), requiring us to recognize expense related to the fair value of our stock-based compensation awards. We elected to use the modified prospective transition method as permitted by SFAS 123(R). Under this transition method, stock-based compensation expense after adoption includes compensation expense for all stock-based compensation awards granted prior to, but not yet vested as of July 1, 2005, based on the grant date fair value estimated in accordance with the original provisions of SFAS 123. Stock-based compensation expense for all stock-based compensation awards granted subsequent to July 1, 2005 was based on the grant-date fair value estimated in accordance with the provisions of SFAS 123(R). We recognize compensation expense for stock option awards on a straight-line basis over the requisite service period of the award.

The following table sets forth the total stock-based compensation expense resulting from stock options, restricted stock awards, ESPP and options assumed as a result of our acquisitions included in our Consolidated Statements of Operations (in millions):

	Fiscal Year Ended June 30, 2008	Fiscal Year Ended June 30, 2007	Fiscal Year Ended June 30, 2006
Cost of sales — products	$ 12	$ 13	$ 10
Cost of sales — services	38	31	29
Research and development	67	64	74
Selling, general and administrative	97	106	112
Stock-based compensation expense	$ 214	$ 214	$ 225

Net cash proceeds from the exercise of stock options were $77 million, $163 million, and $129 million for the fiscal years ended June 30, 2008, 2007 and 2006, respectively.

The fair value of stock-based awards including assumed options from the purchase of MySQL was estimated using the Black-Scholes model with the following weighted-average assumptions for the fiscal years ended June 30, 2008 and June 30, 2007, respectively:

	Options			Employee Stock Purchase Plan
	2008	2007	2006	2006
Expected life (in years)	4.3	4.6	4.8	0.5
Interest rate	3.38%	4.69%	4.41%	4.0%
Volatility	41.57%	46.00%	52.74%	35.29%
Dividend yield	—	—	—	—
Weighted-average fair value at grant date	$ 9.64	$ 9.08	$ 8.40	$ 3.68

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Our computation of expected volatility for the fiscal year ended June 30, 2008, is based on a combination of historical and market-based implied volatility. Our computation of expected life is based on historical settlement patterns. The interest rate for periods within the contractual life of the award is based on the U.S. Treasury yield curve in effect at the time of grant.

Prior to May 2006, our ESPP allowed employees to purchase shares of common stock at 85% of the fair market value at the lower of either the date of enrollment or the date of purchase. Effective May 2006, our ESPP plan was modified to allow employees to purchase shares of common stock at 85% of the fair market value solely at the date of purchase. Accordingly, the Black-Scholes model is no longer used to estimate the fair value of ESPP stock awards granted after May 2006.

Stock option activity for the fiscal years ended June 30, 2008, is as follows (in millions, except per share amounts):

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at June 30, 2005	139	$ 47.76	4.6	$ 38
Grants and acquisition-related assumed options	24	13.60		
Exercises	(10)	12.68		
Forfeitures or expirations	(22)	42.20		
Outstanding at June 30, 2006	131	$ 45.12	4.3	$ 140
Grants and acquisition-related assumed options	7	20.36		
Exercises	(12)	13.84		
Forfeitures or expirations	(22)	49.40		
Outstanding at June 30, 2007	104	$ 46.11	3.8	$ 329
Grants (includes options assumed from MySQL)	20	9.38		
Exercises	(12)	6.67		
Forfeitures or expirations	(21)	93.41		
Outstanding at June 30, 2008	91	$ 32.05	3.92	$ 46
Exercisable at June 30, 2008	65	$ 38.26	2.94	$ 24

The aggregate intrinsic value in the table above represents the total pretax intrinsic value (i.e., the difference between our closing stock price on the last trading day of our fiscal 2008 and the exercise price, times the number of shares) that would have been received by the option holders had all option holders exercised their options on June 30, 2008. This amount changes based on the fair market value of our stock. The total intrinsic value of options exercised was $124 million and $99 million for the fiscal years ended June 30, 2008 and June 30, 2007, respectively. The total fair value of options that vested during the fiscal years ended June 30, 2008 and June 30, 2007, was $117 million and $120 million, respectively.

As of June 30, 2008, $188 million of total unrecognized compensation cost related to stock options is expected to be recognized over a weighted-average period of two years.

The following table summarizes our restricted stock award activity for the fiscal years ended June 30, 2008 (in millions, except per share amounts):

	Number of Shares	Weighted-Average Grant Date Fair Value (per share)
Restricted stock at June 30, 2005	1	$ 19.20
Granted	12	16.59
Vested	—	—
Forfeited	(1)	16.35
Restricted stock at June 30, 2006	12	$ 16.65
Granted	10	21.15
Vested	(5)	15.18
Forfeited	(2)	18.28
Restricted stock awards at June 30, 2007	15	$ 20.01
Granted	11	19.65
Vested	(1)	19.49
Forfeited	(2)	20.00
Restricted stock awards at June 30, 2008	23	$ 19.90

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As of June 30, 2008, we retained purchase rights to 71,114 shares issued pursuant to stock purchase agreements and other stock plans at a weighted-average price of approximately $0.02. As of June 30, 2008, $334 million of total unrecognized compensation costs related to restricted stock based awards is expected to be recognized over a weighted-average period of three years.

Defined contribution plans

We have a 401(k) plan known as the Sun Microsystems, Inc. Tax Deferred Retirement Savings Plan (Plan). The Plan is available to all regular employees on our U.S. payroll and provides employees with tax deferred salary deductions and alternative investment options. The Plan does not provide employees with the option to invest in our common stock. Employees may contribute up to 30% of their salary, subject to certain limitations. We match employees' contributions to the Plan at a maximum of 4% of eligible compensation up to the annual maximum of $6,800. We expensed $80 million, $86 million and $83 million in the fiscal 2008, 2007 and 2006, respectively, for our contributions to the Plan. Our contributions to the Plan vest 100% upon contribution.

Defined benefit plans

Effective June 30, 2007, we adopted SFAS 158, which requires us to record non-cash adjustments to recognize the funded status of each of our defined pension and postretirement benefit plans as a net asset or liability in our statement of financial position with a corresponding amount recorded in accumulated other comprehensive income, and to recognize changes in that funded status in the year in which changes occur through comprehensive income. For the period ended June 30, 2007, SFAS 158 required us to measure the funded status of each of our plans as of the date of our year-end statement of financial position. The effect of applying SFAS 158 on the individual line items in the consolidated balance sheet as of June 30, 2007 was immaterial. Additionally, for the period ended June 30, 2008, SFAS 158 requires that the measurement date of benefit obligations be the same as our fiscal year-end. The measurement date for a majority of our plans historically has been June 30, therefore, the measurement date provisions of SFAS 158 did not result in a material adjustment in fiscal 2008.

We sponsor a number of qualified defined benefit pension plans primarily outside the United States. We also have an unfunded nonqualified pension plan covering certain executives that are based on targeted wage replacement percentages. We deposit funds for these plans, consistent with the requirements of local law, with insurance companies, third-party trustees, or into government-managed accounts and accrue for the unfunded portion of the obligation.

We aggregate all of our defined benefit plans for disclosure purposes, as the amounts that would be reported individually for our plans are considered insignificant.

There were no material plan amendments, benefit modifications or related events that took place during fiscal 2008 or fiscal 2007.

Change in benefit obligations, for the fiscal years ended June 30, were as follows (in millions):

	2008	2007
Benefit obligation at beginning of year	$310	$295
Service cost	18	20
Interest cost	15	13
Plan participants' contributions	2	1
Amendments		1
Actuarial gains	(65)	(10)
Benefits paid	(8)	(5)
Exchange rate movements	38	14
Curtailments, settlements, and other	(2)	(19)
Benefit obligation at end of year	$308	$310

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Change in plan assets, for the fiscal year ended June 30, were as follows (in millions):

	2008	2007
Fair value of plan assets at beginning of year	$206	$ 172
Actual return on plan assets	(5)	14
Employer contributions	24	24
Plan participants' contributions	2	1
Benefits paid	(7)	(5)
Exchange rate movements	30	8
Curtailments, settlements, and other	(4)	(8)
Fair value of plan assets at end of year	246	206
Unfunded status	$ (62)	$(104)
Noncurrent asset	$ 27	$ 4
Current liability	(20)	(25)
Noncurrent liability	(69)	(83)
Net obligation recognized in the statement of financial position	$ (62)	$(104)
Amounts recognized in accumulated other comprehensive income consist of:		
Net actuarial unrecognized (gain) loss	$ (25)	$ 5
Net prior service cost	13	14
Transition obligation	1	1
	$ (11)	$ 20

The total accumulated benefit obligation, the accumulated benefit obligation (ABO) and fair value of plan assets for our defined benefit pension plans with accumulated benefit obligations in excess of plan assets, and the projected benefit obligation and fair value of plan assets for defined benefit pension plans with projected benefit obligations (PBO) in excess of plan assets, for the fiscal year ended June 30, were as follows (in millions):

	2008	2007
Accumulated Benefit Obligation	$251	$240
Plans with ABO in excess of plan assets		
ABO	$113	$135
Fair value of plan assets	$ 68	$ 88
Plans with PBO in excess of plan assets		
PBO	$241	$276
Fair value of plan assets	$152	$175

The components of pension expense along with the assumptions used to determine benefit obligations, for the fiscal year ended June 30, were as follows (in millions):

	2008	2007	2006
Service cost	$ 19	$ 20	$ 24
Interest cost	14	12	13
Expected return on plan assets	(11)	(9)	(10)
Amortization of prior service cost	2	2	2
Recognized net actuarial loss	1	2	2
Curtailments, settlements, and other losses	1	1	
Net expense	$ 26	$ 28	$ 31
Weighted-average assumptions used to determine benefit obligations at June 30[a] :			
Discount rate	4.7%	4.4%	4.1%
Rate of compensation increase	2.7%	2.8%	3.1%
Weighted-average assumptions used to determine net expense for years ended June 30[b]:			
Discount rate	4.3%	4.1%	3.9%
Expected return on plan assets	4.8%	5.3%	5.1%
Rate of compensation increase	2.9%	2.8%	3.0%

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(a) Determined as of end of year.
(b) Determined as of beginning of year and updated for remeasurements. Appropriate discount rates were used during 2008 to measure the effects of curtailments and plan amendments on various plans.

Estimated amounts to be amortized from Accumulated other comprehensive income into net periodic benefit cost during 2009 based on June 30, 2008 plan measurements, were as follows (in millions):

Amortization of prior service cost	$ 2
Amortization of transition obligation	—
Recognized net actuarial loss	—
	$ 2

Discount Rate

We set the discount rate assumption annually for each of our retirement-related benefit plans at their respective measurement dates to reflect the yield of a portfolio of high quality, fixed-income debt instruments that would produce cash flows sufficient in timing and amount to address projected future benefits. The weighted average rate established discount rate for our defined benefit pension plans was 4.7% for the fiscal year-end 2008.

Long-term Rate of Return on Plan Assets and Target Asset Allocations

To determine the expected long-term rate of return on plan assets, we consider the current and expected asset allocations, as well as historical and expected returns on various categories of plan assets. We apply our expected rate of return to a market-related value of assets, which stabilizes variability in the amounts to which we apply that expected return. While we give appropriate consideration to recent fund performance and historical returns, the assumptions are primarily long term, prospective rates of return. Plan fiduciaries set investment policies and strategies for the plan assets and oversee its investment allocation, which includes selecting investment managers and setting long-term strategic targets. Long-term strategic investment objectives include preserving the funded status of the plan and balancing risk and return. Target allocation ranges are guidelines, not limitations, and occasionally plan fiduciaries will approve allocations above or below a target range. Because of the diversity in practice between geographies and our different pension funds in how target allocations are determined, we have not supplied this information as it is not considered useful to the readers of the financial statements. The weighted average expected long-term rate of return on our defined benefit plans assets used to determine net pension expense for fiscal 2008 was 4.8% compared to 5.3% for fiscal 2007 and 5.1% in fiscal 2006.

Plan Assets

Plan assets are valued using quoted market prices when available. Assets for which quoted market prices are not available are valued using independent pricing vendors, dealer or counterparty supplied valuations and net asset values provided by fund managers or portfolio investment advisors whose fair value estimates may utilize appraisals of the underlying assets or discounted cash flow models.

Our defined benefit pension plans have the following asset allocations, as of their respective measurement dates in fiscal years ended June 30:

	Plans Actual Percentage of Plan Assets	
Asset Category	2008	2007
Equity securities	25.7%	30.6%
Debt securities	68.8%	63.4%
Real estate	2.4%	3.0%
Other	3.1%	3.0%
Total	100%	100%

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Plan Funding Policy and Contributions

Our practice is to fund the various pension plans in amounts at least sufficient to meet the minimum requirements of local laws and regulations or to directly pay benefit payments where appropriate. We made pension contributions to the defined benefit pension plans, or made direct payments where appropriate, for the fiscal year ended June 30, as follows (in millions):

	June 30,		
	2008	2007	2006
Pension plan contributions and direct payments to plan participants	$31	$26	$21

As of June 30, 2008, we do not have any contributions due, and we do not expect to make any discretionary contributions into the defined benefit pension plans. During fiscal 2009 we expect to contribute or pay benefits of approximately $20 million to our defined benefit pension plans.

Benefit Payments

The following benefit payments, which include assumptions related to estimated future employee service, as appropriate, are expected to be paid in the future (in millions):

	Pension Benefits (a)
2009	$ 8
2010	$ 7
2011	$ 13
2012	$ 12
2013	$ 16
2014-2018	$ 50

(a) Benefits for most non-U.S. pension plans are paid out of plan assets rather than our cash.

15. Operating Segments

We design, manufacture, market and service network computing infrastructure solutions that consist of Computer Systems (hardware and software), Storage (hardware and software), Support Services (Support Services and Managed Services) and Professional Services and Educational Services. Our organization is primarily structured in a functional manner. During the periods presented, our Chief Executive Officer was identified as our Chief Operating Decision Maker (CODM) as defined by SFAS No. 131, “Disclosures About Segments of an Enterprise and Related Information” (SFAS 131).

Our CODM manages our company based primarily on broad functional categories of sales, services, manufacturing, product development and engineering and marketing and strategy. Starting in fiscal 2008, our CODM reviews consolidated financial information on revenues and gross margins for products and services and also reviews operating expenses. Our CODM does not use assets allocation for purposes of making decisions about allocating resources to the segment and assessing segment’s performance. Our Product Group segment comprises our end-to-end networking architecture of computing products including our Computer Systems and Storage product lines. Our Services Group segment comprises a full range of services to existing and new customers, including Support Services (Support Services and Managed Services) and Professional Services and Educational Services.

We have a Worldwide Operations (WWOPS) organization and a Global Sales and Services (GSS) organization that are responsible for the manufacturing and sale, respectively, of all of our products. CODM holds GSS accountable for overall products and services revenue and margins on a consolidated level. GSS and WWOPS manage the majority of our accounts receivable and inventory, respectively. In addition, we have a Worldwide Marketing Organization (WMO) that is responsible for developing and executing our overall corporate, strategic and product marketing and advertising strategies. The CODM looks to this functional organization for advertising, pricing and other marketing strategies for the products and services delivered to market.

Operating expenses (primarily sales, marketing and administrative) related to the GSS and the WMO are not allocated to the reportable segments and, accordingly, are included under the Other segment reported below. With the exception of goodwill, we do not identify or allocate assets by operating segment, nor does the CODM evaluate operating segments using discrete asset information. We do not report inter-segment revenue because the operating segments do not record it. We do not allocate interest and other income, interest expense, or taxes to operating segments. Although the CODM uses operating income to evaluate the segments, operating costs included in one segment may benefit other segments.

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Segment Information

The following table presents revenues and operating income (loss) for our segments (in millions):

	Product Group	Services Group	Total
2008			
Revenues	$8,618	$5,262	$13,880
Gross margin	$3,950	$2,505	$ 6,455
Operating expenses			(6,083)
Operating income			$ 372
2007(1)			
Revenues	$8,771	$5,102	$13,873
Gross margin	$3,960	$2,305	$ 6,265
Operating expenses			(5,956)
Operating income			$ 309
2006(1)			
Revenues	$8,371	$4,697	$13,068
Gross margin	$3,544	$2,085	$ 5,629
Operating expenses			(6,499)
Operating loss			$ (870)

(1) Reported segment operating income (loss) was adjusted to reflect a change in the measure of segment results used by our CODM. Starting in fiscal 2008, our CODM reviews revenue and gross margins for the products and services segments. Our CODM also reviews total operating expenses and operating income (loss) at the consolidated level.

Product information

Our Product revenue is comprised of revenue from Computer Systems products and Storage products. Our Services revenue consists of sales from two classes of services: (1) Support Services (Support and Managed Services) and (2) Professional Services and Educational Services. Support Services are services that offer customers technical support, software and firmware updates, online tools, product repair and maintenance and preventive services for system, storage and software products. Managed services include on-site and remote monitoring and management for the components of their IT infrastructure, including operating systems, third-party and custom applications, databases, networks, security, storage and the web. Professional Services are services that enable customers to reduce costs and complexity, improve operational efficiency and build or transform their IT infrastructure. Professional Services include IT assessments, architectural services, implementation services and consolidation and migration services. Educational Services include training and certification for individuals and teams. The following table provides external revenue for similar classes of products and services for the last three fiscal years (in millions):

	2008	2007	2006
Computer Systems products	$6,264	$6,455	$5,997
Storage products	2,354	2,316	2,374
Total products revenue	$8,618	$8,771	$8,371
Support Services	$4,023	$3,962	$3,678
Professional Services and Educational Services	1,239	1,140	1,019
Total services revenue	$5,262	$5,102	$4,697

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Geographic information

Our significant operations outside the U.S. include manufacturing facilities, design centers and sales offices in Europe, Middle East and Africa (EMEA), as well as the Asia Pacific (APAC) and Canada and Latin America (International Americas). Intercompany transfers between operating segments and geographic areas are primarily accounted for at prices that approximate arm's length transactions. In fiscal 2008, 2007 and 2006, sales between segments are recorded at standard cost. Information regarding geographic areas at June 30 and for each of the years then ended, was as follows (in millions):

	U.S.	International Americas	Americas — Total	EMEA	APAC	Total
2008						
Sales to unaffiliated customers	$5,198	$ 1,002	$ 6,200	$5,247	$2,433	$13,880
Long-lived assets (excluding investments and deferred tax assets)	$4,875	$ 77	$ 4,952	$ 421	$ 31	$ 5,404
2007						
Sales to unaffiliated customers	$5,641	$ 863	$ 6,504	$4,999	$2,370	$13,873
Long-lived assets (excluding investments and deferred tax assets)	$3,925	$ 158	$ 4,083	$ 797	$ 88	$ 4,968
2006[(1)]						
Sales to unaffiliated customers	$5,535	$ 755	$ 6,290	$4,646	$2,132	$13,068
Long-lived assets (excluding investments and deferred tax assets)	$4,993	$ 133	$ 5,126	$ 617	$ 104	$ 5,847

(1) Geographic revenue reported for fiscal 2006 has been adjusted to reflect an immaterial correction in intercompany revenue to properly report country origin.

Customer Information

Sales to Avnet, the largest distributor of our products, accounted for approximately 11% of our net revenues in each of fiscal 2008, 2007 and 2006. In January 2007, Access Distribution, the largest distributor of our products at the time, was sold to Avnet by General Electric Company. Avnet was StorageTek's largest distributor and became a distributor of Sun products after our acquisition of StorageTek in August 2005. The net revenue percentages for fiscal 2007 and 2006 represent sales to Avnet and Access Distribution on a combined basis. No other customer accounted for more than 10% of our net revenues in fiscal 2008. Accounts receivable from Avnet and Access Distribution and its subsidiaries in the aggregate was approximately 9% and 13% of total accounts receivable as of June 30, 2008 and 2007, respectively.

16. Related Parties

In fiscal 2008, 2007 and 2006, we conducted transactions with Intuit, Inc. (Intuit), a company considered to be a related party. Stephen Bennett was the President and Chief Executive Officer of Intuit until January 2008, and was appointed a member of our Board of Directors effective June 2004. Since Mr. Bennett's appointment through January 1, 2008, the amount of net revenues and expenses recognized for Intuit were not material. In fiscal 2007 and 2008, we conducted transactions with Flextronics International Ltd. and its subsidiaries (Flextronics), entities considered to be related parties. Michael Marks was the Chairman of Flextronics's Board of Directors until January 10, 2008, and was appointed a member of our Board of Directors effective April 2007. During fiscal 2008 through January 10, 2008, we recognized approximately $18 million in net revenue and approximately $2 million in expenses with Flextronics. In fiscal 2007 we recognized approximately $16 million in net revenues and approximately $2 million in expenses from Flextronics since Mr. Mark's appointment.

17. Legal Proceedings and Contingencies

In fiscal 2005, the GSA began auditing our records under the agreements it had with us at that time. A lawsuit related to the audit and our performance under our GSA contract and other government contracts has been filed against us in the United States District Court for the District of Arkansas. It includes claims under the Federal False Claims and Anti-Kickback Acts, as well as breach of contract and other claims, including claims related to certain rebates, discounts and other payments or benefits provided by us to our resellers and technology integrators. The parties continue to discuss the nature of the government's current and potential claims on our GSA and other government sales. If this matter proceeds to trial, possible sanctions include an award of damages, including treble damages, fines, penalties and other sanctions, up to and including suspension or debarment from sales to the federal government. Although we are interested in pursuing an amicable resolution, we intend to present a vigorous factual and legal defense throughout the course of these proceedings.

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As required by SFAS 5, we accrue for contingencies when we believe that a loss is probable and that we can reasonably estimate the amount of any such loss. We have made an assessment of the probability of incurring any such losses and such amounts are reflected in our Consolidated Financial Statements. Litigation is inherently unpredictable and it is difficult to predict the outcome of particular matters with reasonable certainty and, therefore, the actual amount of any loss may prove to be larger or smaller than the amounts reflected in our consolidated financial statements.

18. Subsequent Event

On July 31, 2008, our Board of Directors authorized management to repurchase up to $1 billion of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions, repayment of debt and our share price.

19. Quarterly Financial Data (Unaudited)

Our first three quarters in fiscal 2008 ended on September 30, December 30 and March 30 and in fiscal 2007 ended on October 1, December 31 and April 1. Our fourth quarter ends on June 30.

The following tables contain selected unaudited Consolidated Statement of Operations data for each quarter of fiscal 2008 and 2007 (in millions, except per share amounts):

	Fiscal 2008 Quarter Ended			
	September 30	December 30	March 30	June 30
Net revenues	$ 3,219	$ 3,615	$ 3,266	$3,780
Gross margin	1,561	1,753	1,468	1,673
Operating income (loss)	63	262	(16)	63
Net income (loss)	89	260	(34)	88
Net income (loss) per common share[(1)]:				
Basic	0.10	0.32	(0.04)	0.11
Diluted	0.10	0.31	(0.04)	0.11
Weighted average shares outstanding:				
Basic	866	806	785	772
Diluted	884	826	785	776

	Fiscal 2007 Quarter Ended			
	October 1	December 31	April 1	June 30
Net revenues	$ 3,189	$ 3,566	$ 3,283	$3,835
Gross margin	1,388	1,604	1,461	1,812
Operating income (loss)	(64)	93	(45)	325
Net income (loss)	(56)	133	67	329
Net income (loss) per common share[(1)]:				
Basic	(0.06)	0.15	0.08	0.37
Diluted	(0.06)	0.15	0.07	0.36
Weighted average shares outstanding:				
Basic	874	881	887	889
Diluted	874	907	915	908

(1) Net income (loss) per common share are computed independently for each of the quarters presented. Therefore, the sum of the quarterly per common share information may not equal the annual per common share information.

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Sun Microsystems, Inc.

We have audited the accompanying consolidated balance sheets of Sun Microsystems, Inc. as of June 30, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended June 30, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Sun Microsystems, Inc. at June 30, 2008 and 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended June 30, 2008, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 2 to the consolidated financial statements, in fiscal year 2008, Sun Microsystems, Inc. changed its method of accounting for uncertain tax positions in accordance with guidance provided in Financial Accounting Standards Board Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an interpretation of FASB Statement No. 109".

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Sun Microsystems, Inc.'s internal control over financial reporting as of June 30, 2008, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated August 26, 2008 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Jose, California
August 26, 2008

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Sun Microsystems, Inc.

We have audited Sun Microsystems, Inc.'s internal control over financial reporting as of June 30, 2008, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Sun Microsystems, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Sun Microsystems, Inc. maintained, in all material respects, effective internal control over financial reporting as of June 30, 2008, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Sun Microsystems, Inc. as of June 30, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended June 30, 2008 and our report dated August 26, 2008 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

San Jose, California
August 26, 2008

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ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Management, with the participation of the Chief Executive Officer and Chief Financial Officer, has performed an evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(c) and 15d-15(c) of the Securities Exchange Act of 1934). This evaluation included consideration of the controls, processes and procedures that are designed to ensure that information required to be disclosed by us in the reports we file under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2008, our disclosure controls and procedures were effective.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(c) and 15d-15(c) under the Securities Exchange Act of 1934. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that:

(i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;

(ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and

(iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

There are inherent limitations in the effectiveness of any system of internal control, including the possibility of human error and the circumvention or overriding of controls. Accordingly, even an effective internal control system may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Based on the results of our evaluation, management assessed the effectiveness of our internal control over financial reporting as of June 30, 2008, utilizing the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework*. Based on the results of this assessment, management (including our chief executive officer and our chief financial officer) has concluded that, as of that date, our internal control over financial reporting was effective.

The attestation report concerning the effectiveness of our internal control over financial reporting as of June 30, 2008, issued by Ernst & Young LLP, Independent Registered Public Accounting Firm, appears on page 90 of our Form 10-K.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting during the fourth quarter of fiscal 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

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PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information regarding our directors is incorporated herein by reference to the information contained under the caption “Proposal 1 — Election of Directors” in our 2008 Proxy Statement for the 2008 Annual Meeting of Stockholders (the 2008 Proxy Statement). Information regarding our current executive officers is found under the caption “Executive Officers of the Registrant” in Part I hereof and is incorporated by reference herein. Information regarding Section 16 reporting compliance is incorporated herein by reference to information contained under the caption “Section 16(a) Beneficial Ownership Reporting Compliance” in our 2008 Proxy Statement. The identity of our Audit Committee members and information regarding the “audit committee financial experts” on our Audit Committee is incorporated herein by reference to information contained under the caption “About our Board and Its Committees” in our 2008 Proxy Statement. Finally, information regarding our code of ethics is contained under the caption “Corporate Governance — Standards of Business Conduct” in our 2008 Proxy Statement and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to the information contained under the captions “Director Compensation,” “Executive Compensation,” “Compensation Committee Interlocks and Insider Participation” and “Report of the Leadership Development and Compensation Committee” in our 2008 Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item is incorporated by reference to the information contained under the caption “Security Ownership of Certain Beneficial Owners and Management” in our 2008 Proxy Statement.

Equity Compensation Plan Information

The following table presents a summary of outstanding stock options and securities available for future grant under our stockholder approved and non-stockholder-approved equity compensation plans as of June 30, 2008 (in millions, except per share amounts).

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans
Equity compensation plans approved by security holders (excluding ESPP)	106	$ 26.30	101
Equity compensation plans not approved by security holders (excluding ESPP)	8	$ 15.52	N/A
Total (excluding ESPP)	114	$ 25.53	101
Equity compensation plans approved by security holders (ESPP only)	N/A	N/A	11
Equity compensation plans not approved by security holders (ESPP only)	N/A	N/A	N/A
Total (ESPP only)	N/A	N/A	11
All plans	114	$ 25.53	112

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this item is incorporated by reference to the information contained under the captions “About Our Board and Its Committees,” “Proposal 1 — Election of Directors,” “Related Person Transactions Policy and Procedures,” and “Certain Related Person Transactions” in our 2008 Proxy Statement.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated herein by reference to the information contained under the caption “Audit and Non-Audit Fees” in our 2008 Proxy Statement.

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PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this report:

1. Financial Statements: See Index to Consolidated Financial Statements under Item 8 on Page 48 of this report.
2. Financial Statement Schedules have been omitted since they are either not required, not applicable, or the information is otherwise included.
3. Exhibits:

Exhibit Number	Exhibit Description	Management Contract or Compensatory Plan or Arrangement	Incorporated by Reference		
			Form	Exhibit	Filing Date
3.1	Certificate of Amendment to Amended and Restated Certificate of Incorporation, dated November 9, 2007.	No	10-Q	3.1	February 6, 2008
3.2	Bylaws of the Registrant, as amended July 31, 2008.	No	8-K	3.2	August 4, 2008
4.1	Indenture, dated August 1, 1999 (the "Indenture") between Registrant and The Bank of New York, as Trustee.	No	8-K	4.1	August 6, 1999
4.2	Form of Subordinated Indenture.	No	8-K	4.2	August 6, 1999
4.3	Officers' Certificate Pursuant to Section 301 of the Indenture, without exhibits, establishing the terms of Registrant's Senior Notes.	No	8-K	4.3	August 6, 1999
4.4	Form of Senior Note.	No	8-K	4.4	August 6, 1999
4.5	Indenture Related to the 0.625% Convertible Notes, Due 2012, between Registrant and U.S. National Association, as Trustee (including Form of 0.625% Convertible Senior Note Due 2012.	No	8-K/A	4.1	February 2, 2007
4.6	Indenture Related to the 0.750% Convertible Notes, Due 2014, between Registrant and U.S. National Association, as Trustee (including Form of 0.750% Convertible Senior Note Due 2014.	No	8-K/A	4.2	February 2, 2007
4.7	Registration Rights Agreement, dated as of January 26, 2007, between Registrant and KKR PEI Solar Holdings II, Ltd. and Citibank, N.A.	No	8-K/A	4.3	February 2, 2007
4.8	Purchase Agreement, dated January 23, 2007, by and among Registrant, the Purchasers Named in Exhibit A Attached Thereto, Kohlberg Kravis Roberts & Co., LP and KKR PEI Investments, L.P.	No	8-K/A	10.1	February 2, 2007
10.1	2007 Omnibus Incentive Plan (the "Omnibus Plan").	Yes	10-Q	10.1	February 6, 2008
10.2	Representative form of stock option grant agreement for Section 16 officers under the Omnibus Plan.	Yes			
10.3	Representative form of restricted stock unit grant agreement for Section 16 officers under the Omnibus Plan.	Yes			
10.4	Representative form of restricted stock unit grant agreement for members of the Board under the Omnibus Plan.	Yes			
10.5	U.S. Non-Qualified Deferred Compensation Plan, as amended June 30, 2002.	Yes	10-Q	10.84	May 13, 2002
10.6	Amendment to U.S. Non-Qualified Deferred Compensation Plan, effective January 1, 2005	Yes	10-Q	10.3	February 3, 2006
10.7	Amendment to U.S. Non-Qualified Deferred Compensation Plan, effective January 1, 2007	Yes	10-Q	10.5	February 9, 2007

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Exhibit Number	Exhibit Description	Management Contract or Compensatory Plan or Arrangement	Incorporated by Reference		
			Form	Exhibit	Filing Date
10.8	2005 U.S. Non-Qualified Deferred Compensation Plan, amended and restated effective January 1, 2005	Yes	10-Q	10.4	February 9, 2007
10.9	Amendment to 2005 U.S. Non-Qualified Deferred Compensation Plan, effective January 1, 2008	Yes	10-Q	10.5	February 6, 2008
10.10	Section 162(m) Executive Officer Performance-Based Bonus Plan, effective July 1, 2006.	Yes	10-K	10.11	September 8, 2006
10.11	U.S. Vice President Severance Plan and Summary Plan Description, effective as of May 1, 2006.	Yes	10-K	10.12	September 8, 2006
10.12	U.S. Vice President Involuntary Separation Plan and Summary Plan Description, effective as of November 2, 2006.	Yes	10-K	10.13	September 8, 2006
10.13	Form of Change of Control Agreement executed by each executive officer, other than the Chief Executive Officer of Registrant.	Yes			
10.14	Form of Change of Control Agreement executed by the Chairman of the Board and Chief Executive Officer of Registrant.	Yes			
10.15	Form of Indemnification Agreement executed by each Board member and executive officer of Registrant.	Yes	10-K	10.104	September 30, 2002
10.16	Chief Executive Officer Bonus Terms for FY09 under the Section 162(m) Executive Officer Performance-Based Bonus Plan.	Yes	8-K	10.1	August 4, 2008
10.17	Executive Officer Bonus Terms for FY09 under the Section 162(m) Executive Officer Performance-Based Bonus Plan.	Yes			
10.18	Chairman of the Board Bonus Terms for FY09 under the Section 162(m) Executive Officer Performance-Based Bonus Plan	Yes			
10.19	Changes to the Named Executive Officer Base Salary and Bonus Targets.	Yes	10-Q	10.3	February 9, 2007
10.20	Compensation Terms for Jonathan Schwartz.	Yes	10-K	10.20	September 8, 2006
10.21	Compensation Terms for Scott McNealy.	Yes	10-K	10.19	September 8, 2006
10.22	Amendment to Compensation Terms for Jonathan I. Schwartz.	Yes	10-Q	10.1	February 9, 2007
10.23	Amendment to Compensation Terms for Scott G. McNealy.	Yes	10-Q	10.2	February 9, 2007
21.1	Subsidiaries of Registrant.	No			
23.1	Consent of Independent Registered Public Accounting Firm.	No			
31.1	Rule 13a-14(a) Certification of Chief Executive Officer.	No			
31.2	Rule 13a-14(a) Certification of Chief Financial Officer.	No			
32.1	Section 1350 Certificate of Chief Executive Officer.	No			
32.2	Section 1350 Certificate of Chief Financial Officer.	No			

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

August 28, 2008

SUN MICROSYSTEMS, INC.
Registrant

By: /s/ MICHAEL E. LEHMAN
(Michael E. Lehman)
Chief Financial Officer and Executive Vice President, Corporate Resources

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Jonathan I. Schwartz and Michael A. Dillon, jointly and severally, his attorney-in-fact, each with the full power of substitution, for such person, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might do or could do in person hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his substitute, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ SCOTT G. McNEALY (Scott G. McNealy)	Chairman of the Board of Directors	August 28, 2008
/s/ JONATHAN I. SCHWARTZ (Jonathan I. Schwartz)	Chief Executive Officer, President and Director (Principal Executive Officer)	August 28, 2008
/s/ MICHAEL E. LEHMAN (Michael E. Lehman)	Chief Financial Officer and Executive Vice President, Corporate Resources (Principal Financial Officer)	August 28, 2008
/s/ VENGALIL K. CHATTERJEE-TANDON (Vengalil K. Chatterjee-Tandon)	Vice President and Corporate Controller (Principal Accounting Officer)	August 28, 2008
/s/ JAMES L. BARKSDALE (James L. Barksdale)	Director	August 28, 2008
/s/ STEPHEN M. BENNETT (Stephen M. Bennett)	Director	August 28, 2008
/s/ PETER L.S. CURRIE (Peter L.S. Currie)	Director	August 28, 2008
/s/ ROBERT J. FINOCCHIO, Jr. (Robert J. Finocchio, Jr.)	Director	August 28, 2008
/s/ JAMES H. GREENE, JR. (James H. Greene, Jr.)	Director	August 28, 2008

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Signature	Title	Date
/s/ MICHAEL E. MARKS (Michael E. Marks)	Director	August 28, 2008
/s/ PATRICIA E. MITCHELL (Patricia E. Mitchell)	Director	August 28, 2008
/s/ M. KENNETH OSHMAN (M. Kenneth Oshman)	Director	August 28, 2008
/s/ P. ANTHONY RIDDER (P. Anthony Ridder)	Director	August 28, 2008

EX-3.1 2 dex31.htm CERTIFICATE OF AMENDMENT TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

Exhibit 3.1

CERTIFICATE OF AMENDMENT TO
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
SUN MICROSYSTEMS, INC.

Sun Microsystems, Inc., a Delaware corporation (the "Company"), does hereby certify that:

FIRST: This Certificate of Amendment (this "Certificate of Amendment") amends the provisions of the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation").

SECOND: The terms and provisions of this Certificate of Amendment have been duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware and shall become effective at 1:00 a.m., Eastern Standard Time, on November 12, 2007.

THIRD: Article 4 of the Certificate of Incorporation is hereby amended by deleting paragraph (a) in its entirety and replacing it with the following:

"(a) The Corporation is authorized to issue two classes of shares designated "Common Stock" and "Preferred Stock." The total number of shares which the Corporation shall have authority to issue is 1,810,000,000, of which 1,800,000,000 shares shall be Common Stock with a par value of $0.001 per share and 10,000,000 shares shall be Preferred Stock with a par value of $0.001 per share.

Without regard to any other provision of this Certificate of Incorporation, each one (1) share of Common Stock, either issued and outstanding or held by the Company as treasury stock, immediately prior to the time this amendment becomes effective shall be and is hereby automatically reclassified and changed (without any further act) into one-fourth (1/4th) of a fully-paid and nonassessable share of Common Stock, provided that no fractional shares shall be issued to any holder and that instead of issuing such fractional shares, the Company shall pay in cash the fair value of such fractions of a share as of the time when this Certificate of Amendment becomes effective based on the average closing sales price of the Common Stock as reported on NASDAQ for the four trading days preceding such date."

Signed on this 9th day of November, 2007

By: /s/ Michael A. Dillon
Name: Michael A. Dillon
Title: Executive Vice President, General Counsel and Secretary

EX-3.2 2 rrd214780_25337.htm BYLAWS, AS AMENDED JULY 31, 2008

BYLAWS

OF

SUN MICROSYSTEMS, INC.

(As adopted on December 14, 1990 and

last amended on July 31, 2008)

ARTICLE I

CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

1.2 OTHER OFFICES

The board of directors may at any time establish other offices at any place or places as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II

STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. The board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the registered office of the corporation.

2.2 ANNUAL MEETING

The annual meeting of the stockholders of this corporation shall be held each year on a date and at a time designated by the board of directors. At the meeting, directors shall be elected and any other proper business may be transacted. Nominations of persons for election to the board of directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the corporation's notice of meeting, (b) by or at the direction of the board of directors or (c) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in these bylaws, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this bylaw.

For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of the preceding sentence, the stockholder must have given timely notice thereof in writing to the secretary of the corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder proposal to be presented at an annual meeting must be delivered to the secretary of the corporation at the corporation's principal executive offices not less than 60 or more than 90 calendar days prior to the first anniversary of the date that the corporation first mailed its proxy statement to stockholders in connection with the previous year's

annual meeting of stockholders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the first anniversary date of the previous year's annual meeting, notice by the stockholder to be timely must be received no later than the close of business on the tenth day following the day on which public announcement of the date of such annual meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of director in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (or any successor thereto) (the "**Exchange Act**") and Rule 14a-11 thereunder (or any successor thereto) or Section 3.3 of these Bylaws (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and such beneficial owner, and (ii) the class and number of shares for the corporation which are owned beneficially and of record by such stockholder and such beneficial owner. Notwithstanding any provision herein to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 2.2. For purposes of Section 2.2 and 3.3 of these bylaws "**public announcement**" shall mean disclosure effected in a manner that satisfies the "public disclosure" requirement of Regulation FD.

2.3 SPECIAL MEETING

A special meeting of the stockholders may be called at any time by the board of directors, or by the chairman of the board, or by the chief executive officer of the corporation, or by one or more stockholders holding shares in the aggregate entitled to cast not less than 10% of the votes at that meeting.

If a special meeting is called by any person or persons other than the board of directors, the request shall be in writing to the secretary of the corporation, and shall set forth (a) as to each person whom such person or persons propose to nominate for election or reelection as a director at such meeting all information relating to such proposed nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (or any successor thereto) and Rule 14a-11 thereunder (or any successor thereto)(including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business to be taken the meeting, a brief description of such business, the reasons for conducting such business and any material interest in such business of the person or persons calling such meeting and the beneficial owners, if any, on whose behalf such meeting is called; and (c) as to the person or persons calling such meeting and the beneficial owners, if any, on whose behalf the meeting is called (i) the name and address of such persons, as they appear on the corporation's books, and of such beneficial owners, and (ii) the class and number of shares of the corporation which are owned beneficially and of record by such persons and such beneficial owners. No business may be transacted at such special meeting otherwise than specified in such notice or by or at the direction of the corporation's board of directors. Within twenty days after such request is received, the corporation's secretary shall determine whether or not such request is valid and conforms to the requirements of this Section 2.3. If the secretary so determines, the board of directors shall have the sole authority to fix the place, date and hour of such meeting, which date shall be not less than sixty nor more than ninety days after the secretary's determination, and the corporation's secretary shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5. Nothing contained in this paragraph 2.3 shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

Only such business shall be conducted at a special meeting of stockholders called by action of the board of directors as shall have been brought before the meeting pursuant to the corporation's notice of meeting.

This Section 2.3 may not be amended to eliminate the right of one or more stockholders holding shares in the aggregate entitled to cast not less than 10% of the votes at a special meeting of stockholders to call such a special meeting of stockholders, unless holders of at least 75% of the shares entitled to vote thereon approve such an amendment.

2.4 NOTICE OF STOCKHOLDERS' MEETINGS

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the DGCL or the certificate of incorporation of the corporation). The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE

Notice of any meeting of stockholders shall be given:

i. if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the corporation's records; or

ii. if electronically transmitted, as provided in Section 10.2 of these bylaws.

An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or any other agent of the corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act.

2.6 QUORUM

At any meeting of the stockholders, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law. Where a separate vote by a class or classes is required, a majority of the shares of such class or classes entitled to take action with respect to that vote on that matter, present in person or by proxy, shall constitute a quorum. If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, date or time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 CONDUCT OF BUSINESS

Such person as the board of directors may have designated or, in the absence of such a person, the chairman of the board, the chief executive officer or, in their absence, any officer of the corporation, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the secretary of the corporation, the secretary of the meeting shall be such person as the chairman appoints. The board of directors may adopt by resolution such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent

with such rules and regulations as adopted by the board of directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the board of directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (1) the establishment of an agenda or order of business for the meeting; (2) rules and procedures for maintaining order at the meeting and the safety of those present; (3) limitations on attendance at or participation in the meeting, to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the chair shall permit; (4) restrictions on entry to the meeting after the time fixed for the commencement thereof, and (5) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the board of directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

2.9 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the DGCL or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Any action required or able to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation at its registered office in Delaware, its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery to the corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the corporation in the manner prescribed in the first paragraph of this section.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the DGCL.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix a record date, which shall not be more than 60 nor less than ten days before the date of such meeting, nor more than 60 days prior to any other action.

If the board of directors does not so fix a record date:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of

stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(ii) The record date for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall neither precede nor be more than ten days after the date upon which such resolution is adopted by the board of directors. Any stockholder of record seeking to have the stockholders authorize or take action by written consent shall, by written notice to the secretary, request the board of directors to fix a record date. The board of directors shall promptly, but in all events within ten days after the date on which such noticed is received, adopt a resolution fixing the record date.

If the board of directors has not fixed a record date within such time, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in the manner prescribed in the first paragraph of Section 2.10 of these bylaws. If the board of directors has not fixed a record date within such time and prior action by the board of directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts the resolution taking such prior action.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.12 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to the provisions of Sections 217 and 218 of the DGCL (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Each stockholder shall have one (1) vote for every share of stock entitled to vote that is registered in his or her name on the record date for the meeting (as determined in accordance with Section 2.11 of these bylaws), except as otherwise provided herein or required by law.

At a stockholders' meeting at which directors are to be elected, each stockholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes which such stockholder normally is entitled to cast) if the candidates' names have been properly placed in nomination (in accordance with these bylaws) prior to commencement of the voting and the stockholder requesting cumulative voting has given notice prior to commencement of the voting of the stockholder's intention to cumulate votes. If cumulative voting is properly requested, each holder of stock, or of any class or classes or of a series or series thereof, who elects to cumulate votes shall be entitled to as many votes as equals the number of votes which (absent this provision as to cumulative voting) such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by such holder, and such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them, as such holder may see fit.

Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. Except as otherwise required by law, the certificate of incorporation or these bylaws, all action taken by holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation.

2.13 PROXIES

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by a written or electronic proxy, filed in accordance with the procedure established for the meeting or taking of action in writing, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 2.13 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. An electronic proxy (which may be transmitted via telephone, e-mail, the Internet or such other electronic means as the board of directors may determine from time to time) shall be deemed executed if the corporation receives an appropriate electronic transmission from the stockholder or the stockholder's attorney-in-fact along with a pass code or other identifier which reasonably establishes the stockholder or the stockholder's attorney-in-fact as the sender of such transmission. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(c) of the DGCL.

2.14 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

2.15 INSPECTORS OF ELECTION

The corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by an inspector or inspectors appointed by the chairman of the meeting.

ARTICLE III

DIRECTORS

3.1 POWERS

Subject to the provisions of the DGCL and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 NUMBER OF DIRECTORS

The number of directors of the corporation shall be no less than 6 or more than 11. The exact number of directors shall be 11, until changed, within the limits specified above, by a resolution duly adopted by the board of directors. The indefinite number of directors may be changed, or a definite number fixed without provision for an indefinite number, by an adopted amendment to this bylaw duly adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that an amendment reducing the number or the minimum

number of directors to a number less than five cannot be adopted if the votes cast against its adoption at a meeting of the stockholders, or the shares not consenting in the case of action by written consent, are equal to more than 16-2/3% of the outstanding shares entitled to vote thereon. No amendment may change the stated maximum number of authorized directors to a number greater than two times the stated number of directors minus one.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. The stockholders shall elect directors by a majority of the votes cast; provided, however, that the directors shall be elected by a plurality of the shares represented in person or by proxy and entitled to vote on the election of directors at any meeting for which (i) the Secretary of the corporation receives a notice that a stockholder has nominated a person for election to the board of directors in compliance with the advance notice requirements for stockholder nominees for director set forth in Section 2.2 of these Bylaws and (ii) such nomination has not been withdrawn by such stockholder on or prior to the twentieth day preceding the date the corporation first mails its notice of meeting for such meeting to the stockholders. For the purposes of this Section 3.3, a majority of the votes cast means that the number of shares entitled to vote on the election of directors and represented in person or by proxy at such meeting casting their vote "for" a director must exceed the number of such votes "against" that director. If a nominee for director does not receive a majority of the votes cast at a meeting of stockholders for the election of directors, the Corporate Governance and Nominating Committee shall then make a recommendation to the board of directors as to whether to accept such director's resignation as previously tendered pursuant to the corporation's Corporate Governance Guidelines. Thereafter, the board of directors will act on the Corporate Governance and Nominating Committee's recommendation. Within 90 days from the date the election results are certified, the corporation will publicly disclose the board of directors' decision and rationale, and, if applicable, the fact that such resignation was accepted by the board of directors.

Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Nominations for election to the board of directors of the corporation at an annual meeting of stockholders may be made by the board or on behalf of the board by a nominating committee appointed by the board, or by any stockholder of the corporation entitled to vote for the election of directors at such meeting. Such nominations, other than those made by or on behalf of the board, shall be made by notice in writing received by the secretary of the corporation at the corporation's principal executive offices not less than 60 or more than 90 calendar days prior to the first anniversary of the date that the corporation first mailed its proxy statement to stockholders in connection with the previous year's annual meeting of stockholders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the first anniversary date of the previous year's annual meeting, notice by the stockholder to be timely must be received no later than the close of business on the tenth day following the day on which public announcement (as defined in Section 2.2) of the date of such annual meeting is first made. Such notice shall set forth as to each proposed nominee who is not an incumbent director (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee, (iii) the number of shares of stock of the corporation beneficially owned by each such nominee and by the nominating stockholder, (iv) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, (v) a statement as to whether such person, if elected and in accordance with the Corporation's Corporate Governance Guidelines, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and upon acceptance of such resignation by the Board; and (vi) any other information concerning the nominee that must be disclosed of nominees in proxy solicitations pursuant to Regulation 14A under the Exchange Act.

The chairman of the annual meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure. If such determination and declaration is made, the defective

nomination shall be disregarded.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon written notice to the attention of the secretary of the corporation. When one or more directors so resigns and the resignation is effective at a future date, only a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled only by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person.

3.6 REGULAR MEETINGS

Regular meetings of the board of directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the board of directors and publicized among all directors. A notice of each regular meeting shall not be required.

3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the

board, the chief executive officer of the corporation, or by one-third of the directors then in office (rounded up to the nearest whole number) and shall be held at a place, on a date and at a time as such person or persons shall fix. Notice of the place, date and time of special meetings, unless waived, shall be given to each director by mailing written notice not less than two (2) days before the meeting or by sending an electronic transmission (as defined in Section 10.3 of these bylaws) of the same not less than two hours before the time of the holding of the meeting. If the circumstances warrant, notice may also be given personally or by telephone not less than two hours before the time of the holding of the meeting. Oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

3.8 QUORUM

At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the DGCL or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

3.10 CONDUCT OF BUSINESS

At any meeting of the board of directors, business shall be transacted in such order and manner as the board may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided herein or required by law.

3.11 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing or by means of electronic transmission and the writings or reproductions of the electronic transmissions are filed with the minutes of proceedings of the board or committee.

3.12 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.13 APPROVAL OF LOANS TO OFFICERS

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee

of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.14 REMOVAL OF DIRECTORS

Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that, so long as stockholders of the corporation are entitled to cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

3.15 EMERGENCY BYLAWS

In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee of the board of directors cannot readily be convened for action, then the director or directors in attendance at a meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the board of directors as they shall deem necessary and appropriate.

ARTICLE IV

COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) amend the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in Section 151(a) of the DGCL, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the DGCL, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, (iv) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution, or (v) amend the bylaws of the corporation; and, unless the board resolution establishing the committee, a supplemental resolution of the board of directors, the bylaws or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253

of the DGCL.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.11 (action without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

5.1 OFFICERS DESIGNATED

The officers of the corporation elected by the board of directors shall be a chairman of the board of directors, a chief executive officer, a president, a secretary, a chief financial officer and such other officers as the board of directors may deem appropriate. The corporation may also have one or more vice presidents, assistant secretaries, assistant treasurers or other officers, who shall also be officers of the corporation (each, an "**Appointed Officer**") and who shall be appointed by the chairman of the board or the chief executive officer. Any number of offices may be held by the same person.

5.2 REMOVAL AND RESIGNATION OF OFFICERS

All officers shall hold office at the pleasure of the board of directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected by the board of directors may be removed at any time by the board of directors. Any Appointed Officer may be removed at any time by the board of directors, the chairman of the board or the chief executive officer. Nothing in these bylaws shall be construed as creating any kind of contractual right to employment with the corporation.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.3 VACANCIES IN OFFICES

If the office of any elected officer becomes vacant for any reason, the vacancy may be left vacant or be filled by the board of directors. If the office of any Appointed Officer becomes vacant for any reason, the vacancy may be left vacant or be filled by the chairman of the board or the chief executive officer.

5.4 CHAIRMAN OF THE BOARD

The chairman of the board shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned by the board of directors or as may be prescribed by

these bylaws.

5.5 CHIEF EXECUTIVE OFFICER

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, the chief executive officer of the corporation shall, subject to the control of the board of directors, have general supervision, direction, and control of the business and the officers of the corporation. The chief executive officer shall have the general powers and duties of management usually vested in the chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

5.6 PRESIDENT

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the corporation. The president shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

5.7 VICE PRESIDENTS

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president and chief executive officer. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president, chief executive officer or the chairman of the board.

5.8 SECRETARY

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.9 CHIEF FINANCIAL OFFICER

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. The chief financial officer shall disburse the

funds of the corporation as may be ordered by the board of directors, shall render to the chief executive officer, president and directors, whenever they request it, an account of all transactions and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or the bylaws.

5.10 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairman of the board, any officer of this corporation, or any other person designated by the board of directors, shall be authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.11 AUTHORITY AND DUTIES OF OFFICERS

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors or the stockholders.

ARTICLE VI

INDEMNITY

6.1 THIRD PARTY ACTIONS

The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director or officer of the corporation, or that he or she is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture trust or other enterprise, including without limitation any subsidiary of the corporation (collectively, an "**Agent**"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the corporation, which approval shall not be unreasonably withheld) actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

6.2 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was an Agent against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

6.3 SUCCESSFUL DEFENSE

To the extent that an Agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.1 and 6.2, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

6.4 DETERMINATION OF CONDUCT

Any indemnification under Sections 6.1 and 6.2 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that the indemnification of the Agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 6.l and 6.2. Such determination shall be made (1) by the board of directors or the executive committee by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding or (2) if such quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

6.5 PAYMENT OF EXPENSES IN ADVANCE

Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation as authorized in this Article VI.

6.6 INDEMNITY NOT EXCLUSIVE

The indemnification and advancement of expenses provided or granted pursuant to the other sections of this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

6.7 INSURANCE INDEMNIFICATION

The corporation shall have the power to purchase and maintain on behalf any person who is or was an Agent insurance against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article VI.

6.8 THE CORPORATION

For purposes of this Article VI, references to the "**corporation**" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors and officers, so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under and subject to the provisions of this Article VI (including, without limitation the provisions of Section 6.4) with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

6.9 EMPLOYEE BENEFIT PLANS

For purposes of this Article VI, references to "**other enterprises**" shall include employee benefit plans; references to "**fines**" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the corporation**" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the corporation**" as referred to in this Article

VI.

6.10 INDEMNITY FUND

Upon resolution passed by the board, the corporation may establish a trust or other designated account, grant a security interest or use other means (including, without limitation, a letter of credit), to ensure the payment of certain of its obligations arising under this Article VI and/or agreements which may be entered into between the corporation and its officers and directors from time to time.

6.11 INDEMNIFICATION OF OTHER PERSONS

The provisions of this Article VI shall not be deemed to preclude the indemnification of any person who is not an Agent, but whom the corporation has the power or obligation to indemnify under the provisions of the DGCL or otherwise. The corporation may, in its sole discretion, indemnify an employee, trustee or other agent as permitted by the DGCL. The corporation shall indemnify an employee, trustee or other agent where required by law.

6.12 SAVINGS CLAUSE

If this Article VI or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Agent against expenses (including attorney's fees), judgments, fines and amounts paid in settlement with respect to any action, suit, proceeding or investigation, whether civil, criminal or administrative, and whether internal or external, including a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article VI that shall not have been invalidated, or by any other applicable law.

6.13 CONTINUATION OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VII

RECORDS AND REPORTS

7.1 MAINTENANCE AND INSPECTION OF RECORDS

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number of class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

7.2 INSPECTION BY DIRECTORS

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested

with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

ARTICLE VIII

GENERAL MATTERS

8.1 CHECKS

All checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation shall be signed by such officer or officers, or agent or agents, as from time to time may be designated by the board of directors or by such officers of the corporation as may be designated by the board to make such designation, and only the persons so authorized shall sign or endorse those instruments.

8.2 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 STOCK CERTIFICATES; PARTLY PAID SHARES

Certificates for the shares of stock of the corporation shall be issued only to the extent as may be required by applicable law or as otherwise authorized by the secretary or an assistant secretary, and if so issued shall be in such form as is consistent with the certificate of incorporation and applicable law. Any such certificate shall be signed by, or in the name of the corporation by, the chairman of or vice-chairman of the board of directors, or the secretary or an assistant secretary. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the corporation in the case or uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 LOST CERTIFICATES

The board of directors or the secretary or an assistant secretary may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors or the secretary or an assistant secretary may, in its or their discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to indemnify the corporation in such manner as it shall require and/or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed..

8.6 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "**person**" includes both a corporation and a natural person.

8.7 DIVIDENDS

The directors of the corporation, subject to any restrictions contained in (i) the DGCL or (ii) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

8.8 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

8.9 SEAL

The corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 TRANSFER OF STOCK

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

8.12 REGISTERED STOCKHOLDERS

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the

person registered on its hooks as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX

AMENDMENTS

Any of these bylaws may be altered, amended or repealed by the affirmative vote of a majority of the board of directors or, with respect to bylaw amendments placed before the stockholders for approval and except as otherwise provided herein or required by law, by the affirmative vote of the holders of 75% of the shares of the corporation's stock entitled to vote in the election of directors, voting as one class.

ARTICLE X

NOTICES

10.1 GENERAL

Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery, by mail, postage paid, by facsimile transmission or by electronic transmission. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at such stockholder's last known address as it appears on the books of the corporation. The time when such notice shall be deemed received, if hand delivered, or dispatched, if sent by mail or facsimile or electronic transmission, shall be the time of the giving of the notice.

10.2 NOTICE BY ELECTRONIC TRANSMISSION

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

A. the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

B. such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

i. if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

ii. if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

iii. if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

iv. if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

10.3 DEFINITION OF ELECTRONIC TRANSMISSION

An "**electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including without limitation any facsimile transmission or communication by electronic mail.

10.4 INAPPLICABILITY

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

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CONFORMED SUBMISSION TYPE: 8-K
PUBLIC DOCUMENT COUNT: 6
CONFORMED PERIOD OF REPORT: 19990722
ITEM INFORMATION:
ITEM INFORMATION:
FILED AS OF DATE: 19990806

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		CENTRAL INDEX KEY: 0000709519
		STANDARD INDUSTRIAL CLASSIFICATION: ELECTRONIC COMPUTERS [3571]
		IRS NUMBER: 942805249
		STATE OF INCORPORATION: DE
		FISCAL YEAR END: 0630

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		FORM TYPE: 8-K
		SEC ACT:
		SEC FILE NUMBER:000-15086
		FILM NUMBER: 99679322

	BUSINESS ADDRESS:
		STREET 1: 901 SAN ANTONIO RD
		CITY: PALO ALTO
		STATE: CA
		ZIP: 94303
		BUSINESS PHONE: 6509601300

	MAIL ADDRESS:
		STREET 1: 901 SAN ANTONIO ROAD
		CITY: PALO ALTO
		STATE: CA
		ZIP: 94303
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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K
CURRENT REPORT

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

August 6, 1999

- ---

Date of Report (Date of earliest event reported):

SUN MICROSYSTEMS, INC.

- ---

(Exact name of registrant as specified in its charter)

<TABLE>
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Delaware 0-15086 94-2805249

- ---

(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

901 San Antonio Road, Palo Alto, California	94303
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (650) 960-1300

N/A

(Former name or former address, if changed since last report)

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ITEM 5. OTHER EVENTS

Sun Microsystems, Inc. (the "Company") recently completed a multi-tranche debt offering of $1,500,000,000 aggregate principal amount of Senior Notes, issued pursuant to the provisions of the Indenture, dated as of August 1, 1999, between the Company and The Bank of New York. The Company sold $200,000,000 principal amount of 7.00% Senior Notes due 2002, $250,000,000 principal amount of 7.35% Senior Notes due 2004, $500,000,000 principal amount of 7.50% Senior Notes due 2006 and $550,000,000 principal amount of 7.65% Senior Notes due 2009.

The Senior Notes were offered under a shelf registration statement declared effective by the Securities and Exchange Commission on July 14, 1999. The underwriting was managed by Goldman, Sachs & Co. The sale closed on August 4, 1999.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits

1.1 Underwriting Agreement, dated July 30, 1999, by and among Sun Microsystems and the underwriters named therein.

4.1 Indenture, dated as of August 1, 1999 (the "Indenture") between Sun Microsystems, Inc. and The Bank of New York, as trustee.

4.2 Form of Subordinated Indenture.

4.3 Officers' Certificate Pursuant to Section 301 of the Indenture, without exhibits, establishing the terms of the Company's Senior Notes.

4.4 Form of Senior Note.

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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.

Date: August 6, 1999 SUN MICROSYSTEMS, INC.

By: /s/ MICHAEL E. LEHMAN
Michael E. Lehman
Vice President, Corporate Resources and Chief Financial Officer

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INDEX TO EXHIBITS

Exhibit	
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4.2 Form of Subordinated Indenture.

4.3 Officers' Certificate Pursuant to Section 301 of the Indenture, without exhibits, establishing the terms of the Company's Senior Notes.

4.4 Form of Senior Note.

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SUN MICROSYSTEMS, INC.

DEBT SECURITIES

UNDERWRITING AGREEMENT

July 30, 1999

Goldman, Sachs & Co.
85 Broad Street,
New York, New York 10004

Ladies and Gentlemen:

From time to time Sun Microsystems, Inc., a Delaware corporation (the "Company"), proposes to enter into one or more Pricing Agreements (each a "Pricing Agreement") in the form of Annex I hereto, with such additions and deletions as the parties thereto may determine, and, subject to the terms and conditions stated herein and therein, to issue and sell to the firms named in Schedule I to the applicable Pricing Agreement (such firms constituting the "Underwriters" with respect to such Pricing Agreement and the securities specified therein) certain of its debt securities (the "Securities") specified in Schedule II to such Pricing Agreement (with respect to such Pricing Agreement, the "Designated Securities").

The terms and rights of any particular issuance of Designated Securities shall be as specified in the Pricing Agreement relating thereto and in or pursuant to the indenture (the "Indenture") identified in such Pricing Agreement.

1. Particular sales of Designated Securities may be made from time to time to the Underwriters of such Securities, for whom the firms designated as representatives of the Underwriters of such Securities in the Pricing Agreement relating thereto will act as representatives (the "Representatives"). The term "Representatives" also refers to a single firm acting as sole representative of the Underwriters and to an Underwriter or Underwriters who act without any firm being designated as its or their representatives. This Underwriting Agreement shall not be construed as an obligation of the Company to sell any of the Securities or as an obligation of any of the Underwriters to purchase the Securities. The obligation of the Company to issue and sell any of the Securities and the obligation of any of the Underwriters to purchase any of the Securities shall be evidenced by the Pricing Agreement with respect to the Designated Securities specified therein. Each Pricing Agreement shall specify the aggregate principal amount of such Designated Securities, the initial public offering price of such

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Designated Securities, the purchase price to the Underwriters of such Designated Securities, the names of the Underwriters of such Designated Securities, the names of the Representatives of such Underwriters and the principal amount of such Designated Securities to be purchased by each Underwriter and shall set forth the date, time and manner of delivery of such Designated Securities and payment therefor. The Pricing Agreement shall also specify (to the extent not set forth in the Indenture and the registration statement and prospectus with respect thereto) the terms of such Designated Securities. A Pricing Agreement

shall be in the form of an executed writing (which may be in counterparts), and may be evidenced by an exchange of telegraphic communications or any other rapid transmission device designed to produce a written record of communications transmitted. The obligations of the Underwriters under this Agreement and each Pricing Agreement shall be several and not joint.

2. The Company represents and warrants to, and agrees with, each of the Underwriters that:

(a) A registration statement on Form S-3 (File No. 333-81101) (the "Initial Registration Statement") in respect of the Securities has been filed with the Securities and Exchange Commission (the "Commission"); the Initial Registration Statement and any post-effective amendment thereto, each in the form heretofore delivered or to be delivered to the Representatives and, excluding exhibits to the Initial Registration Statement, but including all documents incorporated by reference in the prospectus contained therein, to the Representatives for each of the other Underwriters, have been declared effective by the Commission in such form; other than a registration statement, if any, increasing the size of the offering (a "Rule 462(b) Registration Statement"), filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Act"), which became effective upon filing, no other document with respect to the Initial Registration Statement or document incorporated by reference therein has heretofore been filed or transmitted for filing with the Commission (other than prospectuses filed pursuant to Rule 424(b) of the rules and regulations of the Commission under the Act, each in the form heretofore delivered to the Representatives); and no stop order suspending the effectiveness of the Initial Registration Statement, any post-effective amendment thereto or the Rule 462(b) Registration Statement, if any, has been issued and no proceeding for that purpose has been initiated or threatened by the Commission (any preliminary prospectus included in the Initial Registration Statement or filed with the Commission pursuant to Rule 424(a) under the Act, is hereinafter called a "Preliminary Prospectus"; the various parts of the Initial Registration Statement, any post-effective amendment thereto and the Rule 462(b) Registration Statement, if any, including all exhibits thereto and the documents incorporated by reference in the prospectus contained in the Initial Registration Statement at the time such part of the Initial Registration Statement became effective but excluding Form T-1, each as amended at the time such part of the Initial Registration Statement became effective or such part of the Rule 462(b) Registration Statement, if any, became or hereafter becomes effective, are hereinafter collectively called the "Registration Statement"; the prospectus relating to the Securities, in the form in which it has most recently been filed, or transmitted for filing, with the Commission on or prior to the date of this Agreement, being hereinafter called the "Prospectus"; any reference herein to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to the applicable form under the Act, as of the date of such Preliminary Prospectus or Prospectus, as the case may be; any reference to any amendment or

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supplement to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such Preliminary Prospectus or Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and incorporated by reference in such Preliminary Prospectus or Prospectus, as the case may be; any reference to any amendment to the Initial Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Sections 13(a) or 15(d) of the Exchange Act after the effective date of the Initial Registration Statement that is incorporated by reference in the Registration Statement; and any reference to the Prospectus as amended or supplemented shall be deemed to refer to the Prospectus as amended or supplemented in relation to the applicable Designated Securities in the form in which it is filed with the Commission pursuant to Rule 424(b) under the Act in accordance with Section 5(a) hereof, including any documents incorporated by reference therein as of the date of such filing);

(b) The documents incorporated by reference in the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and any further documents so filed and incorporated by reference in the Prospectus or any further amendment or supplement thereto, when such documents become effective or are filed with the Commission, as the case may be, will conform in all

material respects to the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter of Designated Securities through the Representatives expressly for use in the Prospectus as amended or supplemented relating to such Securities;

(c) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement or the Prospectus will conform, in all material respects to the requirements of the Act and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") and the rules and regulations of the Commission thereunder, and such documents do not and will not, as of the applicable effective date as to the Registration Statement and any amendment thereto, and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by the Underwriters expressly for use therein.

(d) No order preventing or suspending the use of the Registration Statement or any Prospectus has been issued by the Commission;

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(e) The Company and its subsidiaries, taken as a whole, have not sustained since the date of the latest audited financial statements included or incorporated by reference in the Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been any material change in the capital stock or long-term debt of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Prospectus;

(f) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, with full power and authority (corporate and other) to own, lease and operate its properties and conduct its business as described in the Prospectus; the Company is duly qualified to do business as a foreign corporation in good standing in California, Massachusetts, Colorado and Oregon. Such states are the only states where the Company has material facilities to conduct its business as described in the Prospectus. The Company now holds, and at each Time of Delivery (hereinafter defined) will hold, all licenses, certificates, and permits from state, federal and other domestic regulatory authorities which are material to the conduct of its business as presently conducted; the Company is not (i) in violation of its Certificate of Incorporation or By-laws or (ii) in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any material bond, debenture, note or other evidence of indebtedness or in any material contract, indenture, mortgage, loan agreement, joint venture or other agreement or instrument to which the Company is a party or by which it or any of its properties may be bound or (iii) in material violation of any law, order, rule, regulation, writ injunction or decree of any government, governmental instrumentality or court, domestic or foreign, of which it has knowledge except where in the case of clauses (ii) and (iii) such violation or default would not have a material adverse effect on the business, operations or financial condition of the Company and the subsidiaries taken as a whole;

(g) The Company has an authorized capitalization as set forth in the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable;

(h) The Securities have been duly authorized, and, when Designated Securities are issued and delivered pursuant to this Agreement and the Pricing Agreement with respect to such Designated

Securities, such Designated Securities will have been duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company entitled to the benefits provided by the Indenture, which will be substantially in the form filed as an exhibit to the Registration Statement; the Indenture has been duly authorized and duly qualified under the Trust Indenture Act and, at the Time of Delivery for such Designated Securities (as defined in Section 4 hereof), the Indenture will constitute a valid and legally binding instrument,

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enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to rules of law governing specific performance, injunctive relief and general equity principles; and the Indenture conforms, and the Designated Securities will conform, to the descriptions thereof contained in the Prospectus as amended or supplemented with respect to such Designated Securities;

(i) The issue and sale of the Securities and the compliance by, the Company with all of the provisions of the Securities, the Indenture, this Agreement and any Pricing Agreement, and the consummation of the transactions herein and therein contemplated will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement bond, debenture, note agreement, or other evidence of indebtedness, lease or contract or other material agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject, nor will such action result in any violation of the provisions of the Certificate of Incorporation, as amended, or By-laws, as amended, of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the consummation by the Company of the transactions contemplated by this Agreement or any Pricing Agreement or the Indenture, except such as have been, or will have been prior to the Time of Delivery, obtained under the Act and the Trust Indenture Act and such consents, approvals, authorizations, registrations or qualifications as may be required by the National Association of Securities Dealers or under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Underwriters;

(j) The statements set forth in the Prospects under the caption "Description of the Debt Securities", insofar as they purport to constitute a summary of the terms of the Securities, and under the caption "Plan of Distribution" insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair;

(k) Neither the Company nor any of its subsidiaries is in violation of its Certificate of Incorporation or By-laws or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound;

(l) Other than as set forth or contemplated in the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject which are required to be disclosed in the Prospectus, or which could reasonably be expected, individually or in the aggregate to have a material adverse effect on the consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries; and, to the Company's knowledge, no such

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proceedings are threatened in writing by governmental authorities or threatened in writing by others;

(m) The Company is not and, after giving effect to the offering and sale of the Securities, will not be an "investment company", as such term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act");

(n) Except as disclosed in the Prospectus, neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect

to any patents, patent rights, inventions, trade secrets, know-how, proprietary techniques, including processes and substances, trademarks, service marks, trade names, or copyrights which, singly or in the aggregate, could reasonably be expected to have a material adverse effect on the business, operations, financial condition, income or business prospects of the Company and its subsidiaries taken as a whole;

(o) Ernst & Young LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Act and the rules and regulations of the Commission thereunder; and

(p) The Company has reviewed its operations and that of its subsidiaries and has commenced an audit with respect to third parties with which the Company or any of its subsidiaries has a material relationship to evaluate the extent to which the business or operations of the Company or any of its subsidiaries will be affected by the Year 2000 Problem. As a result of such review (and only with respect to such third parties that the Company has completed its audit for), the Company has no particular reason to believe, and therefore does not believe, that the Year 2000 Problem will have a material adverse effect on the Company's consolidated financial position, business prospects, stockholders' equity or results of operations of the Company and its subsidiaries or result in any material loss or interference with the Company's business or operations. The "Year 2000 Problem" as used herein means any significant risk that computer hardware or software used in the receipt, transmission, processing, manipulation, storage, retrieval, retransmission or other utilization of data or in the operation of mechanical or electrical systems of any kind will not, in the case of dates or time periods occurring after December 31, 1999, function at least as effectively as in the case of dates or time periods occurring prior to January 1, 2000.

3. Upon the execution of the Pricing Agreement applicable to any Designated Securities and authorization by the Representatives of the release of such Designated Securities, the several Underwriters propose to offer such Designated Securities for sale upon the terms and conditions set forth in the Prospectus as amended or supplemented.

4. Designated Securities to be purchased by each Underwriter pursuant to the Pricing Agreement relating thereto, in the form specified in such Pricing Agreement, and in such authorized denominations and registered in such names as the Representatives may request upon at least forty-eight hours' prior notice to the Company, shall be delivered by or on behalf of the Company to the Representatives for the account of such Underwriter, against payment by such Underwriter or on its behalf of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to the Representatives at least

forty-eight hours in advance or at such other place and time and date as the Representatives and the Company may agree upon in writing, such time and date being herein called the "Time of Delivery" for such Securities.

5. The Company agrees with each of the Underwriters of any Designated Securities:

(a) To prepare the Prospectus as amended or supplemented in relation to the applicable Designated Securities in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission's close of business on the second business day following the execution and delivery of the Pricing Agreement relating to the applicable Designated Securities or, if applicable, such earlier time as may be required by Rule 424(b); to make no further amendment or any supplement to the Registration Statement or Prospectus as amended or supplemented after the date of the Pricing Agreement relating to such Securities and prior to the Time of Delivery for such Securities which shall be disapproved by the Representatives for such Securities promptly after reasonable notice thereof; to advise the Representatives promptly of any such amendment or supplement after such Time of Delivery and furnish the Representatives with copies thereof; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus for so long as the delivery of a prospectus is required in connection with the offering or sale of such Securities, and during such same period to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed with the Commission, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any prospectus relating to the Securities, of the suspension

of the qualification of such Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or Prospectus or for additional information; and, in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any prospectus relating to the Securities or suspending any such qualification, to promptly use its best efforts to obtain the withdrawal of such order;

(b) Promptly from time to time to take such action as the Representatives may reasonably request to qualify such Securities for offering and sale under the securities laws of such jurisdictions as the Representatives may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of such Securities, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction;

(c) Prior to 10:00 a.m., New York City time, on the New York Business Day next succeeding the date of this Agreement and from time to time, to furnish the Underwriters with copies of the Prospectus in New York City as amended or

supplemented in such quantities as the Representatives may reasonably request, and, if the delivery of a prospectus is required at any time in connection with the offering or sale of the Securities and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Act, the Exchange Act or the Trust Indenture Act, to notify the Representatives and upon their request to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many copies as the Representatives may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance;

(d) To make generally available to its securityholders as soon as practicable, but in any event not later than eighteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158);

(e) During the period beginning from the date of the Pricing Agreement for such Designated Securities and continuing to and including the later of (i) the termination of trading restrictions for such Designated Securities, as notified to the Company by the Representatives and (ii) the Time of Delivery for such Designated Securities, not to offer, sell, contract to sell or otherwise dispose of any debt securities of the Company which mature more than one year after such Time of Delivery and which are substantially similar to such Designated Securities, without the prior written consent of the Representatives;

(f) If the Company elects to rely upon Rule 462(b), the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 P.M., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for the Rule 462(b) Registration Statement or give irrevocable instructions for the payment of such fee pursuant to Rule 111(b) under the Act;

(g) Not to invest, reinvest or otherwise use the proceeds received by it from the sale of the Securities to the Underwriters in such a manner as would require the Company to register as an investment company under the Investment Company Act of 1940.

6. The Company covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Securities under the Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, any Preliminary Prospectus and the Prospectus and amendments

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and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any Agreement among Underwriters, this Agreement, any Pricing Agreement, any Indenture, any Blue Sky and Legal Investment Memoranda, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) all expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 5(b) hereof, including the fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky and Legal Investment Surveys; (iv) any fees charged by securities rating services for rating the Securities; (v) any filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with, any required review by the National Association of Securities Dealers, Inc. of the terms of the sale of the Securities; (vi) the cost of preparing the Securities; (vii) the fees and expenses of any Trustee and any agent of any Trustee and the fees and disbursements of counsel for any Trustee in connection with any Indenture and the Securities; and (viii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section, and Sections 8 and 11 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

7. The obligations of the Underwriters of any Designated Securities under the Pricing Agreement relating to such Designated Securities shall be subject, in the discretion of the Representatives, to the condition that all representations and warranties and other statements of the Company in or incorporated by reference in the Pricing Agreement relating to such Designated Securities are, at and as of the Time of Delivery for such Designated Securities, true and correct, the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus as amended or supplemented in relation to the applicable Designated Securities shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 5(a) hereof; if the Company has elected to rely upon Rule 462(b), the Rule 462(b) Registration Statement shall have become effective by 10:00 P.M., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the Representatives' reasonable satisfaction;

(b) Counsel for the Underwriters shall have furnished to the Representatives such written opinion or opinions, dated the Time of Delivery for such Designated Securities, with respect to the matters covered in paragraphs (i), (iv), (v), (vi) and (x) of subsection (c) below as well as such other related matters as the Representatives may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

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(c) Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel for the Company, shall have furnished to the Representatives their written opinion, dated the Time of Delivery for such Designated Securities, in form and substance satisfactory to the Representatives, to the effect that:

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, with the requisite corporate power to own, lease and operate its properties and conduct its business as described in the Prospectus; and the Company is duly qualified to do business as a foreign corporation and is in good standing in California, Massachusetts, Colorado and Oregon;

(ii) The Company has an authorized capitalization as set forth in its Certificate of Incorporation and as set forth in the Prospectus as amended or supplemented;

(iii) To such counsel's knowledge and other than as set forth or contemplated in the Prospectus, there are no legal

or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject which to such counsel's knowledge would individually or in the aggregate have a material adverse effect on the consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries; and, to such counsel's knowledge, no such proceedings are threatened in writing by governmental authorities or by others;

(iv) This Agreement and the Pricing Agreement with respect to the Designated Securities have been duly authorized, executed and delivered by the Company;

(v) The Designated Securities have been duly authorized, executed, authenticated, issued and delivered and constitute valid and legally binding obligations of the Company entitled to the benefits provided by the Indenture; and the Designated Securities and the Indenture conform in all material respects to the descriptions thereof in the Prospectus as amended or supplemented;

(vi) The Indenture has been duly authorized, executed and delivered by the parties thereto and constitutes a valid and legally binding instrument, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to rules of law governing specific performance, injunctive relief and general equity principles; and the Indenture has been duly qualified under the Trust Indenture Act;

(vii) The issue and sale of the Designated Securities and the compliance, as of the date hereof, by the Company with all of the provisions of the Designated Securities, the Indenture, this Agreement and the Pricing Agreement with respect to the Designated Securities and the consummation of the transactions herein and therein contemplated will not to such counsel's

knowledge, result in a breach or violation of any of the terms or provisions of, or constitute a default under, any Reviewed Agreements, nor will such actions result in any violation of the provisions of the Certificate of Incorporation, as amended, or By-laws, as amended, of the Company or to such counsel's knowledge any applicable statute or any order, rule or regulation known to such counsel of any court or governmental agency or body having jurisdiction over the Company or any of its properties, other than state securities or Blue Sky laws, as to which such counsel need express no opinion. "Reviewed Agreements" means those agreements (i) that have been filed as an exhibit to the Company's Annual Report on Form 10-K and to which the Company or any of its subsidiaries is currently a party or by which the Company or any of its subsidiaries is currently bound or to which any of the property or assets of the Company or any of its subsidiaries is currently subject or (ii) that would be required to be filed as an exhibit to the Company's Annual Report on Form 10-K if such Annual Report was being filed for the first time as of the date of such counsel's opinion, as certified by the Company in the Company's Officers' Certificate attached as an exhibit to such counsel's opinion;

(viii) No consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Designated Securities or the consummation by the Company of the other transactions contemplated by this Agreement or such Pricing Agreement or the Indenture, except (i) such as have been obtained under the Act and the Trust Indenture Act and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Designated Securities by the Underwriters and (ii) such as may be expressly contemplated by the requirements of this Agreement, such Pricing Agreement or the Indenture;

(ix) To such counsel's knowledge the Company is not in violation of its By-laws or Certificate of Incorporation;

(x) The statements set forth in the Prospectus under the caption "Description of the Debt Securities" insofar as they purport to constitute a summary of the terms of the Designated

Securities and under the caption "Plan of Distribution" insofar as they purport to describe the provisions of the laws and documents referred to therein, fairly and accurately summarize in all material respects such laws and documents;

(xi) The documents incorporated by reference in the Prospectus as amended or supplemented (other than the financial statements and related schedules therein, as to which such counsel need express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder;

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(xii) The Registration Statement and the Prospectus as amended or supplemented and any further amendments and supplements thereto made by the Company prior to the Time of Delivery for the Designated Securities (other than the financial statements and related schedules therein, as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act, the Exchange Act and the Trust Indenture Act and the rules and regulations thereunder.

Such counsel shall also state that although they do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement or the Prospectus, except for those referred to in the opinion in subsection (x) of this Section 7(c), they have no reason to believe that, as of its effective date, the Registration Statement or any further amendment thereto made by the Company prior to the Time of Delivery (except for financial statements and schedules included or incorporated by reference therein or omitted therefrom and financial information derived, as to which we have not been requested to comment) contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that, as of its date, the Prospectus as amended or supplemented or any further amendment or supplement thereto made by the Company prior to the Time of Delivery (except for financial statements and schedules included or incorporated by reference therein or omitted therefrom and financial information derived, as to which we have not been requested to comment) contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or that, as of the Time of Delivery, either the Registration Statement or the Prospectus as amended or supplemented or any further amendment or supplement thereto made by the Company prior to the Time of Delivery (except for financial statements and schedules included or incorporated by reference therein or omitted therefrom and financial information derived, as to which we have not been requested to comment) contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(d) On the date of the Pricing Agreement for such Designated Securities at a time prior to the execution of the Pricing Agreement with respect to such Designated Securities and at the Time of Delivery for such Designated Securities, the independent accountants of the Company who have certified the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement shall have furnished to the Representatives a letter, dated the effective date of the Registration Statement or the date of the most recent report filed with the Commission containing financial statements and incorporated by reference in the Registration Statement, if the date of such report is later than such effective date, and a letter dated such Time of Delivery, respectively, to the effect set forth in Annex II hereto, and with respect to such letter dated such Time of Delivery, as to such other matters as the Representatives may reasonably request and in form and substance satisfactory to the Representatives (the executed copy of the letter delivered prior to the execution of

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this Agreement is attached as Annex I(a) hereto and a draft of the form of letter to be delivered on the effective date of any post-effective amendment to the Registration Statement and as of each Time of Delivery is attached as Annex I(b) hereto);

(e) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Prospectus as amended prior to the date of the Pricing Agreement relating to the Designated Securities any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Prospectus as amended prior to the date of the Pricing Agreement relating to the Designated Securities, and (ii) since the respective dates as of which information is given in the Prospectus as amended prior to the date of the Pricing Agreement relating to the Designated Securities there shall not have been any change in the capital stock or long-term debt of the Company or any of its subsidiaries or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, otherwise than as set forth or contemplated in the Prospectus as amended prior to the date of the Pricing Agreement relating to the Designated Securities, the effect of which, in any such case described in clause (i) or (ii), is in the judgment of the Representatives so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Designated Securities on the terms and in the manner contemplated in the Prospectus as first amended or supplemented relating to the Designated Securities;

(f) On or after the date of the Pricing Agreement relating to the Designated Securities (i) no downgrading shall have occurred in the rating accorded the Company's debt securities or preferred stock by any "nationally recognized statistical rating organization", as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities or preferred stock;

(g) On or after the date of the Pricing Agreement relating to the Designated Securities there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or on the Nasdaq National Market; (ii) a suspension or material limitation in trading in the Company's securities on the Nasdaq National Market; (iii) a general moratorium on commercial banking activities declared by either Federal or New York State authorities; or (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, if the effect of any such event specified in this clause (iv) in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Designated Securities on the terms and in the manner contemplated in the Prospectus as first amended or supplemented relating to the Designated Securities;

(h) The Company shall have complied with the provisions of Section 5(c) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement; and

(i) The Company shall have furnished or caused to be furnished to the Representatives at the Time of Delivery for the Designated Securities a certificate or certificates of officers of the Company satisfactory to the Representatives as to the accuracy of the representations and warranties of the Company herein at and as of such Time of Delivery, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to such Time of Delivery, as to the matters set forth in subsections (a) and (e) of this Section and as to such other matters as the Representatives may reasonably request.

8. (a) The Company will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus as amended or supplemented and any other prospectus relating to the Securities, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any

such action or claim as such expenses are incurred; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus as amended or supplemented and any other prospectus relating to the Securities, or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Company by any Underwriter of Designated Securities through the Representatives expressly for use in the Prospectus as amended or supplemented relating to such Securities.

(b) Each Underwriter will indemnify and hold harmless the Company against any losses, claims, damages or liabilities to which the Company may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus as amended or supplemented and any other prospectus relating to the Securities, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus as amended or supplemented and any other prospectus relating to the Securities, or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives expressly

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for use therein; and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim 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) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters of the Designated Securities on the other from the offering of the Designated Securities to which such loss, claim, damage or liability (or action in respect thereof) relates. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under

subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters of the Designated Securities on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and such Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from

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such offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by such Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the applicable Designated Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter 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 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Underwriters of Designated Securities in this subsection (d) to contribute are several in proportion to their respective underwriting obligations with respect to such Securities and not joint.

(e) The obligations of the Company under this Section 8 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act; and the obligations of the Underwriters under this Section 8 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company within the meaning of the Act.

9. (a) If any Underwriter shall default in its obligation to purchase the Designated Securities which it has agreed to purchase under the Pricing Agreement relating to such Designated Securities, the Representatives may in their discretion arrange for themselves or another party or other parties to purchase such Designated Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter the Representatives do not arrange for the purchase of such Designated Securities, then the Company shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to the Representatives to purchase such Designated Securities on such terms. In the event that, within the respective prescribed period, the Representatives notify the Company that they have so arranged for the purchase of such Designated Securities, or the Company notifies the Representatives that it has so arranged for the purchase of such Designated Securities, the Representatives or the Company shall have the right to

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postpone the Time of Delivery for such Designated Securities for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus as amended or supplemented, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in the opinion of the Representatives may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to the Pricing Agreement with respect to such Designated Securities.

(b) If, after giving effect to any arrangements for the purchase of the Designated Securities of a defaulting Underwriter or Underwriters by the Representatives and the Company as provided in subsection (a) above, the aggregate principal amount of such Designated Securities which remains unpurchased does not exceed one-eleventh of the aggregate principal amount of the Designated Securities, then the Company shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Designated Securities which such Underwriter agreed to purchase under the Pricing Agreement relating to such Designated Securities and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the principal amount of Designated Securities which such Underwriter agreed to purchase under such Pricing Agreement) of the Designated Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Designated Securities of a defaulting Underwriter or Underwriters by the Representatives and the Company as provided in subsection (a) above, the aggregate principal amount of Designated Securities which remains unpurchased exceeds one-eleventh of the aggregate principal amount of the Designated Securities, as referred to in subsection (b) above, or if the Company shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Designated Securities of a defaulting Underwriter or Underwriters, then the Pricing Agreement relating to such Designated Securities shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Company, except for the expenses to be borne by the Company and the Underwriters as provided in Section 6 hereof and the indemnity and contribution agreements in Section 8 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

10. The respective indemnities, agreements, representations, warranties and other statements of the Company and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Securities.

11. If any Pricing Agreement shall be terminated pursuant to Section 9 hereof, the Company shall not then be under any liability to any Underwriter with respect to the Designated

Securities covered by such Pricing Agreement except as provided in Sections 6 and 8 hereof; but, if for any other reason Designated Securities are not delivered by or on behalf of the Company as provided herein, the Company will reimburse the Underwriters through the Representatives for all out-of-pocket expenses approved in writing by the Representatives, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of such Designated Securities, but the Company shall then be under no further liability to any Underwriter with respect to such Designated Securities except as provided in Sections 6 and 8 hereof.

12. In all dealings hereunder, the Representatives of the Underwriters of Designated Securities shall act on behalf of each of such Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by such Representatives jointly or by such of the Representatives, if any, as may be designated for such purpose in the Pricing Agreement.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to the address of the Representatives as set forth in the Pricing Agreement; and if to the Company shall be delivered or sent by mail, telex or facsimile transmission to the address of the Company set forth in the Registration Statement: Attention: Secretary; provided, however, that any notice to an Underwriter pursuant to Section 8(c) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire, or telex constituting such Questionnaire, which address will be supplied to the Company by the Representatives upon request. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

13. This Agreement and each Pricing Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company and, to the extent provided in Sections 8 and 10 hereof, the officers and directors of the

Company and each person who controls the Company or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement or any such Pricing Agreement. No purchaser of any of the Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

14. Time shall be of the essence of each Pricing Agreement. As used herein, "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

15. THIS AGREEMENT AND EACH PRICING AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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16. This Agreement and each Pricing Agreement may be executed by any one or more of the parties hereto and thereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument.

Very truly yours,

Sun Microsystems, Inc.

By:_____
Name:
Title:

Accepted as of the date hereof:

Goldman, Sachs & Co.

(Goldman, Sachs & Co.)

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ANNEX I

PRICING AGREEMENT

July [ ], 1999

Goldman, Sachs & Co.,
[NAMES OF CO-REPRESENTATIVE(S),]
As Representatives of the several
Underwriters named in Schedule I hereto,
[C/O GOLDMAN, SACHS & CO.,]
85 Broad Street,
New York, New York 10004

Ladies and Gentlemen:

Sun Microsystems, Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated herein and in the Underwriting Agreement, dated July [ ], 1999 (the "Underwriting Agreement"), between the Company on the one hand and Goldman, Sachs & Co. on the other hand, to issue and sell to the Underwriters named in Schedule I hereto (the "Underwriters") the Securities specified in Schedule II hereto (the "Designated Securities"). Each of the provisions of the Underwriting Agreement is incorporated herein by reference in its entirety, and shall be deemed to be a part of this Agreement to the same extent as if such provisions had been set forth in full herein; and each of the representations and warranties set forth therein shall be deemed to have been made at and as of the date of this Pricing Agreement, except that each representation and warranty which refers to the Prospectus in Section 2 of the Underwriting Agreement shall be deemed to be a representation or warranty as of the date of the Underwriting Agreement in relation to the Prospectus (as therein defined), and also a representation and warranty as of the date of this Pricing Agreement in relation to the Prospectus as amended or supplemented relating to the Designated Securities which are the subject of this Pricing Agreement. Each reference to the Representatives herein and in the provisions of the Underwriting Agreement so incorporated by reference shall be deemed to refer to you. Unless otherwise defined herein, terms defined in the Underwriting Agreement are used herein as therein defined. The Representatives designated to act on behalf of the Representatives and on behalf of each of the Underwriters of the Designated Securities pursuant to Section 12 of the Underwriting Agreement and the address of the Representatives referred to

in such Section 12 are set forth at the end of Schedule II hereto.

An amendment to the Registration Statement, or a supplement to the Prospectus, as the case may be, relating to the Designated Securities, in the form heretofore delivered to you is now proposed to be filed with the Commission.

Subject to the terms and conditions set forth herein and in the Underwriting Agreement incorporated herein by reference, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the time and place and at the purchase price to the Underwriters set forth in

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Schedule II hereto, the principal amount of Designated Securities set forth opposite the name of such Underwriter in Schedule I hereto.

If the foregoing is in accordance with your understanding, please sign and return to us one for the Company and each of the Representatives plus one for each counsel counterparts hereof, and upon acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof, including the provisions of the Underwriting Agreement incorporated herein by reference, shall constitute a binding agreement between each of the Underwriters and the Company. It is understood that your acceptance of this letter on behalf of each of the Underwriters is or will be pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company for examination upon request, but without warranty on the part of the Representatives as to the authority of the signers thereof.

Very truly yours,

Sun Microsystems, Inc,

By:_____
Name:
Title:

Accepted as of the date hereof:

Goldman, Sachs & Co.

(Goldman, Sachs & Co.)

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SCHEDULE I

<TABLE>
<CAPTION>

Underwriter	Principal Amount of Designated Securities to be Purchased
<S>	<C>
Goldman, Sachs & Co.	$
[NAME(S) OF OTHER CO-REPRESENTATIVE(S)]	
[NAMES OF OTHER UNDERWRITERS]	

</TABLE>

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SCHEDULE II

TITLE OF DESIGNATED SECURITIES:

[%] [Floating Rate] [Zero Coupon] [Notes]
[Debentures] due ,

AGGREGATE PRINCIPAL AMOUNT:
[$]

PRICE TO PUBLIC:
% of the principal amount of the Designated Securities, plus accrued interest[, if any,] from to [and accrued amortization[, if any,] from to]

PURCHASE PRICE BY UNDERWRITERS:

% of the principal amount of the Designated Securities, plus accrued interest from to [and accrued amortization[, if any,] from to]

FORM OF DESIGNATED SECURITIES:

[Definitive form to be made available for checking and packaging at least twenty-four hours prior to the Time of Delivery at the office of [The Depository Trust Company or its designated custodian] [the Representatives]]

[Book-entry only form represented by one or more global securities deposited with The Depository Trust Company ("DTC") or its designated custodian, to be made available for checking by the Representatives at least twenty-four hours prior to the Time of Delivery at the office of DTC.]

SPECIFIED FUNDS FOR PAYMENT OF PURCHASE PRICE:

Federal (same day) funds

TIME OF DELIVERY:

a.m. (New York City time), , 19

INDENTURE:

Indenture dated , 19 , between the Company and , as Trustee

MATURITY:

INTEREST RATE:

[%] [Zero Coupon] [See Floating Rate Provisions]

INTEREST PAYMENT DATES:

[months and dates, commencing ....., 19..]

REDEMPTION PROVISIONS:

[No provisions for redemption]

[The Designated Securities may be redeemed, otherwise than through the sinking fund, in whole or in part at the option of the Company, in the amount of [$] or an integral multiple thereof,

[on or after , at the following redemption prices (expressed in percentages of principal amount). If [redeemed on or before , %, and if] redeemed during the 12-month period beginning ,

Year	Redemption Price

and thereafter at 100% of their principal amount, together in each case with accrued interest to the redemption date.]

[on any interest payment date falling on or after , , at the election of the Company, at a redemption price equal to the principal amount thereof, plus accrued interest to the date of redemption.]]

[Other possible redemption provisions, such as mandatory redemption upon occurrence of certain events or redemption for changes in tax law]

[Restriction on refunding]

SINKING FUND PROVISIONS:

[No sinking fund provisions]

[The Designated Securities are entitled to the benefit of a sinking fund to retire [$] principal amount of Designated Securities on in each of the years through at 100% of their principal amount _____ plus accrued interest[, together with [cumulative] [noncumulative] redemptions at the option of the Company to retire an additional [$] principal amount of Designated Securities in the years through at 100% of their principal amount plus accrued interest.]

[If Designated Securities are extendable debt securities, insert--
EXTENDABLE PROVISIONS:

Designated Securities are repayable on , [insert date and years], at the option of the holder, at their principal amount with accrued interest. The initial annual interest rate will be %, and thereafter the annual interest rate will be adjusted on , _____ and to a rate not less than % of the effective

annual interest rate on U.S. Treasury obligations with -year maturities as of the [insert date 15 days prior to maturity date] prior to such [insert maturity date].]

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[If Designated Securities are floating rate debt securities, insert-- FLOATING RATE PROVISIONS:

Initial annual interest rate will be % through [and thereafter will be adjusted [monthly] [on each , , and] [to an annual rate of % above the average rate for -year [month][securities][certificates of deposit] issued by and [insert names of banks].] [and the annual interest rate [thereafter] [from through] will be the interest yield equivalent of the weekly average per annum market discount rate for -month Treasury bills plus % of Interest Differential (the excess, if any, of (i) the then current weekly average per annum secondary market yield for -month certificates of deposit over (ii) the then current interest yield equivalent of the weekly average per annum market discount rate for -month Treasury bills); [from and thereafter the rate will be the then current interest yield equivalent plus % of Interest Differential].]

DEFEASANCE PROVISIONS:

CLOSING LOCATION FOR DELIVERY OF DESIGNATED SECURITIES:

ADDITIONAL CLOSING CONDITIONS:

Paragraph 7(g) of the Underwriting Agreement should be modified in the event that the Securities are denominated in, indexed to, or principal or interest are paid in, a currency other than the U.S. dollar, more than one currency or in a composite currency. The country or countries issuing such currency should be added to the banking moratorium and hostilities clauses and the following additional clause should be added to the paragraph (the entire paragraph should be restated, as amended):

"; ( ) the imposition of the proposal of exchange controls by any governmental authority in [insert the country or countries issuing such currency, currencies or composite currency]".

NAMES AND ADDRESSES OF REPRESENTATIVES:

Designated Representatives:

Address for Notices, etc.:

[OTHER TERMS]:

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ANNEX II

Pursuant to Section 7(d) of the Underwriting Agreement, the accountants shall furnish letters to the Underwriters to the effect that:

(i) They are independent certified public accountants with respect to the Company and its subsidiaries within the meaning of the Act and the applicable rules and regulations adopted by the Commission;

(ii) In their opinion, the financial statements and any supplementary financial information and schedules audited (and, if applicable, financial forecasts and/or pro forma financial information examined) by them and included or incorporated by reference in the Registration Statement or the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Act or the Exchange Act, as applicable, and the related rules and regulations; and, if applicable, they have made a review in accordance with standards established by the American Institute of Certified Public Accountants of the consolidated interim financial statements, selected financial data, pro forma financial information, financial forecasts and/or condensed financial statements derived from audited financial statements of the Company for the periods specified in such letter, as indicated in their reports thereon, copies of which have been [SEPARATELY] furnished to the representative or representatives of the Underwriters (the "Representatives") such term to include an Underwriter or Underwriters who act without any firm being designated as its or their representatives [AND ARE ATTACHED TO SUCH LETTERS];

(iii) They have made a review in accordance with standards established by the American Institute of Certified Public Accountants of the unaudited condensed consolidated statements of income, consolidated balance sheets and consolidated statements of cash flows included in the Prospectus and/or included in the Company's quarterly report on Form 10-Q incorporated by reference into the Prospectus as indicated in their reports thereon copies of which [HAVE BEEN SEPARATELY FURNISHED TO THE

REPRESENTATIVES][ARE ATTACHED TO SUCH LETTERS]; and on the basis of specified procedures including inquiries of officials of the Company who have responsibility for financial and accounting matters regarding whether the unaudited condensed consolidated financial statements referred to in paragraph (vi)(A)(i) below comply as to form in all material respects with the applicable accounting requirements of the Act and the Exchange Act and the related rules and regulations, nothing came to their attention that caused them to believe that the unaudited condensed consolidated financial statements do not comply as to form in all material respects with the applicable accounting requirements of the Act and the Exchange Act and the related rules and regulations adopted by the Commission;

(iv) The unaudited selected financial information with respect to the consolidated results of operations and financial position of the Company for the five most recent fiscal years included in the Prospectus and included or incorporated by reference in Item 6 of the Company's Annual Report on Form 10-K for the most recent fiscal year agrees with the corresponding amounts (after restatement where applicable) in the audited consolidated financial statements for five such fiscal years included or

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incorporated by reference in the Company's Annual Reports on Form 10-K for such fiscal years;

(v) They have compared the information in the Prospectus under selected captions with the disclosure requirements of Regulation S-K and on the basis of limited procedures specified in such letter nothing came to their attention as a result of the foregoing procedures that caused them to believe that this information does not conform in all material respects with the disclosure requirements of Items 301, 302, 402 and 503(d), respectively, of Regulation S-K;

(vi) On the basis of limited procedures, not constituting an examination in accordance with generally accepted auditing standards, consisting of a reading of the unaudited financial statements and other information referred to below, a reading of the latest available interim financial statements of the Company and its subsidiaries, inspection of the minute books of the Company and its subsidiaries since the date of the latest audited financial statements included or incorporated by reference in the Prospectus, inquiries of officials of the Company and its subsidiaries responsible for financial and accounting matters and such other inquiries and procedures as may be specified in such letter, nothing came to their attention that caused them to believe that:

(A) (i) the unaudited condensed consolidated statements of income, consolidated balance sheets and consolidated statements of cash flows included in the Prospectus and/or included or incorporated by reference in the Company's Quarterly Reports on Form 10-Q incorporated by reference in the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the Exchange Act and the published rules and regulations adopted by the Commission, or (ii) any material modifications should be made to the unaudited condensed consolidated statements of income, consolidated balance sheets and consolidated statements of cash flows included in the Prospectus or included in the Company's Quarterly Reports on Form 10-Q incorporated by reference in the Prospectus for them to be in conformity with generally accepted accounting principles;

(B) any other unaudited income statement data and balance sheet items included in the Prospectus do not agree with the corresponding items in the unaudited consolidated financial statements from which such data and items were derived, and any such unaudited data and items were not determined on a basis substantially consistent with the basis for the corresponding amounts in the audited consolidated financial statements included or incorporated by reference in the Company's Annual Report on Form 10-K for the most recent fiscal year;

(C) the unaudited financial statements which were not included in the Prospectus but from which were derived the unaudited condensed financial statements referred to in clause (A) and any unaudited income statement data and balance sheet items included in the Prospectus and referred to in clause (B) were not determined on a basis substantially consistent with the basis for the audited financial statements included or incorporated by reference in the Company's Annual Report on Form 10-K for the most recent fiscal year;

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(D) any unaudited pro forma consolidated condensed financial statements included or incorporated by reference in the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the Act and the rules and regulations adopted by the Commission thereunder or the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements;

(E) as of a specified date not more than five days prior to the date of such letter, there have been any changes in the consolidated capital stock (other than issuances of capital stock upon exercise of options and stock appreciation rights, upon earn-outs of performance shares and upon conversions of convertible securities, in each case which were outstanding on the date of the latest balance sheet included or incorporated by reference in the Prospectus) or any increase in the consolidated long-term debt of the Company and its subsidiaries, or any decreases in consolidated net current assets or stockholders' equity or other items specified by the Representatives, or any increases in any items specified by the Representatives, in each case as compared with amounts shown in the latest balance sheet included or incorporated by reference in the Prospectus, except in each case for changes, increases or decreases which the Prospectus discloses have occurred or may occur or which are described in such letter; and

(F) for the period from the date of the latest financial statements included or incorporated by reference in the Prospectus to the specified date referred to in clause (E) there were any decreases in consolidated net revenues or operating profit or the total or per share amounts of consolidated net income or other items specified by the Representatives, or any increases in any items specified by the Representatives, in each case as compared with the comparable period of the preceding year and with any other period of corresponding length specified by the Representatives, except in each case for increases or decreases which the Prospectus discloses have occurred or may occur or which are described in such letter; and

(vii) In addition to the audit referred to in their report(s) included or incorporated by reference in the Prospectus and the limited procedures, inspection of minute books, inquiries and other procedures referred to in paragraphs (iii) and (vi) above, they have carried out certain specified procedures, not constituting an audit in accordance with generally accepted auditing standards, with respect to certain amounts, percentages and financial information specified by the Representatives which are derived from the general accounting records of the Company and its subsidiaries, which appear in the Prospectus (excluding documents incorporated by reference), or in Part II of, or in exhibits and schedules to, the Registration Statement specified by the Representatives or in documents incorporated by reference in the Prospectus specified by the Representatives, and have compared certain of such amounts, percentages and financial information with the accounting records of the Company and its subsidiaries and have found them to be in agreement.

All references in this Annex II to the Prospectus shall be deemed to refer to the Prospectus (including the documents incorporated by reference therein) as defined in the

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Underwriting Agreement as of the date of the letter delivered on the date of the Pricing Agreement for purposes of such letter and to the Prospectus as amended or supplemented (including the documents incorporated by reference therein) in relation to the applicable Designated Securities for purposes of the letter delivered at the Time of Delivery for such Designated Securities.

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</DOCUMENT>
<DOCUMENT>
<TYPE>EX-4.1
<SEQUENCE>3
<DESCRIPTION>INDENTURE, DATED AS OF AUGUST 1, 1999
<TEXT>

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Exhibit 4.1

==========

Sun Microsystems, Inc.

TO

The Bank of New York

as Trustee

Indenture

Dated as of August 1, 1999

Senior Debt Securities

==========

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SUN MICROSYSTEMS, INC.

Certain Sections of this Indenture relating to Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

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	(d)	Not Applicable
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NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE, dated as of August 1, 1999, between Sun Microsystems, Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), having its principal executive office at 901 San Antonio Road, Palo Alto, California 94303, 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 execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as provided in this Indenture.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. DEFINITIONS.

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

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

(2) 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;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation;

(4) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Indenture; and

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(5) 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 104.

"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.

"Attributable Debt" means, in respect of a Sale and Lease-Back Transaction involving a Principal Property, at the time of determination, the lesser of: (a) the fair value of such property (as determined in good faith by the Board of Directors); or (b) the present value of the total net amount of rent required to be paid under such lease during the remaining term thereof (including any renewal term or period for which such lease has been extended), discounted at the rate of interest set forth or implicit in the terms of such lease or, if not practicable to determine such rate, the weighted average interest rate per annum (in the case of Original Issue Discount Securities, the imputed interest rate) borne by the Securities of each series outstanding pursuant to this Indenture compounded semi-annually. For purposes of the foregoing definition, rent shall not include amounts required to be paid by the lessee, whether or not designated as rent or additional rent, on account of or contingent upon maintenance and repairs, insurance, taxes, assessments, water rates and similar charges. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall be the lesser of the net amount determined assuming termination upon the first date such lease may be terminated (in which case the net amount shall also include the amount of the penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated) and the net amount determined assuming no such termination.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 614 to act on behalf of the Trustee to authenticate Securities of one or more series.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board empowered to act for it with respect to this Indenture.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day," when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

"Commission" means the Securities and Exchange Commission, 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" includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which is not subject to redemption by the Company; provided, however, subject to the provisions of Section 1409, shares issuable upon conversion of Securities shall include only shares of the class designated as Common Stock of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, further that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Company" means the corporation 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 Chairman of the Board, its Vice Chairman of the Board, its President or a Vice President, and by its principal financial officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Consolidated Net Tangible Assets" means, as of the time of determination, total assets (excluding applicable reserves) less: (a) total current liabilities, except for (1) notes and loans payable, (2) current maturities of long-term debt and (3) current maturities of obligations under capital leases; and (b) certain intangible assets to the extent included in total assets, all as set forth on the most recent consolidated balance sheet of the Company and its consolidated subsidiaries and computed in accordance with generally accepted accounting principles.

"Corporate Trust Office" means the principal corporate trust office of the Trustee currently at 101 Barclay Street, Floor 21W, New York, New York 10286, at which at any particular time its corporate trust business shall be administered.

"Corporation" means a corporation, association, company, limited liability company, joint-stock company or business trust.

"Covenant Defeasance" has the meaning specified in Section 1303.

"Defaulted Interest" has the meaning specified in Section 307.

"Defeasance" has the meaning specified in Section 1302.

"Depositary" means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depositary for such Securities as contemplated by Section 301.

"Event of Default" has the meaning specified in Section 501.

"Exchange Act" means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

"Expiration Date" has the meaning specified in Section 104.

"Global Security" means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 204 (or such legend as may be specified as contemplated by Section 301 for such Securities).

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

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term "Indenture" shall also include the terms of particular series of Securities established as contemplated by Section 301; provided, however, that if at any time more than one Person is acting as Trustee under this Indenture due to the appointment of one or more separate Trustees for any one or more separate series of Securities, "Indenture" shall mean, with respect to such series of Securities for which any such Person is Trustee, 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 and shall include the terms of particular series of Securities for which such Person is Trustee established as contemplated by Section 301, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such person had become such Trustee, but to which such person, as such Trustee, was not a party; provided, further that in the event that this Indenture is supplemented or amended by one or more indentures supplemental hereto which are only applicable to certain series of Securities, the term "Indenture" for a particular series of Securities shall only include the supplemental indentures applicable thereto.

"Interest," when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date," when used with respect to any Security, means the Stated Maturity of an instalment of interest on such Security.

"Investment Company Act" means the Investment Company Act of 1940 and

any statute successor thereto, in each case as amended from time to time.

"Maturity," when used with respect to any Security, means the date on which the principal of such Security or an instalment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, repurchase at the option of the Holder or otherwise.

"Nonrecourse Obligation" means indebtedness or other obligations substantially related to (i) the acquisition of assets not previously owned by the Company or any Restricted Subsidiary or (ii) the financing of a project involving the development or expansion of properties of the Company or any Restricted Subsidiary, as to which the obligee with respect to such indebtedness or obligation has no recourse to the Company or any Restricted Subsidiary or any assets of the Company or any Restricted Subsidiary other than the assets which were acquired with the proceeds of such transaction or the project financed with the proceeds of such transaction (and the proceeds thereof).

"Notice of Default" means a written notice of the kind specified in Section 501(4).

"Officers' Certificate" means a certificate signed by (a) the Chairman of the Board, a Vice Chairman of the Board, the President or a Vice President, and (b) by the principal financial officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 1004 shall be the principal executive, financial or accounting officer of the Company.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for, or an employee of, the Company, and who shall be reasonably acceptable to the Trustee.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

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

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

(2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) 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; provided that, if such Securities are to be redeemed, notice of such

redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Securities as to which Defeasance has been effected pursuant to Section 1302; and

(4) Securities which have been paid pursuant to Section 306 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 bona fide 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, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 502, (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 301, (C) the principal amount of a Security denominated in one or more foreign currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 301, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) 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, waiver or other action, 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 or any premium or interest on any Securities on behalf of the Company.

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

"Place of Payment," when used with respect to the Securities of any series, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as specified as contemplated by Section 301.

"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 306 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 Property" means the land, land improvements, buildings and fixtures (to the extent they constitute real property interests, including any leasehold interest therein) constituting the principal corporate office, any manufacturing plant or any manufacturing facility (whether now owned or hereafter acquired) which: (a) is owned by the Company or any Subsidiary; (b) is located within any of the present 50 states of the United States of America (or the District of Columbia); (c) has not been determined in good faith by the Board of Directors not to be materially important to the total business conducted by the Company and its Subsidiaries taken as a whole; and (d) has a book value on the date as of which the determination is being made in excess of 0.75% of Consolidated Net Tangible Assets of the Company as most recently determined on or prior to such date.

"Record Date" means any Regular Record Date or Special Record Date.

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

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

"Regular Record Date" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 301.

"Restricted Subsidiary" means any Subsidiary which owns any Principal Property; provided, however, that the term "Restricted Subsidiary" shall not include (a) any Subsidiary which is principally engaged in financing receivables, or which is principally engaged in financing the Company's operations outside the United States of America; or (b) any Subsidiary less than 80% of the 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 if the Common Stock of such Subsidiary is traded on any national securities exchange or quoted on the Nasdaq National Market or in the over-the-counter market.

"Sale and Leaseback Transaction" means any arrangement with any person providing for the leasing by the Company or any Restricted Subsidiary of any Principal Property which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to such person.

"Securities" has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 307.

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such instalment of principal or interest is due and payable.

"Subsidiary" means a corporation of which at least 66 2/3% of the outstanding voting stock of such corporation is at the time owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries, and the accounts of which are consolidated with those of the Company in its most recent consolidated financial statements in accordance with generally accepted accounting principals. 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.

"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 or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"U.S. Government Obligation" has the meaning specified in Section 1304.

"Vice President," when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

SECTION 102. 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 requirements 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,

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) 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;

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

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. 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 or her 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 104. ACTS OF HOLDERS; RECORD DATES.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made 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. The Trustee shall promptly deliver to the Company copies of all such instrument or instruments and records delivered to the Trustee. 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 601) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

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

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.

The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, vote, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person

be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of

such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 502, (iii) any request to institute proceedings referred to in Section 507(2) or (iv) any direction referred to in Section 512, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

With respect to any record date set pursuant to this Section, the party hereto which sets such record dates may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 106, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto which set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

SECTION 105. 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,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (or by facsimile transmission ((212) 815-5915), provided that oral confirmation of receipt shall have been received) to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust Trustee Administration or

(2) 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, 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 106. 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 its 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 107. CONFLICT WITH TRUST INDENTURE ACT.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act which 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 which 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 108. 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 109. 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 110. 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 111. BENEFITS OF INDENTURE.

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

SECTION 112. GOVERNING LAW.

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

SECTION 113. LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last date on which a Holder has the right to convert a Security at a particular conversion price shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) or, if applicable to a particular series of Securities, conversion need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, at the Stated Maturity or on such last day for conversion, as the case may be.

SECTION 114. INDENTURE AND SECURITIES SOLELY CORPORATE OBLIGATIONS.

No recourse for the payment of the principal of or premium, if any, or interest on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, or

director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the

enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

SECTION 115. INDENTURE MAY BE EXECUTED IN COUNTERPARTS.

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

ARTICLE TWO

SECURITY FORMS

SECTION 201. FORMS GENERALLY.

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case 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 Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 303 for the authentication and delivery of such Securities. Any such Board Resolution or record of such action shall have attached thereto a true and correct copy of the form of Security referred to therein approved by or pursuant to such Board Resolution.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 202. FORM OF FACE OF SECURITY.

[INSERT ANY LEGEND REQUIRED BY THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER.]

SUN MICROSYSTEMS, INC.

No. _____ $_____
CUSIP No. _____

Sun Microsystems, Inc., a corporation duly organized and existing under the laws of Delaware (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ Dollars on _____ [IF THE SECURITY IS TO BEAR INTEREST PRIOR TO MATURITY, INSERT -- , and to pay interest thereon from _____ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on _____ and _____ in each year, commencing _____, at the rate of ___% per annum, until the principal hereof is paid or made available for payment [IF APPLICABLE, INSERT -- , provided that any principal and premium, and any such instalment of interest, which is overdue shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the _____ or _____ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided

for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. Interest on the Security shall be computed on the basis of a 360-day year of twelve 30-day months.]

[IF THE SECURITY IS NOT TO BEAR INTEREST PRIOR TO MATURITY, INSERT -- The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. [Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the

date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]]

Payment of the principal of (and premium, if any) and [IF APPLICABLE, INSERT -- any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in _____, [IF APPLICABLE, INSERT -- which shall initially be the [principal corporate trust] office of the Trustee,] 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 [IF APPLICABLE, INSERT -- ; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register].

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

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

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

SUN MICROSYSTEMS, INC.

By:

Title:

Attest:

- ---

SECTION 203. FORM OF REVERSE OF SECURITY.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of August 1, 1999 (herein called the "Indenture," which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [IF APPLICABLE, INSERT -- , limited in aggregate principal amount to $_____].

[IF APPLICABLE, INSERT -- The Securities of this series are subject to redemption upon not less than [IF APPLICABLE, INSERT -- 30] days' notice by mail,(1) on _____ in any year commencing with the year _____ and ending with the year _____ through operation of the sinking fund for this series

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at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [IF APPLICABLE, INSERT -- on or after _____, 19__], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [IF APPLICABLE, INSERT -- on or before _____, ___%, and if redeemed] during the 12-month period beginning _____ of the years indicated, and thereafter at a Redemption Price equal to ___% of the principal amount, together in the case of any such redemption [IF APPLICABLE, INSERT -- (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

<TABLE>
<CAPTION>

YEAR	REDEMPTION PRICE	YEAR	REDEMPTION PRICE
<S>	<C>	<C>	<C>

</TABLE>

[IF APPLICABLE, INSERT -- The Securities of this series are subject to redemption upon not less than [if applicable, insert --- 30] days' notice by mail, (1) on _____ in any year commencing with the year _____ and ending with the year _____ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [IF APPLICABLE, INSERT -- on or after _____], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning _____ of the years indicated,

<TABLE>
<CAPTION>

YEAR	REDEMPTION PRICE FOR REDEMPTION-THROUGH OPERATION OF THE SINKING FUND	REDEMPTION PRICE FOR REDEMPTION-OTHERWISE THAN THROUGH OPERATION OF THE SINKING FUND
<S>	<C>	<C>

</TABLE>

and thereafter at a Redemption Price equal to ____% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[IF APPLICABLE, INSERT -- Notwithstanding the foregoing, the Company may not, prior to _____, redeem any Securities of this series as contemplated by [IF APPLICABLE, INSERT -- Clause (2) of] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application,

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directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than ___% per annum.]

[IF APPLICABLE, INSERT -- The sinking fund for this series provides for the redemption on _____ in each year beginning with the year _____ and ending with the year _____ of [IF APPLICABLE, INSERT -- not less than $_____ ("mandatory sinking fund") and not more than] $_____ aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [IF APPLICABLE, INSERT -- mandatory] sinking fund payments may be credited against subsequent [if applicable, insert -- mandatory] sinking fund payments otherwise required to be made [IF APPLICABLE, INSERT -- , in the inverse order in which they become due].]

[IF THE SECURITY IS SUBJECT TO REDEMPTION OF ANY KIND, INSERT -- In the event of redemption of this Security in part only, a new Security or Securities

of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[IF APPLICABLE, INSERT -- The Indenture contains provisions for defeasance at any time of [the entire indebtedness of this Security] [or] [certain restrictive covenants and Events of Default with respect to this Security] [, in each case] upon compliance with certain conditions set forth in the Indenture.]

[IF THE SECURITY IS CONVERTIBLE INTO COMMON STOCK OF THE COMPANY, INSERT - -- Subject to the provisions of the Indenture, the Holder of this Security is entitled, at its option, at any time on or prior to Maturity (except that, in case this Security or any portion hereof shall be called for redemption, such right shall terminate with respect to this Security or portion hereof, as the case may be, so called for redemption at the close of business on the first Business Day next preceding the date fixed for redemption as provided in the Indenture unless the Company defaults in making the payment due upon redemption), to convert the principal amount of this Security (or any portion hereof which is $1,000 or an integral multiple thereof), into fully paid and non-assessable shares (calculated as to each conversion to the nearest 1/100th of a share) of the Common Stock of the Company, as said shares shall be constituted at the date of conversion, at the conversion price of $_____ principal amount of Securities for each share of Common Stock, or at the adjusted conversion price in effect at the date of conversion determined as provided in the Indenture, upon surrender of this Security, together with the conversion notice hereon duly executed, to the Company at the designated office or agency of the Company in _____, accompanied (if so required by the Company) by instruments of transfer, in form satisfactory to the Company and to the Trustee, duly executed by the Holder or by its duly authorized attorney in writing. Such surrender shall, if made during any period beginning at the close of business on a Regular Record Date and ending at the opening of business on the Interest Payment Date next following such Regular Record Date (unless this Security or the portion being converted shall have been called for redemption on a Redemption Date during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day), also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted. Subject to the aforesaid requirement for payment and, in the case of a conversion after the Regular Record Date next preceding any Interest Payment Date and on or before such Interest Payment Date, to the right of

the Holder of this Security (or any Predecessor Security) of record at such Regular Record Date to receive an installment of interest (with certain exceptions provided in the Indenture), no adjustment is to be made on conversion for interest accrued hereon or for dividends on shares of Common Stock issued on conversion. The Company is not required to issue fractional shares upon any such conversion, but shall make adjustment therefor in cash on the basis of the current market value of such fractional interest as provided in the Indenture. The conversion price is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the sale of substantially all of the assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other property receivable upon the consolidation, merger or sale by a holder of the number of shares of Common Stock into which this Security might have been converted immediately prior to such consolidation, merger or sale (assuming such holder of Common Stock failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of non-electing shares). In the event of conversion of this Security in part only, a new Security or Securities for the unconverted portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.]

[IF THE SECURITY IS CONVERTIBLE INTO OTHER SECURITIES OF THE COMPANY, SPECIFY THE CONVERSION FEATURES.]

[IF THE SECURITY IS NOT AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT -- If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[IF THE SECURITY IS AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT -- If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to -- insert formula for determining the amount. Upon payment (i) of the amount of principal so declared due and payable

and (ii) of interest on any overdue principal, premium and interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on the Securities of this series shall terminate.]

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 of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of more than 50% in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, 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 of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding 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 principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest 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 any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of $[1,000] and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor 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 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, without regard to conflict of laws principles thereof.

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

SECTION 204. FORM OF LEGEND FOR GLOBAL SECURITIES.

Unless otherwise specified as contemplated by Section 301 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

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.

SECTION 205. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

The Trustee's certificates of authentication shall be in substantially the following form:

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

Dated:

THE BANK OF NEW YORK
As Trustee

By:

Authorized Signatory

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SECTION 206. FORM OF CONVERSION NOTICE.

Conversion notices shall be in substantially the following form:

To Sun Microsystems, Inc.:

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or portion hereof (which is $[1,000] or an integral multiple thereof) below designated, into shares of Common Stock of the Company in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If this Notice is being delivered on a date after the close of business on a Regular Record Date and prior to the opening of business on the related Interest Payment Date (unless this Security or the portion thereof being converted has been called for redemption on a Redemption Date during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day), this Notice is accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest payable on such Interest Payment Date of the principal of this Security to be converted. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

PRINCIPAL AMOUNT TO BE CONVERTED
(IN AN INTEGRAL MULTIPLE OF $1,000, IF LESS THAN ALL)
U.S. $_____

Dated:

Signature(s) must be guaranteed if shares of

Common Stock are to be delivered, or Securities to be issued, other than to and in the name of the registered owner.

Signature Guaranty

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Fill in for registration of shares of Common Stock and Security if to be issued otherwise than to the registered Holder.

<TABLE>

<S>	<C>
(Name)	Social Security or Other Taxpayer Identification Number
(Address)	
Please print Name and Address (including zip code number)	

</TABLE>

[The above conversion notice is to be modified, as appropriate, for conversion into other securities or property of the Company.]

ARTICLE THREE

THE SECURITIES

SECTION 301. AMOUNT UNLIMITED; ISSUABLE IN SERIES.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);

(2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906 or 1107 and except for any Securities which, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder);

(3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;

(4) the date or dates on which the principal of any Securities of the series is payable;

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(5) the rate or rates at which any Securities of the series shall bear interest, if any, the date or dates from which any such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any such interest payable on any Interest Payment Date;

(6) the place or places where the principal of and any premium and interest on any Securities of the series shall be payable;

(7) the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series may be redeemed, in whole or in part, at the option of the Company and, if other than by a Board Resolution, the manner in which any election by the Company to redeem the Securities shall be evidenced;

(8) the obligation, if any, of the Company to redeem or purchase any Securities of the series pursuant to any sinking fund or analogous provisions or at the option of the Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which any Securities of the series shall be issuable;

(10) if the amount of principal of or any premium or interest on any Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined;

(11) if other than the currency of the United States of America, the currency, currencies or currency units in which the principal of or any premium or interest on any Securities of the series shall be payable and the manner of determining the equivalent thereof in the currency of the United States of America for any purpose, including for purposes of the definition of "Outstanding" in Section 101;

(12) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or the Holder thereof, in one or more currencies or currency units other than that or those in which such Securities are stated to be payable, the currency, currencies or currency units in which the principal of or any premium or interest on such Securities as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);

(13) if other than the entire principal amount thereof, the portion of the principal amount of any Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(14) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or

hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(15) if applicable, that the Securities of the series, in whole or any specified part, shall be defeasible pursuant to Section 1302 or Section 1303 or both such Sections and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;

(16) if applicable, the terms of any right to convert Securities of the series into, or exchange Securities for, shares of Common Stock of the Company or other securities or property;

(17) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 204 and any circumstances in addition to or in lieu of those set forth in Clause (2) of the last paragraph of Section 305 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof;

(18) any addition to or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 502;

(19) any addition to or change in the covenants set forth in Article Ten

which applies to Securities of the series; and

(20) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 901(5)).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 303) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

SECTION 302. DENOMINATIONS.

The Securities of each series shall be issuable only in registered form without coupons and only in such denominations as shall be specified as contemplated by Section 301. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of $1,000 and any integral multiple thereof.

SECTION 303. EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its principal financial officer, its President or one of its Vice Presidents, attested by its Treasurer, its Assistant Treasurer, Secretary or one of its Assistant Secretaries. 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 of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions as permitted by Sections 201 and 301, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, a copy of such Board Resolution, the Officers' Certificate setting forth the terms of the series and an Opinion of Counsel, with such Opinion of Counsel stating,

(1) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 201, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities have been established by or pursuant to Board Resolution as permitted by Section 301, that such terms have been established in conformity with the provisions of this Indenture; and

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding

paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 301 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

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. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

SECTION 304. TEMPORARY SECURITIES.

Pending the preparation of definitive Securities of any series, 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 of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

SECTION 305. REGISTRATION; REGISTRATION OF TRANSFER AND EXCHANGE.

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 of the Company in a Place of Payment 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" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of a series at the office or agency of the Company in a Place of Payment for that series, 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 the same series, of any authorized denominations and of like tenor and aggregate principal amount.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities 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 its attorney duly authorized in writing.

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 304, 906 or 1107 not involving any transfer.

If the Securities of any series (or of any series and specified tenor) are to be redeemed in part, the Company shall not be required (A) to issue, register the transfer of or exchange any Securities of that series (or of that series and specified tenor, as the case may be) during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of any such Securities selected for redemption under Section 1103 and ending at the close of business on the day of such mailing, or (B) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

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

(1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary (i) has notified the Company that it 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, (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security or (C) there shall exist such circumstances, if any, in addition to or in lieu of the foregoing as have been specified for this purpose as contemplated by Section 301.

(3) Subject to Clause (2) above, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.

(4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section, Section 304, 306, 906 or 1107 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

SECTION 306. 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 the same series and 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 as may be required by 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 the same series and 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 of any series 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 of that series 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 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

Except as otherwise provided as contemplated by Section 301 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of Securities of such series in the manner set forth in Section 106, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having

been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

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

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

Subject to the provisions of Section 1402, in the case of any Security (or any part thereof) which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security the principal of (or premium, if any, on) which shall become due and payable, whether at Stated Maturity or by declaration of acceleration or otherwise prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that

Security (or any one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence or in Section 1402, in the case of any Security (or any part thereof) which is converted, interest whose Stated Maturity is after the date of conversion of such Security (or such part thereof) shall not be payable.

SECTION 308. PERSONS DEEMED OWNERS.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 307) any interest 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 309. CANCELLATION.

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly canceled

by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be returned to the Company.

SECTION 310. COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 311. CUSIP NUMBERS.

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

ARTICLE FOUR

SATISFACTION AND DISCHARGE

SECTION 401. SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request 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, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306 and (ii) Securities for whose payment money has theretofore been deposited 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 1003) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company,

in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose money in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

(3) 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 607, the obligations of the Company to any Authenticating Agent under Section 614 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

SECTION 402. APPLICATION OF TRUST MONEY.

Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 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 any premium and interest for whose payment such money has been deposited with the Trustee.

ARTICLE FIVE

REMEDIES

SECTION 501. EVENTS OF DEFAULT.

"Event of Default," wherever used herein with respect to Securities of any series, 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):

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of the principal of or any premium on any Security of that series at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 90 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 principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company 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 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 90 consecutive days; or

(6) the commencement by the Company 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 bankruptcy, insolvency, reorganization or other similar law or to the commencement of

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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 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, or the taking of corporate action by the Company in furtherance of any such action; or

(7) any other Event of Default provided with respect to Securities of that series.

SECTION 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default (other than an Event of Default specified in Section 501(5) or 501(6)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount of all the Securities of that series (or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof) 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 (or specified amount) shall become immediately due and payable. If an Event of Default specified in Section 501(5) or 501(6) with respect to Securities of any series at the time Outstanding occurs, the principal amount of all the Securities of that series (or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof) shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series 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 principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

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

(A) all overdue interest on all Securities of that series,

(B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

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(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the

Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

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

SECTION 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

The Company covenants that if

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

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

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 for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in 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.

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

SECTION 504. 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 reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 607.

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; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

SECTION 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 506. APPLICATION OF MONEY COLLECTED.

Any money collected by the Trustee pursuant to this Article 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 on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607; and

SECOND: To the payment of the amounts then due and unpaid for principal of and any premium, if any, and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium, if any, and interest, respectively.

SECTION 507. LIMITATION ON SUITS.

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

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series 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;

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

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such 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 of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

SECTION 508. UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST AND TO CONVERT.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date), to convert such Securities in accordance with Article Fourteen and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 509. RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, 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 510. 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 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and

every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder of any Securities 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 (subject to the limitations contained in this Indenture) or by the Holders, as the case may be.

SECTION 512. CONTROL BY HOLDERS.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture and the Trustee shall not have determined that the action so directed would be unjustly prejudicial to Holders of Securities of that series, or any other series, not taking part in such direction, and

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

SECTION 513. WAIVER OF PAST DEFAULTS.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of or any premium or interest on any Security of such series, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series 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 514. 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, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, including legal fees and expenses, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or the Trustee or in any suit for the enforcement of the right to convert any Security in accordance with Article Fourteen.

SECTION 515. WAIVER OF USURY, 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 usury, 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 SIX

THE TRUSTEE

SECTION 601. CERTAIN DUTIES AND RESPONSIBILITIES.

The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. 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, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. 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 602. NOTICE OF DEFAULTS.

If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default known to it as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 501(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any

event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

SECTION 603. CERTAIN RIGHTS OF TRUSTEE.

Subject to the provisions of Section 601:

(1) 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;

(2) 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 shall be sufficiently evidenced by a Board Resolution;

(3) 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;

(4) 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;

(5) 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 reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(7) 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;

(8) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken 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; and

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

SECTION 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

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 neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 605. MAY HOLD SECURITIES AND ACT AS TRUSTEE UNDER OTHER INDENTURES.

The Trustee, any Authenticating Agent, 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 Sections 608 and 613, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Subject to the limitations imposed by the Trust Indenture Act, nothing in this Indenture shall prohibit the Trustee from becoming and acting as trustee under other indentures under which other securities, or certificates of interest of participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

SECTION 606. 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 607. COMPENSATION AND REIMBURSEMENT.

The Company agrees

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

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

(3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim (whether asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(5) or Section 501(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State Bankruptcy, insolvency or other similar law.

SECTION 608. 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. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

SECTION 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be one (and only one) Trustee hereunder with respect to the Securities of each series, which may be Trustee hereunder for Securities of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has (or if the Trustee is a member of a bank holding company system, its bank holding company has) a combined capital and surplus of at least $50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section and to the extent permitted by the Trust Indenture Act, 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 with respect to the Securities of any

series 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 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

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 in accordance with the applicable requirements of Section 611.

The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee 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 of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee 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 of such series.

If at any time:

(1) the Trustee shall fail to comply with Section 608 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (B) subject to Section 514, 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 removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

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, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the

Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 611, the retiring Trustee may petition, or any Holder who has been a bona fide Holder of a Security of such series 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 with respect to the Securities of such series.

The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 611. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed 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 the 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.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring

Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each 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 with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall, upon payment in full of all of its charges, duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

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 referred to in the first or second preceding paragraph, as the case may be.

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 612. 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 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

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).

SECTION 614. APPOINTMENT OF AUTHENTICATING AGENT.

The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue and upon exchange, registration of transfer or partial redemption thereof

or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having (or if the Authenticating Agent is a member of a bank holding company system, its bank holding company has) a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent 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 Authenticating Agent 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 an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment in the manner provided in Section 106 to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor

hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section 612, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

THE BANK OF NEW YORK, N.A.,
As Trustee

By:
---------- ,
As Authenticating Agent

By:

Authorized Signatory

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 701. COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.

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

(1) semi-annually, not later than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of each series as of such Regular Record Date, as the case may be, and

(2) 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;

provided that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as Security Registrar.

SECTION 702. PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

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 701, if any, 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 701 upon receipt of a new list so furnished.

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 privileges of the Trustee, shall be as provided by the Trust Indenture Act.

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 703. REPORTS BY TRUSTEE.

The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each July 15 following the date of this Indenture deliver to Holders a brief report, dated as of such July 15, which complies with

the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when any Securities are listed on any stock exchange or of any delisting thereof.

SECTION 704. 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 the Trust Indenture 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.

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).

ARTICLE EIGHT

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(1) in case the Company shall consolidate with or merge into another Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person 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 shall be a corporation, limited liability company, partnership, trust or other business entity, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and the conversion rights shall be provided for in accordance with Article Fourteen, if applicable, or as otherwise specified pursuant to Section 301, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company's assets;

(2) 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 happened and be continuing; and

(3) the Company 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 and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 802. 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 801, 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 NINE

SUPPLEMENTAL INDENTURES

SECTION 901. 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 enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, or successive successions, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such additional Events of Default are to be for the benefit of less than all series of Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or

(4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form; or

(5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding; or

(6) to secure the Securities; or

(7) to establish the form or terms of Securities of any series as permitted by Sections 201 and 301; or

(8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 611; or

(9) to make provision with respect to the conversion rights of Holders pursuant to the requirements of Article Fourteen, including providing for the conversion of the securities into any security (other than the Common Stock of the Company) or property of the Company; or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this Clause (10) shall not adversely affect the interests of the Holders of Securities of any series in any material respect; or

(11) to supplement any of the provisions of the Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Articles Four and Thirteen, provided that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities in any material respect.

SECTION 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the consent of the Holders of a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, 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 of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, 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

(3) modify any of the provisions of this Section, Section 513 or Section 1010, 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;

provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and Section 1010, or the deletion of this proviso, in accordance with the requirements of Sections 611 and 901(8), or

(4) if applicable, make any change that adversely affects the right to convert any security as provided in Article Fourteen or pursuant to Section 301 (except as permitted by Section 901(9)) or decrease the conversion rate or increase the conversion price of any such security.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

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 903. 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 Sections 601 and 603) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 904. EFFECT OF SUPPLEMENTAL INDENTURES.

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

SECTION 905. CONFORMITY WITH TRUST INDENTURE ACT.

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

SECTION 906. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company

shall so determine, new Securities of any series 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 of such series.

ARTICLE TEN

COVENANTS

SECTION 1001. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

SECTION 1002. MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities of that series may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. 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 where the Securities of one or more series 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 each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

SECTION 1003. MONEY FOR SECURITIES PAYMENTS TO BE HELD IN TRUST.

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

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of or any premium or interest on any Securities of that series, 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 will cause each Paying Agent for any series of Securities 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 (1) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (2) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

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 payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for a period ending on the earlier of the date that is ten Business Days prior to the date such money would escheat to the State or two years after such principal, premium or interest has become due and payable 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.

SECTION 1004. STATEMENT BY OFFICERS AS TO DEFAULT.

The Company will 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 best 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 fiscal year of the Company ends on June 30; and the Company will give the Trustee prompt written notice of any change of its fiscal year.

SECTION 1005. EXISTENCE.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

SECTION 1006. MAINTENANCE OF PROPERTIES.

The Company will cause all properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as, and to the extent, in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business and not disadvantageous in any material respect to the Holders.

SECTION 1007. PAYMENT OF TAXES AND OTHER CLAIMS.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Company upon the income, profits or property of the Company, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (i) whose amount, applicability or validity is being contested in good faith by appropriate proceedings or (ii) if the failure to pay or discharge would not have a material adverse effect on the assets, business, operations, properties or condition (financial or otherwise) of the Company and its subsidiaries, taken as a whole.

SECTION 1008. LIMITATION ON LIENS.

The Company will not issue, incur, create, assume or guarantee, and will not permit any Restricted Subsidiary to issue, incur, create, assume or guarantee, any Secured Debt (as defined below) without in any such case effectively providing concurrently with issuance, incurrence, creation, assumption or guarantee of any such Secured Debt, or the grant of a mortgage with respect to any such indebtedness, that the Securities (together with, if the Company shall so determine, any other indebtedness of or guarantee by the Company or such Restricted Subsidiary ranking equally with the Securities) shall be secured equally and ratably with (or, at the option of the Company, prior to) such Secured Debt. The foregoing restriction with respect to Secured Debt, however, will not apply to:

(1) mortgages on property existing at the time of acquisition thereof by the Company or any Subsidiary, provided that such mortgages were in existence prior to the contemplation of such acquisitions;

(2) mortgages on property, shares of stock or indebtedness or other assets of any corporation existing at the time such corporation becomes a Restricted Subsidiary, provided that such mortgages are not incurred in anticipation of such corporation becoming a Restricted Subsidiary (which may include property previously leased by the Company and leasehold interests thereon, provided that the lease terminates prior to or upon the acquisition);

(3) mortgages on property, shares of stock or indebtedness existing at the time of acquisition thereof by the Company or a Restricted Subsidiary or mortgages thereon to secure the payment of all or any part of the purchase price thereof, or mortgages on property, shares of stock or indebtedness to secure any indebtedness for borrowed money incurred prior to, at the time of or within 270 days after, the latest of the acquisition thereof, or, in the case of property, the completion of construction, the completion of improvements, or the commencement of substantial commercial operation of such property for the purpose of financing all or any part of the purchase price thereof, such construction, or the making of such improvements;

(4) mortgages to secure indebtedness owing to the Company or to a Restricted Subsidiary:

(5) mortgages existing at the date of this Indenture;

(6) mortgages on property of a corporation existing at the time such corporation is merged into or consolidated with the Company or a Subsidiary or at the time of a sale, lease or other disposition of the properties of a corporation as an entirety or substantially as an entirety to the Company or a Restricted Subsidiary, provided that such mortgage was not incurred in anticipation of such merger or consolidation or sale, lease or other disposition;

(7) mortgages in favor of the United States or any State, territory or possession thereof (or the District of Columbia), or any department, agency, instrumentality or political subdivision of the United States or any State, territory or possession thereof (or the District of Columbia), to secure partial, progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price of the cost of constructing or improving the property subject to such mortgages;

(8) mortgages created in connection with the acquisition of assets or a project financed with, and created to secure, a Nonrecourse Obligation;

(9) extensions, renewals, refinancings or replacements of any mortgage referred to in the foregoing clauses (1), (2), (3), (4), (5), (6), (7) and (8) provided, however, that any mortgages permitted by any of the foregoing clauses (1), (2), (3), (4), (5), (6), (7) and (8) shall not extend to or cover any property of the Company or such Restricted Subsidiary, as the case may be, other than the property, if any, specified in such clauses and improvements thereto, and provided further that any refinancing or replacement of any mortgages permitted by the foregoing clauses (7) and (8) shall be of the type referred to in such clauses (7) or (8), as the case may be.

Notwithstanding the restrictions outlined in the preceding paragraph, the Company or any Restricted Subsidiary will be permitted to issue, incur, create, assume or guarantee debt secured by a mortgage which would otherwise be subject to such restrictions, without equally and ratably securing the Securities, provided that after giving effect thereto, the aggregate amount of all debt so secured by mortgages (not including mortgages permitted under clauses (1) through (9) above) does not exceed the greater of $300 million or 10% of the Consolidated Net Tangible Assets of the Company as most recently determine on or prior to such date.

For purposes of this Section 1008:

(i) "Secured Debt" means any debt for borrowed money secured by a mortgage upon any Principal Property of the Company or any Restricted Subsidiary or upon any shares of stock or indebtedness (whether such Principal Property, shares or indebtedness are now existing or owed or hereafter created or acquired); and

(ii) "mortgage" means a mortgage, security interest, pledge, lien,

charge or other encumbrance.

SECTION 1009. LIMITATIONS ON SALE AND LEASEBACK TRANSACTIONS.

The Company will not, nor will it permit any Restricted Subsidiary to, enter into any Sale and Lease-Back Transaction with respect to any Principal Property, other than any such transaction involving a lease for a term of not more than three years of any such transaction between the Company and a Restricted Subsidiary or between Restricted Subsidiaries, unless: (1) the Company or such Restricted Subsidiary would be entitled to incurs indebtedness secured by a mortgage on the Principal Property involved in such transaction at least equal in amount to the Attributable Debt with respect to such Sale and Lease-Back Transaction, without equally and ratably securing the Securities, pursuant to Section 1008; or (2) the Company shall apply an amount equal to the greater of the net proceeds of such sale or the Attributable Debt with respect to such Sale and Lease-Back Transaction within 180 days of such sale to either (or a combination of) the retirement (other than mandatory retirement, mandatory prepayment or sinking fund payment or by a payment at maturity) of debt for borrowed money of the Company or a Restricted Subsidiary that matures more than 12 months after the creation of such indebtedness or the purchase, construction or development of other comparable property.

Notwithstanding the restrictions outlined is the preceding paragraph, the Company or any Restricted Subsidiary will be permitted to enter into Sale and Lease-Back Transactions which would otherwise be subject to such restrictions, without applying the net proceeds of such transactions in the manner set forth in clause (b) above, provided that after giving effect thereto, the aggregate amount of such sale and Lease-Back Transactions, together with the aggregate amount of all debt secured by mortgages not permitted by clauses (1) through (9) under Section 1008 above, does not exceed the greater of $300 million or 10% of Consolidated Net Tangible Assets of the Company as most recently determined on or prior to such date.

SECTION 1010. WAIVER OF CERTAIN COVENANTS.

Except as otherwise specified as contemplated by Section 301 for Securities of such series, the Company may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant provided pursuant to Section 301(19), 901(2), 901(7), 1006, 1007, 1008 or 1009 for the benefit of the Holders of such series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

SECTION 1011. CALCULATION OF ORIGINAL ISSUE DISCOUNT.

The Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE ELEVEN

REDEMPTION OF SECURITIES

SECTION 1101. APPLICABILITY OF ARTICLE.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for such Securities) in accordance with this Article.

SECTION 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities. In case of any redemption at the election of the Company of the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 35 days (or 45 days if less than all the Securities of any series are to be redeemed) prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable,

of the tenor of the Securities to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 1103. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed (unless all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by lot, or in the Trustee's discretion, on a pro-rata basis, provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

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

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

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

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

SECTION 1104. NOTICE OF REDEMPTION.

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

All notices of redemption shall identify the Securities to be redeemed (including CUSIP number(s)) and shall state:

(1) the Redemption Date,

(2) the Redemption Price (including accrued interest, if any),

(3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(5) the place or places where each such Security is to be surrendered

for payment of the Redemption Price,

(6) if applicable, the conversion price, that the date on which the right to convert the principal of the Securities or the portions thereof to be redeemed will terminate will be the Business Day prior to the Redemption Date and the place or places where such Securities may be surrendered for conversion, and

(7) that the redemption is for a sinking fund, if such is the case.

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

SECTION 1105. DEPOSIT OF REDEMPTION PRICE.

On or prior to 10:00 a.m., New York time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to the right of any Holder of such Security to receive interest as provided in the last paragraph of Section 307) be paid to the Company on Company Request, or if then held by the Company, shall be discharged from such trust.

SECTION 1106. SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 301, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

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

SECTION 1107. SECURITIES REDEEMED IN PART.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (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 its 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 the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE TWELVE

SINKING FUNDS

SECTION 1201. APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 301 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an "optional sinking fund payment." If provided for by the terms of any Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking

fund payment shall be applied to the redemption of Securities as provided for by the terms of such Securities.

SECTION 1202. SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Securities so to be redeemed, for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 1203. REDEMPTION OF SECURITIES FOR SINKING FUND.

Not less than 60 days prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities pursuant to Section 1202 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN

DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1301. COMPANY'S OPTION TO EFFECT DEFEASANCE OR COVENANT DEFEASANCE.

The Company may elect, at its option at any time, to have Section 1302 or Section 1303 applied to any Securities or any series of Securities, as the case may be, designated pursuant to Section 301 as being defeasible pursuant to such Section 1302 or 1303, in accordance with any applicable requirements provided pursuant to Section 301 and upon compliance with the conditions set forth below in this Article. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities.

SECTION 1302. DEFEASANCE AND DISCHARGE.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 1304 and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due, (2) the Company's obligations with respect to such Securities under Sections 304, 305, 306, 1002 and 1003, and, if applicable, Article Fourteen, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article. Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 1303 applied to such Securities.

SECTION 1303. COVENANT DEFEASANCE.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, (1) the Company shall be released from its obligations under Sections 1006 through 1009, inclusive, and any covenants provided pursuant to Section 301(19), 901(2) or 901(7) for the benefit of the Holders of such Securities and (2) the occurrence of any event specified in Sections 501(4) (with respect to any of Sections 1006 through 1009, inclusive, and any such covenants provided pursuant to Section 301(19), 901(2) or 901(7)) shall be deemed not to be or result in an Event of Default, in each case with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 501(4)), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

SECTION 1304. CONDITIONS TO DEFEASANCE OR COVENANT DEFEASANCE.

The following shall be the conditions to the application of Section 1302 or Section 1303 to any Securities or any series of Securities, as the case may be:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 609 and agrees to comply with the provisions of this Article applicable to it) as trust funds in trust for the purpose of making the

following payments, specifically pledged as security for, and dedicated solely to, the benefits of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "U.S. Government Obligation" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(2) In the event of an election to have Section 1302 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 1303 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected

with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Securities nor any other Securities of the same series, if then listed on any securities exchange, will be delisted as a result of such deposit.

(5) No event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Securities or any other Securities shall have occurred and be continuing at the time of such deposit or, with regard to any such event specified in Sections 501(5) and (6), at any time on or prior to the 90th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 90th day).

(6) Such Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Securities are in default within the meaning of such Act).

(7) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which it is bound.

(8) Such Defeasance or Covenant Defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act unless such trust shall be registered under such Act or exempt from registration thereunder.

(9) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

SECTION 1305. DEPOSITED MONEY AND U.S. GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; MISCELLANEOUS PROVISIONS.

Subject to the provisions of the last paragraph of Section 1003, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section and Section 1306, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 1304 in respect of any Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and any premium and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 1304 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1304 with respect to any Securities which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered

to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

SECTION 1306. REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations under this Indenture and such Securities from which the Company has been discharged or released pursuant to Section 1302 or 1303 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such Securities, until such time as the Trustee or Paying Agent is permitted to apply

all money held in trust pursuant to Section 1305 with respect to such Securities in accordance with this Article; provided, however, that if the Company makes any payment of principal of or any premium or interest on any such Security following such reinstatement of its obligations, the Company shall be subrogated to the rights (if any) of the Holders of such Securities to receive such payment from the money so held in trust.

ARTICLE FOURTEEN

CONVERSION AND EXCHANGE OF SECURITIES

SECTION 1401. APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to the Securities of any series which are convertible or exchangeable into shares of Common Stock of the Company, and the issuance of such shares of Common Stock upon the conversion or exchange of such Securities, except as otherwise specified as contemplated by Section 301 for the Securities of such series.

SECTION 1402. EXERCISE OF CONVERSION AND EXCHANGE PRIVILEGE.

In order to exercise a conversion or exchange privilege, the Holder of a Security of a series with such a privilege shall surrender such Security to the Company at the office or agency maintained for that purpose pursuant to Section 1002, accompanied by a duly executed conversion or exchange notice to the Company substantially in the form set forth in Section 206 stating that the Holder elects to convert such Security or a specified portion thereof. Such notice shall also state, if different from the name and address of such Holder, the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion or exchange shall be issued. Securities surrendered for conversion or exchange shall (if so required by the Company or the Trustee) be duly endorsed by or accompanied by instruments of transfer in forms satisfactory to the Company and the Trustee duly executed by the registered Holder or its attorney duly authorized in writing; and Securities so surrendered for conversion or exchange (in whole or in part) during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date (excluding Securities or portions thereof called for redemption during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first

Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day) shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of such Security then being converted or exchanged, and such interest shall be payable to such registered Holder notwithstanding the conversion or exchange of such Security, subject to the provisions of Section 307 relating to the payment of Defaulted Interest by the Company. As promptly as practicable after the receipt of such notice and of any payment required pursuant to a Board Resolution and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto setting forth the terms of such series of Security, and the surrender of such Security in accordance with such reasonable regulations as the Company may prescribe, the Company shall issue and shall deliver, at the office or agency at which such Security is surrendered, to such Holder or on its written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion or exchange of such Security (or specified portion thereof), in accordance with the provisions of such Board Resolution, Officers' Certificate or supplemental indenture, and cash as provided therein in respect of any fractional share of such Common Stock otherwise issuable upon such conversion or exchange. Such conversion or exchange shall be deemed to have been effected immediately prior to the close of business on the date on which such notice and such payment, if required, shall have been received in proper order for conversion or exchange by the Company and such Security shall have been surrendered as aforesaid (unless such Holder shall have so surrendered such Security and shall have instructed the Company to effect the conversion or exchange on a particular date following such surrender and such Holder shall be entitled to convert or exchange such Security on such date, in which case such conversion or exchange shall be deemed to be effected immediately prior to the close of business on such date) and at such time the rights of the Holder of such Security as such Security Holder shall cease and the person or persons in whose name or names any certificate or certificates for shares of Common Stock of the Company shall be issuable upon such conversion or exchange shall be deemed to have become the Holder or Holders of record of the shares represented thereby. Except as set forth above and subject to the final paragraph of Section 307, no payment or adjustment shall be made upon any conversion or exchange on account of any interest accrued on the Securities (or any part thereof) surrendered for conversion or exchange or on account of any dividends on the Common Stock of the Company issued upon such conversion or exchange.

In the case of any Security which is converted or exchanged in part only, upon such conversion or exchange the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unconverted or unexchanged portion of such Security.

SECTION 1403. NO FRACTIONAL SHARES.

No fractional share of Common Stock of the Company shall be issued upon conversions or exchanges of Securities of any series. If more than one Security shall be surrendered for conversion or exchange at one time by the same Holder, the number of full shares which shall be issuable upon conversion or exchange 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, except for the provisions

of this Section 1403, any Holder of a Security or Securities would be entitled to a fractional share of Common Stock of the Company upon the conversion or exchange of such Security or Securities, or specified portions thereof, the Company shall pay to such Holder an amount in cash equal to the current market value of such fractional share computed, (i) if such Common Stock is listed or admitted to unlisted trading privileges on a national securities exchange or market, on the basis of the last reported sale price regular way on such exchange or market on the last trading day prior to the date of conversion or exchange upon which such a sale shall have been effected, or (ii) if such Common Stock is not at the time so listed or admitted to unlisted trading privileges on a national securities exchange or market, on the basis of the average of the bid and asked prices of such Common Stock in the over-the-counter market, on the last trading day prior to the date of conversion or exchange, as reported by the National Quotation Bureau, Incorporated or similar organization if the National Quotation Bureau, Incorporated is no longer reporting such information, or if not so available, the fair market price as determined by the Board of Directors. For purposes of this Section, "trading day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday other than any day on which the Common Stock is not traded on the Nasdaq National Market, or if the Common Stock is not traded on the Nasdaq National Market, on the principal exchange or market on which the Common Stock is traded or quoted.

SECTION 1404. ADJUSTMENT OF CONVERSION AND EXCHANGE PRICE.

The conversion or exchange price of Securities of any series that is convertible or exchangeable into Common Stock of the Company shall be adjusted for any stock dividends, stock splits, reclassifications, combinations or similar transactions in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of the Securities of such series.

Whenever the conversion or exchange price is adjusted, the Company shall compute the adjusted conversion or exchange price in accordance with terms of the applicable Board Resolution or supplemental indenture and shall prepare an Officers' Certificate setting forth the adjusted conversion or exchange price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed at each office or agency maintained for the purpose of conversion or exchange of Securities pursuant to Section 1002 and, if different, with the Trustee. The Company shall forthwith cause a notice setting forth the adjusted conversion or exchange price to be mailed, first class postage prepaid, to each Holder of Securities of such series at its address appearing on the Security Register and to any conversion or exchange agent other than the Trustee.

SECTION 1405. NOTICE OF CERTAIN CORPORATE ACTIONS.

In case:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its retained earnings (other than a dividend for which approval of any shareholders of the Company is required) that would require an adjustment pursuant to Section 1404; or

(2) the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights (other than any such grant for which approval of any shareholders of the Company is required); or

(3) of any reclassification of the Common Stock of the Company (other

than a subdivision or combination of its outstanding shares of Common Stock, or of any consolidation, merger or share exchange to which the Company is a party and for which approval of any shareholders of the Company is required), or of the sale of all or substantially all of the assets of the Company; or

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

then the Company shall cause to be filed with the Trustee, and shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least 20 days (or 10 days in any case specified in Clause (1) or (2) above) prior to the applicable record date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options 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, rights, options or warrants are to be determined, or (ii) the date on which such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up. If at any time the Trustee shall not be the conversion or exchange agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

SECTION 1406. RESERVATION OF SHARES OF COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion or exchange of Securities, the full number of shares of Common Stock of the Company then issuable upon the conversion or exchange of all outstanding Securities of any series that has conversion or exchange rights.

SECTION 1407. PAYMENT OF CERTAIN TAXES UPON CONVERSION AND EXCHANGE.

Except as provided in the next sentence, the Company will pay any and all taxes that may be payable in respect of the issue or delivery of shares of its Common Stock on conversion or exchange of Securities pursuant hereto. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of its Common Stock in a name other than that of the Holder of the Security or Securities to be converted or exchanged, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid.

SECTION 1408. NONASSESSABILITY.

The Company covenants that all shares of its Common Stock which may be issued upon conversion or exchange of Securities will upon issue in accordance with the terms hereof be duly and validly issued and fully paid and nonassessable.

SECTION 1409. PROVISION IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS.

In case of any consolidation or merger of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security of a series then Outstanding that is convertible or exchangeable into Common Stock of the Company shall have the right thereafter (which right shall be the exclusive conversion or exchange right thereafter available to said Holder), during the period such Security shall be convertible or exchangeable, to convert or exchange such Security only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted or exchanged immediately prior to such consolidation, merger, conveyance, sale, transfer or lease, assuming such holder of Common Stock of the Company (i) is not a Person with which the Company consolidated or merged with or into or which merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be (a "Constituent Person"), or an Affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon

such consolidation, merger, conveyance, sale, transfer or lease (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer, or lease is not the same for each share of Common Stock of the Company held immediately prior to such consolidation, merger, conveyance, sale, transfer or lease by others than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-electing Share"), then for the purpose of this Section 1409 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by the holders of 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, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article or in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of such adjustments. The above provisions of this Section 1409 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Security of a series that is convertible or exchangeable into Common Stock of the Company as provided in Section 106 promptly upon such execution.

Neither the Trustee nor any conversion or exchange agent, if any, shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Securities of a series convertible or exchangeable into Common Stock of the Company upon the conversion or exchange of their Securities after any such consolidation, merger, conveyance, transfer, sale or lease or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

SECTION 1410. DUTIES OF TRUSTEE REGARDING CONVERSION AND EXCHANGE.

Neither the Trustee nor any conversion or exchange agent shall at any time be under any duty or responsibility to any Holder of Securities of any series that is convertible or exchangeable into Common Stock of the Company to determine whether any facts exist which may require any adjustment of the conversion or exchange price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, whether herein or in any supplemental indenture (or whether any provisions of any supplemental indenture are correct), any resolutions of the Board of Directors or written instrument executed by one or more officers of the Company provided to be employed in making the same. Neither the Trustee nor any conversion or exchange agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock of the Company, or of any securities or property, which may at any time be issued or delivered upon the conversion or exchange of any Securities and neither the Trustee nor any conversion or exchange agent makes any representation with respect thereto. Subject to the provisions of Section 601, neither the Trustee nor any conversion or exchange agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of its Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or exchange or to comply with any of the covenants of the Company contained in this Article Fourteen or in the applicable supplemental indenture, resolutions of the Board of Directors or written instrument executed by one or more duly authorized officers of the Company.

SECTION 1411. REPAYMENT OF CERTAIN FUNDS UPON CONVERSION AND EXCHANGE.

Any funds which at any time shall have been deposited by the Company or on its behalf with the Trustee or any other paying agent for the purpose of paying the principal of, and premium, if any, and interest, if any, on any of the Securities (including, but not limited to, funds deposited for the sinking fund referred to in Article Twelve hereof and funds deposited pursuant to Article Thirteen hereof) and which shall not be required for such purposes because of the conversion or exchange of such Securities as provided in this Article Fourteen shall after such conversion or exchange be repaid to the Company by the Trustee upon the Company's written request.

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.

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

SUN MICROSYSTEMS, INC.

By:

Name:
Title:

THE BANK OF NEW YORK, as Trustee

By:

Name:
Title:

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<TYPE>EX-4.2
<SEQUENCE>4
<DESCRIPTION>FORM OF SUBORDINATED INDENTURE
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Exhibit 4.2

==========

Sun Microsystems, Inc.

TO

The Bank of New York,

as Trustee

Indenture

Dated as of _____, 1999

Subordinated Debt Securities

==========

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SUN MICROSYSTEMS, INC.

Certain Sections of this Indenture relating to
Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

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

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INDENTURE, dated as of _____, 1999, between Sun Microsystems, Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), having its principal executive office at 901 San Antonio Road, Palo Alto, California 94303 and The Bank of New York, N.A., a New York banking corporation, as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as provided in this Indenture.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. DEFINITIONS.

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

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

(2) 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;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation;

(4) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Indenture; and

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(5) 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 104.

"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.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 614 to act on behalf of the Trustee to authenticate Securities of one or more series.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board empowered to act for it with respect to this Indenture.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day," when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

"Commission" means the Securities and Exchange Commission, 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" includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which is not subject to redemption by the Company; provided, however, subject to the provisions of Section 1409, shares issuable upon conversion of Securities shall include only shares of the class designated as Common Stock of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, further, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Company" means the corporation 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 Chairman of the Board, its Vice Chairman of the Board, its President or a Vice President, and by its principal financial officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Corporate Trust Office" means the principal corporate trust office of the Trustee currently at 101 Barclay Street, Floor 21W, New York, New York 10286, at which at any particular time its corporate trust business shall be administered.

"corporation" means a corporation, association, company, limited liability company, joint-stock company or business trust.

"Covenant Defeasance" has the meaning specified in Section 1303.

"Defaulted Interest" has the meaning specified in Section 307.

"Defeasance" has the meaning specified in Section 1302.

"Depositary" means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depositary for such Securities as contemplated by Section 301.

"Designated Senior Debt" means the Company's obligations under the Revolving Credit Agreement and the Company's obligations under any particular Senior Debt in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Debt shall be

"Designated Senior Debt" for purposes of this Indenture (provided that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Debt to exercise the rights of Designated Senior Debt).

"Event of Default" has the meaning specified in Section 501.

"Exchange Act" means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

"Expiration Date" has the meaning specified in Section 104.

"Global Security" means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 204 (or such legend as may be specified as contemplated by Section 301 for such Securities).

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

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term "Indenture" shall also include the terms of particular series of Securities established as contemplated by Section 301; provided, however, that if at any time more than one Person is acting as Trustee under this Indenture due to the appointment of one or more separate Trustees for any one or more separate series of Securities, "Indenture" shall mean, with respect to such series of Securities for which any such Person is Trustee, 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 and shall include the terms of particular series of Securities for which such Person is Trustee established as contemplated by Section 301, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such person had become such Trustee, but to which such person, as such Trustee, was not a party; provided, further that in the event that this Indenture is supplemented or amended by one or more indentures supplemental hereto which are only applicable to certain series of Securities, the term "Indenture" for a particular series of Securities shall only include the supplemental indentures applicable thereto.

"Interest," when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date," when used with respect to any Security, means the Stated Maturity of an instalment of interest on such Security.

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

"Maturity," when used with respect to any Security, means the date on which the principal of such Security or an instalment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, repurchase at the option of the Holder or otherwise.

"Notice of Default" means a written notice of the kind specified in Section 501(4).

"Officers' Certificate" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the President or a Vice President, and by the principal financial officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 1004 shall be the principal executive, financial or accounting officer of the Company.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for, or an employee of, the Company, and who shall be reasonably acceptable to the Trustee.

"Original Issue Discount Security" means any Security which provides

for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

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

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

(2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) 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; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Securities as to which Defeasance has been effected pursuant to Section 1302; and

(4) Securities which have been paid pursuant to Section 306 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 bona fide 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, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 502, (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 301, (C) the principal amount of a Security denominated in one or more foreign currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 301, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) 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, waiver or other action, 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 or any premium or interest on any Securities on behalf of the Company.

"Payment Blockage Notice" has the meaning specified in Section 1504.

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

"Place of Payment," when used with respect to the Securities of any series, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as specified as contemplated by Section 301.

"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 306 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.

"Record Date" means any Regular Record Date or Special Record Date.

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

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

"Regular Record Date" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 301.

"Representative" means the (a) indenture trustee or other trustee, agent or representative for any Senior Debt or (b) with respect to any Senior Debt that does not have any such trustee, agent or other representative, (i) in the case of such Senior Debt issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Senior Debt, any holder or owner of such Senior Debt acting with the consent of the required persons necessary to bind such holders or owners of such Senior Debt and (ii) in the case of all other such Senior Debt, the holder or owner of such Senior Debt.

"Revolving Credit Agreement" means that certain Restated Revolving Credit Agreement, dated as of August 27, 1997, by and between Company, the financial institutions named on the signature pages

thereto (the "Bank) and Citicorp N.A., as agent for the Banks, as amended, restated, supplemented or otherwise modified from time to time.

"Securities" has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Senior Debt" means the principal of (and premium, if any) and interest, if any (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company to the extent that such claim for post-petition interest is allowed in such proceeding), on, rent with respect to, and all fees and other amounts payable in connection with, the following, whether absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred or assumed: (a) indebtedness of the Company evidenced by credit or loan agreement, note, bond, debenture or other written obligation, (b) all obligations of the Company for money borrowed, (c) all obligations of the Company evidenced by a note or similar instrument given in connection with the acquisition of any businesses, properties or assets of any kind, (d) obligations of the Company (i) as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles, (ii) as lessee under other leases for facilities, equipment or related assets, whether or not capitalized, entered into or leased after the date of this Indenture for financing purposes (as determined by the Company) or (iii) under any lease or related document (including a purchase agreement) that provides that the Company is contractually obligated to purchase or cause a third party to purchase the leased property and the obligations of the Company under such lease or related document to purchase or to cause a third party to purchase such leased property, (e) all obligations of the Company under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts, or similar agreements or arrangements, (f) all obligations of the Company with respect to letters of credit, bankers' acceptances or similar facilities (including reimbursement obligations with respect to any of the foregoing), (g) all obligations of the Company issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable arising in the ordinary course of business), (h) all obligations of the type referred to in clauses (a) through (g) above of another Person and all dividends of another Person, the payment of which, in either case, the Company has assumed or guaranteed (or in effect guaranteed through an agreement to purchase or otherwise (including, without limitation, "take or pay" and similar arrangements)), or for which the Company is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise, or which is secured by lien on property of the Company, and all obligations of the Company with respect thereto, and (i) renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for, any such indebtedness or obligation described in clauses (a) through (h) of this paragraph; provided, however, that Senior Debt shall not

include the Securities or any such indebtedness or obligation if the terms of such indebtedness or obligation (or the

terms of the instrument under which, or pursuant to which it is issued) expressly provide that such indebtedness or obligation is not superior in right of payment to the Securities.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 307.

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such instalment of principal or interest is due and payable.

"Subsidiary" means a corporation of which at least 66 2/3% of the outstanding voting stock of such corporation is at the time owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries, and the accounts of which are consolidated with those of the Company in its most recent consolidated financial statements in accordance with generally accepted accounting principles. 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.

"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 or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"U.S. Government Obligation" has the meaning specified in Section 1304.

"Vice President," when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

SECTION 102. 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 requirements 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,

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) 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;

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

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. 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 or her 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 104. ACTS OF HOLDERS; RECORD DATES.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made 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. The Trustee shall promptly deliver to the Company copies of all such instrument or instruments and records delivered to the Trustee. 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 601) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

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

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.

The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give, make or take any request, demand, authorization, direction, vote, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; provided that no such action shall be

effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of

such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 502, (iii) any request to institute proceedings referred to in Section 507(2) or (iv) any direction referred to in Section 512, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 106.

With respect to any record date set pursuant to this Section, the party hereto which sets such record dates may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 106, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto which set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

SECTION 105. 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,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (or by facsimile transmission ((212) 815-5915), provided that oral confirmation of receipt shall have been received) to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust, Trustee Administration, or

(2) 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, 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 106. 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 its 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 107. CONFLICT WITH TRUST INDENTURE ACT.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act which 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 which 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 108. 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 109. 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 110. 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 111. BENEFITS OF INDENTURE.

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

SECTION 112. GOVERNING LAW.

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

SECTION 113. LEGAL HOLIDAYS.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last date on which a Holder has the right to convert a Security at a particular conversion price shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) or, if applicable to a particular series of Securities, conversion need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, at the Stated Maturity or on such last day for conversion, as the case may be.

SECTION 114. INDENTURE AND SECURITIES SOLELY CORPORATE OBLIGATIONS.

No recourse for the payment of the principal of or premium, if any, or interest on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the

enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

SECTION 115. INDENTURE MAY BE EXECUTED IN COUNTERPARTS.

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

ARTICLE TWO

SECURITY FORMS

SECTION 201. FORMS GENERALLY.

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case 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 Depositary therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 303 for the authentication and delivery of such Securities. Any such Board Resolution or record of such action shall have attached thereto a true and correct copy of the form of Security referred to therein approved by or pursuant to such Board Resolution.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 202. FORM OF FACE OF SECURITY.

[INSERT ANY LEGEND REQUIRED BY THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER.]

SUN MICROSYSTEMS, INC.

No. _____ $_____

CUSIP No._____

Sun Microsystems, Inc., a corporation duly organized and existing under the laws of Delaware (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ Dollars on _____

[IF THE SECURITY IS TO BEAR INTEREST PRIOR TO MATURITY, INSERT -- , and to pay interest thereon from _____ or from the most recent Interest Payment Date to

which interest has been paid or duly provided for, semi-annually on _____ and _____ in each year, commencing _____, at the rate of ___% per annum, until the principal hereof is paid or made available for payment [IF APPLICABLE, INSERT -- , provided that any principal and premium, and any such instalment of interest, which is overdue shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the _____ or _____ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. Interest on the Security shall be computed on the basis of a 360 day year of twelve 30 day months.]

[IF THE SECURITY IS NOT TO BEAR INTEREST PRIOR TO MATURITY, INSERT -- The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the

date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]

Payment of the principal of (and premium, if any) and [IF APPLICABLE, INSERT -- any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in _____, [IF APPLICABLE, INSERT -- which shall initially be the [principal corporate trust] office of the Trustee,] 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 [IF APPLICABLE, INSERT -- ; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register].

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

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

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

SUN MICROSYSTEMS, INC.

By:

Title:

Attest:

- ------------------------------

SECTION 203. FORM OF REVERSE OF SECURITY.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of _____, 1999 (herein called the "Indenture," which term shall have the meaning assigned to it in such

instrument), between the Company and The Bank of New York, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [IF APPLICABLE, INSERT -- , limited in aggregate principal amount to $_____].

[IF APPLICABLE, INSERT -- The Securities of this series are subject to redemption upon not less than [IF APPLICABLE, INSERT -- 30] days' notice by mail, [IF APPLICABLE, INSERT -- (1) on _____ in any year

commencing with the year _____ and ending with the year _____ through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [IF APPLICABLE, INSERT -- on or after _____, 19__], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [IF APPLICABLE, INSERT -- on or before _____, ___%, and if redeemed] during the 12-month period beginning _____ of the years indicated, and thereafter at a Redemption Price equal to .....% of the principal amount, together in the case of any such redemption [IF APPLICABLE, INSERT -- (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

<TABLE>
<CAPTION>

YEAR	REDEMPTION PRICE	YEAR	REDEMPTION PRICE
<S>	<C>	<C>	<C>

</TABLE>

[IF APPLICABLE, INSERT -- The Securities of this series are subject to redemption upon not less than [IF APPLICABLE, INSERT -- 30] days' notice by mail, (1) on _____ in any year commencing with the year _____ and ending with the year _____ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [IF APPLICABLE, INSERT -- on or after _____], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning _____ of the years indicated,

<TABLE>
<CAPTION>

YEAR	REDEMPTION PRICE FOR REDEMPTION-THROUGH OPERATION OF THE SINKING FUND	REDEMPTION PRICE FOR REDEMPTION-OTHERWISE THAN THROUGH OPERATION OF THE SINKING FUND
<S>	<C>	<C>

</TABLE>

and thereafter at a Redemption Price equal to ___% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[IF APPLICABLE, INSERT -- Notwithstanding the foregoing, the Company may not, prior to _____, redeem any Securities of this series as contemplated by [IF APPLICABLE, INSERT -- Clause (2)

of] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than ___% per annum.]

[IF APPLICABLE, INSERT -- The sinking fund for this series provides for the redemption on _____, in each year beginning with the year _____ and ending with the year _____ of [IF APPLICABLE, INSERT -- not less than $_____ ("mandatory sinking fund") and not more than] $_____ aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [IF APPLICABLE, INSERT -- mandatory] sinking fund payments may be credited against subsequent [if applicable, insert -- mandatory] sinking fund payments otherwise required to be made [IF APPLICABLE, INSERT -- , in the inverse order in which they become due].]

[IF THE SECURITY IS SUBJECT TO REDEMPTION OF ANY KIND, INSERT -- In the event of redemption of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[IF APPLICABLE, INSERT -- The Indenture contains provisions for defeasance at any time of [the entire indebtedness of this Security] [or] [certain restrictive covenants and Events of Default with respect to this Security] [, in each case] upon compliance with certain conditions set forth in the Indenture.]

[IF THE SECURITY IS CONVERTIBLE INTO COMMON STOCK OF THE COMPANY, INSERT - -- Subject to the provisions of the Indenture, the Holder of this Security is entitled, at its option, at any time on or prior to Maturity (except that, in case this Security or any portion hereof shall be called for redemption, such right shall terminate with respect to this Security or portion hereof, as the case may be, so called for redemption at the close of business on the first Business Day next preceding the date fixed for redemption as provided in the Indenture unless the Company defaults in making the payment due upon redemption), to convert the principal amount of this Security (or any portion hereof which is $1,000 or an integral multiple thereof), into fully paid and non-assessable shares (calculated as to each conversion to the nearest 1/100th of a share) of the Common Stock of the Company, as said shares shall be constituted at the date of conversion, at the conversion price of $_____ principal amount of Securities for each share of Common Stock, or at the adjusted conversion price in effect at the date of conversion determined as provided in the Indenture, upon surrender of this Security, together with the conversion notice hereon duly executed, to the Company at the designated office or agency of the Company in _____, accompanied (if so required by the Company) by instruments of transfer, in form satisfactory to the Company and to the Trustee, duly executed by the Holder or by its duly authorized attorney in writing. Such surrender shall, if made during any period beginning at the close of business on a Regular Record Date and ending at the opening of business on the Interest Payment Date next following such Regular Record Date (unless this Security or the portion being converted shall have been called for redemption on a Redemption Date during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day), also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted. Subject to the aforesaid requirement for payment and, in the case of a conversion after the Regular Record Date

next preceding any Interest Payment Date and on or before such Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security) of record at such Regular Record Date to receive an installment of interest (with certain exceptions provided in the Indenture), no adjustment is to be made on conversion for interest accrued hereon or for dividends on shares of Common Stock issued on conversion. The Company is not required to issue fractional shares upon any such conversion, but shall make adjustment therefor in cash on the basis of the current market value of such fractional interest as provided in the Indenture. The conversion price is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the sale of substantially all of the assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of

securities, cash and other property receivable upon the consolidation, merger or sale by a holder of the number of shares of Common Stock into which this Security might have been converted immediately prior to such consolidation, merger or sale (assuming such holder of Common Stock failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of non-electing shares). In the event of conversion of this Security in part only, a new Security or Securities for the unconverted portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.]

[IF THE SECURITY IS CONVERTIBLE INTO OTHER SECURITIES OF THE COMPANY, SPECIFY THE CONVERSION FEATURES.]

The indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary to appropriate to effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes.

[IF THE SECURITY IS NOT AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT -- If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[IF THE SECURITY IS AN ORIGINAL ISSUE DISCOUNT SECURITY, INSERT -- If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to --INSERT FORMULA FOR DETERMINING THE AMOUNT. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal, premium and interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on the Securities of this series shall terminate.]

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 of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of more than 50% in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, 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 of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding 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 principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest 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 any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of $[1,000] and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal

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amount of Securities of this series and of like tenor 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.

The 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, without regard to conflict of laws principles thereof.

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

SECTION 204. FORM OF LEGEND FOR GLOBAL SECURITIES.

Unless otherwise specified as contemplated by Section 301 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

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.

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SECTION 205. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

The Trustee's certificates of authentication shall be in substantially the following form:

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

Dated:

THE BANK OF NEW YORK,
As Trustee

By:

Authorized Signatory

SECTION 206. FORM OF CONVERSION NOTICE.

Conversion notices shall be in substantially the following form:

To Sun Microsystems, Inc.:

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or portion hereof (which is $[1,000] or an integral multiple thereof) below designated, into shares of Common Stock of the

Company in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If this Notice is being delivered on a date after the close of business on a Regular Record Date and prior to the opening of business on the related Interest Payment Date (unless this Security or the portion thereof being converted has been called for redemption on a Redemption Date during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day), this Notice is accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest payable on such Interest Payment Date of the principal of this Security to be converted. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

Principal Amount to be Converted
(in an integral multiple of $1,000, if less than all)
U.S. $ _____

Dated:

Signature(s) must be guaranteed if shares of Common Stock are to be delivered, or Securities to be issued, other than to and in the name of the registered owner.

Signature Guaranty

Fill in for registration of shares of Common Stock and Security if to be issued otherwise than to the registered Holder.

<TABLE>
<S> <C>

- ---
(Name)

Social Security or Other Taxpayer Identification Number

- ---
(Address)

- ---
Please print Name and Address
(including zip code number)
</TABLE>

[The above conversion notice is to be modified, as appropriate, for conversion into other securities or property of the Company.]

ARTICLE THREE

THE SECURITIES

SECTION 301. AMOUNT UNLIMITED; ISSUABLE IN SERIES.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);

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(2) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906 or 1107 and except for any Securities which, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder);

(3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;

(4) the date or dates on which the principal of any Securities of the series is payable;

(5) the rate or rates at which any Securities of the series shall bear interest, if any, the date or dates from which any such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any such interest payable on any Interest Payment Date;

(6) the place or places where the principal of and any premium and interest on any Securities of the series shall be payable;

(7) the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series may be redeemed, in whole or in part, at the option of the Company and, if other than by a Board Resolution, the manner in which any election by the Company to redeem the Securities shall be evidenced;

(8) the obligation, if any, of the Company to redeem or purchase any Securities of the series pursuant to any sinking fund or analogous provisions or at the option of the Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which any Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which any Securities of the series shall be issuable;

(10) if the amount of principal of or any premium or interest on any Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined;

(11) if other than the currency of the United States of America, the currency, currencies or currency units in which the principal of or any premium or interest on any Securities of the series shall be payable and the manner of determining the equivalent thereof in the currency of the United States of America for any purpose, including for purposes of the definition of "Outstanding" in Section 101;

(12) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or the Holder thereof, in one or more currencies or currency units other than that or those in which such Securities are stated to be payable, the currency, currencies or

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currency units in which the principal of or any premium or interest on such Securities as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);

(13) if other than the entire principal amount thereof, the portion of the principal amount of any Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(14) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(15) if applicable, that the Securities of the series, in whole or any

specified part, shall be defeasible pursuant to Section 1302 or Section 1303 or both such Sections and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;

(16) if applicable, the terms of any right to convert Securities of the series into, or exchange securities for, shares of Common Stock of the Company or other securities or property;

(17) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 204 and any circumstances in addition to or in lieu of those set forth in Clause (2) of the last paragraph of Section 305 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof;

(18) any addition to or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 502;

(19) any addition to or change in the covenants set forth in Article Ten which applies to Securities of the series; and

(20) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 901(5)).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 303) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

The Securities shall be subordinated in right of payment to Senior Debt as provided in Article Fifteen.

SECTION 302. DENOMINATIONS.

The Securities of each series shall be issuable only in registered form without coupons and only in such denominations as shall be specified as contemplated by Section 301. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of $1,000 and any integral multiple thereof.

SECTION 303. EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its principal financial officer, its President or one of its Vice Presidents, attested by its Treasurer, its Assistant Treasurer, its Secretary or one of its Assistant Secretaries. 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 of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions as permitted by Sections 201 and 301, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, a copy of such Board Resolution, the Officers' Certificate setting forth the terms of the series and an Opinion of Counsel, with such Opinion of Counsel stating,

(1) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 201, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities have been established by or pursuant to Board Resolution as permitted by Section 301, that such terms have been established in conformity with the provisions of this Indenture; and

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 301 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

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. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

SECTION 304. TEMPORARY SECURITIES.

Pending the preparation of definitive Securities of any series, 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 of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

SECTION 305. REGISTRATION; REGISTRATION OF TRANSFER AND EXCHANGE.

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 of the Company in a Place of Payment 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" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of a series at the office or agency of the Company in a Place of Payment for that series, 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 the same series, of any authorized denominations and of like tenor and aggregate principal amount.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities 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 its attorney duly authorized in writing.

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 304, 906 or 1107 not involving any transfer.

If the Securities of any series (or of any series and specified tenor) are to be redeemed in part, the Company shall not be required (A) to issue, register the transfer of or exchange any Securities of that series (or of that series and specified tenor, as the case may be) during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of any such Securities selected for redemption under Section 1103 and ending at the close of business on the day of such mailing, or (B) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

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

(1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary (i) has notified the Company that it 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, (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security or (C) there shall exist such circumstances, if any, in addition to or in lieu of the foregoing as have been specified for this purpose as contemplated by Section 301.

(3) Subject to Clause (2) above, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.

(4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section, Section 304, 306, 906 or 1107 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person

other than the Depositary for such Global Security or a nominee thereof.

SECTION 306. 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 the same series and 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 as may be required by 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 the same series and 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 of any series 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 of that series 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 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

Except as otherwise provided as contemplated by Section 301 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal

to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date

therefor to be given to each Holder of Securities of such series in the manner set forth in Section 106, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

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

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

Subject to the provisions of Section 1402, in the case of any Security (or any part thereof) which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security the principal of (or premium, if any, on) which shall become due and payable, whether at Stated Maturity or by declaration of acceleration or otherwise prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or any one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence or in Section 1402, in the case of any Security (or any part thereof) which is converted, interest whose Stated Maturity is after the date of conversion of such Security (or such part thereof) shall not be payable.

SECTION 308. PERSONS DEEMED OWNERS.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 307) any interest 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 309. CANCELLATION.

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be returned to the Company.

SECTION 310. COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 311. CUSIP NUMBERS.

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

by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

SECTION 401. SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request 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, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306 and (ii) Securities for whose payment money has theretofore been deposited 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 1003) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose money in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

(3) 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 607, the obligations of the Company to any Authenticating Agent under Section 614 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

SECTION 402. APPLICATION OF TRUST MONEY.

Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 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 any premium and interest for whose payment such money has been deposited with the Trustee.

ARTICLE FIVE

REMEDIES

SECTION 501. EVENTS OF DEFAULT.

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

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of the principal of or any premium on any Security of that series at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 90 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 principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) failure by the Company to make any payment at maturity, including any applicable grace period, in respect of indebtedness, which term as used herein means obligations (other than the Securities of such series or non-recourse obligations) of the Company for borrowed money or evidenced by bonds, debentures, notes or other similar instruments ("Indebtedness") in an amount in excess of $25,000,000 or the equivalent thereof in any other currency or composite currency and such failure shall have continued for thirty (30) days after written notice thereof shall have been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(6) the commencement by the Company 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 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 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, or the taking of corporate action by the Company in furtherance of any such action; or

(7) any other Event of Default provided with respect to Securities of that series.

SECTION 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default (other than an Event of Default specified in Section 501(5) or 501(6)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount of all the Securities of that series (or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms thereof) 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 (or specified amount) shall become immediately due and payable. If an Event of Default specified in Section 501(5) or 501(6) with respect to Securities of any series at the time Outstanding occurs, the principal amount of all the Securities of that series (or, if any Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified by the terms

thereof) shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. Any payments by the Company on the Securities following any such acceleration will be subject to the subordination provisions of Article Fifteen to the extent provided therein.

At any time after such a declaration of acceleration with respect to Securities of any series 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 principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

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

(A) all overdue interest on all Securities of that series,

(B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

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

SECTION 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

The Company covenants that if

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

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

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 for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in 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.

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

SECTION 504. 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 reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 607.

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; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

SECTION 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 506. APPLICATION OF MONEY COLLECTED.

Any money collected by the Trustee pursuant to this Article 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 on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607; and

SECOND: Subject to Article Fifteen, to the payment of the amounts then due and unpaid for principal of and any premium, if any, and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium, if any, and interest, respectively.

SECTION 507. LIMITATION ON SUITS.

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

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series 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;

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

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series; it being understood and intended that no one or more of such 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 of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

SECTION 508. UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST AND TO CONVERT.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date), to convert such Securities in

accordance with Article Fourteen and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 509. RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, 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 510. 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 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder of any Securities 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 (subject to the limitations contained in this Indenture) or by the Holders, as the case may be.

SECTION 512. CONTROL BY HOLDERS.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture and the Trustee shall not have determined that the action so directed would be unjustly prejudicial to Holders of Securities of that series, or any other series, not taking part in such direction; and

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

SECTION 513. WAIVER OF PAST DEFAULTS.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of or any premium or interest on any Security of such series, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series 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 514. 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, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, including legal fees and expenses, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or in any suit for the enforcement of the right to convert any Security in accordance with Article Fourteen.

SECTION 515. WAIVER OF USURY, 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 usury, 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 SIX

THE TRUSTEE

SECTION 601. CERTAIN DUTIES AND RESPONSIBILITIES.

The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. 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, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. 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 602. NOTICE OF DEFAULTS.

If a default occurs hereunder with respect to Securities of any series, the Trustee shall give the Holders of Securities of such series notice of such default known to it as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 501(4) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

SECTION 603. CERTAIN RIGHTS OF TRUSTEE.

Subject to the provisions of Section 601:

(1) 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;

(2) 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 shall be sufficiently evidenced by a Board Resolution;

(3) 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;

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(4) 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;

(5) 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 reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(7) 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;

(8) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken 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; and

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

SECTION 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

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 neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Securities or the proceeds thereof.

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SECTION 605. MAY HOLD SECURITIES AND ACT AS TRUSTEE UNDER OTHER INDENTURES.

The Trustee, any Authenticating Agent, 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 Sections 608 and 613, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Subject to the limitations imposed by the Trust Indenture Act, nothing in this Indenture shall prohibit the Trustee from becoming and acting as trustee under other indentures under which other securities, or certificates of interest of participation in other securities, of the Company are outstanding in the same manner as if it were not Trustee hereunder.

SECTION 606. 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 607. COMPENSATION AND REIMBURSEMENT.

The Company agrees

(1) to pay to the Trustee from time to time such compensation as shall be agreed in writing between the Company and the Trustee for all services rendered by it hereunder (which compensation shall not be limited by any

provision of law in regard to the compensation of a trustee of an express trust);

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

(3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(5) or Section 501(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State Bankruptcy, insolvency or other similar law.

SECTION 608. 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. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

SECTION 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

There shall at all times be one (and only one) Trustee hereunder with respect to the Securities of each series, which may be Trustee hereunder for Securities of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has (or if the Trustee is a member of a bank holding company system, its bank holding company has) a combined capital and surplus of at least $50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section and to the extent permitted by the Trust Indenture Act, 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 with respect to the Securities of any series 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 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

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 in accordance with the applicable requirements of Section 611.

The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee 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 of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee 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 of such series.

If at any time:

(1) the Trustee shall fail to comply with Section 608 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (B) subject to Section 514, 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 removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

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, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 611. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 611, the retiring Trustee may petition, any Holder who has been a bona fide Holder of a Security of such series 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 with respect to the Securities of such series.

The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 611. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed 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 the 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.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that

or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each 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 with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall, upon payment of all of its charges, duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

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 referred to in the first or second preceding paragraph, as the case may be.

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 612. 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 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

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).

SECTION 614. APPOINTMENT OF AUTHENTICATING AGENT.

The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having (or if the Authenticating Agent is a member of a bank holding company system, its bank holding company has) a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent 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 Authenticating Agent 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 an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or

converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially

all the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment in the manner provided in Section 106 to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section 612, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

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

THE BANK OF NEW YORK,
As Trustee

By:
---------- ,
As Authenticating Agent

By :

Authorized Signatory

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 701. COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF HOLDERS.

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

(1) semi-annually, not later than 15 days after the Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of each series as of such Regular Record Date, as the case may be, and

(2) 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;

provided that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as Security Registrar.

SECTION 702. PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

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 701, if any, 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 701 upon receipt of a new list so furnished.

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 privileges of the Trustee, shall be as provided by the Trust Indenture Act.

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 703. REPORTS BY TRUSTEE.

The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each July 15 following the date of this Indenture deliver to Holders a brief report, dated as of such July 15, which complies with the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when any Securities are listed on any stock exchange or of any delisting thereof.

SECTION 704. 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 the Trust Indenture 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.

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).

ARTICLE EIGHT

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

The Company shall not consolidate with or merge into any other Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(1) in case the Company shall consolidate with or merge into another Person (in a transaction in which the Company is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person 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 shall be a corporation, limited liability company, partnership, trust or other business entity, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and the conversion rights shall be provided for in accordance with Article Fourteen, if applicable, or as otherwise specified pursuant to Section 301, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Company) formed by such consolidation or into which the Company shall have been merged or by the Person which shall have acquired the Company's assets;

(2) 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 happened and be continuing; and

(3) the Company 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 and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 802. 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 801, 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 NINE

SUPPLEMENTAL INDENTURES

SECTION 901. 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 enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, or successive successions, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such additional Events of Default are to be for the benefit of less than all series of Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or

(4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable

as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form; or

(5) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding; or

(6) to secure the Securities; or

(7) to establish the form or terms of Securities of any series as permitted by Sections 201 and 301; or

(8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 611; or

(9) to make provision with respect to the conversion rights of Holders pursuant to the requirements of Article Fourteen, including providing for the conversion of the securities into any security (other than the Common Stock of the Company) or property of the Company; or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this Clause (10) shall not adversely affect the interests of the Holders of Securities of any series in any material respect; or

(11) to supplement any of the provisions of the Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Articles Four and Thirteen, provided that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities in any material respect.

SECTION 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

With the consent of the Holders of a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, 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 of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

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(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or modify the provisions of this Indenture with respect to the subordination of such series of Securities in a manner adverse to the Holders of Securities of such series, or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, 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

(3) modify any of the provisions of this Section, Section 513 or Section 1008, 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; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and Section 1008, or the deletion of this proviso, in accordance with the requirements of Sections 611 and 901(8), or

(4) if applicable, make any change that adversely affects the right to convert any security as provided in Article Fourteen or pursuant to Section 301 (except as permitted by Section 901(9)) or decrease the conversion rate or increase the conversion price of any such security.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

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 903. 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 Sections 601 and 603) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted

by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 904. EFFECT OF SUPPLEMENTAL INDENTURES.

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

SECTION 905. CONFORMITY WITH TRUST INDENTURE ACT.

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

SECTION 906. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series 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 of such series.

SECTION 907. SUBORDINATION UNIMPAIRED.

No provision in any supplemental indenture which affects the superior position of the holders of Senior Debt shall be effective against holders of Senior Debt.

ARTICLE TEN

COVENANTS

SECTION 1001. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST.

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

SECTION 1002. MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities of that series

may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. 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 where the Securities of one or more series 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 each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other

office or agency.

SECTION 1003. MONEY FOR SECURITIES PAYMENTS TO BE HELD IN TRUST.

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

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of or any premium or interest on any Securities of that series, 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 will cause each Paying Agent for any series of Securities 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 (1) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (2) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

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 payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for a period ending on the earlier of the date that is ten Business Days prior to the date such money would escheat to the State or two years after such principal, premium or interest has become due and payable 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.

SECTION 1004. STATEMENT BY OFFICERS AS TO DEFAULT.

The Company will 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 best 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 fiscal year of the Company ends on June 30; and the Company will give the Trustee prompt written notice of any change of its fiscal year.

SECTION 1005. EXISTENCE.

Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

SECTION 1006. MAINTENANCE OF PROPERTIES.

The Company will cause all properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as, and to the extent, in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this

Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business and not disadvantageous in any material respect to the Holders.

SECTION 1007. PAYMENT OF TAXES AND OTHER CLAIMS.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Company or upon the income, profits or property of the Company, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (i) whose amount, applicability or validity is being contested in good faith by appropriate proceedings or (ii) if the failure to pay or discharge would not have a material adverse effect on the assets, business, operations, properties or condition (financial or otherwise) of the Company and its subsidiaries, taken as a whole.

SECTION 1008. WAIVER OF CERTAIN COVENANTS.

Except as otherwise specified as contemplated by Section 301 for Securities of such series or in a supplemental indenture, the Company may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant provided pursuant to Section 301(19), 901(2), 901(7), 1006 or 1007 for the benefit of the Holders of such series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

SECTION 1009. CALCULATION OF ORIGINAL ISSUE DISCOUNT.

The Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE ELEVEN

REDEMPTION OF SECURITIES

SECTION 1101. APPLICABILITY OF ARTICLE.

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for such Securities) in accordance with this Article.

SECTION 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities. In case of any redemption at the election of the Company of less than all the Securities of any series (including any such redemption affecting only a single Security), the Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 1103. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed (unless

all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by lot, or in the Trustee's discretion, on a pro-rata basis, provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 45 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

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

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

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

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

SECTION 1104. NOTICE OF REDEMPTION.

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

All notices of redemption shall identify the Securities to be redeemed (including CUSIP number(s)) and shall state:

(1) the Redemption Date,

(2) the Redemption Price (including accrued interest, if any),

(3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(5) the place or places where each such Security is to be surrendered for payment of the Redemption Price,

(6) if applicable, the conversion price, that the date on which the right to convert the principal of the Securities or the portions thereof to be redeemed will terminate will be the Business Day prior to the Redemption Date and the place or places where such Securities may be surrendered for conversion, and

(7) that the redemption is for a sinking fund, if such is the case.

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

SECTION 1105. DEPOSIT OF REDEMPTION PRICE.

On or prior to 10:00 a.m., New York time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to the right of any Holder of such Security to receive interest as provided in the last paragraph of Section 307) be paid to the Company on Company Request, or if then held by the Company, shall be discharged from such trust.

SECTION 1106. SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 301, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

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

SECTION 1107. SECURITIES REDEEMED IN PART.

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (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 its 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 the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE TWELVE

SINKING FUNDS

SECTION 1201. APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 301 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an "optional sinking fund payment." If provided for by the terms of any Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of such Securities.

SECTION 1202. SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund

payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Securities so to be redeemed, for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 1203. REDEMPTION OF SECURITIES FOR SINKING FUND.

Not less than 60 days prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities pursuant to Section 1202 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN

DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1301. COMPANY'S OPTION TO EFFECT DEFEASANCE OR COVENANT DEFEASANCE.

The Company may elect, at its option at any time, to have Section 1302 or Section 1303 applied to any Securities or any series of Securities, as the case may be, designated pursuant to Section 301 as being defeasible pursuant to such Section 1302 or 1303, in accordance with any applicable requirements provided pursuant to Section 301 and upon compliance with the conditions set forth below in this Article. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities.

SECTION 1302. DEFEASANCE AND DISCHARGE.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations, and the provisions of Article Fifteen shall cease to be effective, with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 1304 and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due, (2) the Company's obligations with respect to such Securities under Sections 304, 305, 306, 1002 and 1003, and, if applicable, Article Fourteen, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article. Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 1303 applied to such Securities.

SECTION 1303. COVENANT DEFEASANCE.

Upon the Company's exercise of its option (if any) to have this Section applied to any Securities or any series of Securities, as the case may be, (1) the Company shall be released from its obligations under Sections 1006 through 1007, inclusive, and any covenants provided pursuant to Section 301(19), 901(2) or 901(7) for the benefit of the Holders of such Securities and (2) the occurrence of any event specified in Sections 501(4) (with respect to any of Sections 1006 through 1007, inclusive, and any such covenants provided pursuant to Section 301(19), 901(2) or 901(7)), shall be deemed not to be or result in an Event of Default, and (3) the provisions of Article Fifteen shall cease to be effective, in each case with respect to such Securities as provided in this Section on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such

Covenant Defeasance means that, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 501(4)) or Article Fifteen, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or Article or by reason of any reference in any such Section or Article to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

SECTION 1304. CONDITIONS TO DEFEASANCE OR COVENANT DEFEASANCE.

The following shall be the conditions to the application of Section 1302 or Section 1303 to any Securities or any series of Securities, as the case may be:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 609 and agrees to comply with the provisions of this Article applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefits of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "U.S. Government Obligation" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(2) In the event of an election to have Section 1302 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a

result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 1303 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Securities nor any other Securities of the same series, if then listed on any securities exchange, will be delisted

as a result of such deposit.

(5) No event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Securities or any other Securities shall have occurred and be continuing at the time of such deposit or, with regard to any such event specified in Sections 501(5) and (6), at any time on or prior to the 90th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 90th day).

(6) Such Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Securities are in default within the meaning of such Act).

(7) Such Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which it is bound.

(8) Such Defeasance or Covenant Defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act unless such trust shall be registered under such Act or exempt from registration thereunder.

(9) At the time of such deposit, (A) no default in the payment of any principal of or premium or interest on any Senior Debt shall have occurred and be continuing, (B) no event of default with respect to any Senior Debt shall have resulted in such Senior Debt becoming, and continuing to be, due and payable prior to the date on which it would otherwise have become due and payable (unless payment of such Senior Debt has been made or duly provided for), and (C) no other event of default with respect to any Senior Debt shall have occurred and be continuing permitting (after notice or lapse of time or both) the holders of such Senior Debt (or a trustee on behalf of such holders) to declare such Senior Debt due and payable prior to the date on which it would otherwise have become due and payable.

(10) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

SECTION 1305. DEPOSITED MONEY AND U.S. GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; MISCELLANEOUS PROVISIONS.

Subject to the provisions of the last paragraph of Section 1003, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section and Section 1306, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 1304 in respect of any Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and any premium and interest, but money so held in trust need not be segregated from other funds except to the extent required by law. Money and U.S. Government Obligations so held in trust shall not be subject to the provisions of Article Fifteen.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 1304 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1304 with respect to any Securities which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

SECTION 1306. REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations under this Indenture and such Securities from which the Company has been discharged or released pursuant to Section 1302 or 1303 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such

Securities, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 1305 with respect to such Securities in accordance with this Article; provided, however, that if the Company makes any payment of principal of or any premium or interest on any such Security following such reinstatement of its obligations, the Company shall be subrogated to the rights (if any) of the Holders of such Securities to receive such payment from the money so held in trust.

ARTICLE FOURTEEN

CONVERSION AND EXCHANGE OF SECURITIES

SECTION 1401. APPLICABILITY OF ARTICLE.

The provisions of this Article shall be applicable to the Securities of any series which are convertible or exchangeable into shares of Common Stock of the Company, and the issuance of such shares of Common Stock upon the conversion of such Securities, except as otherwise specified as contemplated by Section 301 for the Securities of such series.

SECTION 1402. EXERCISE OF CONVERSION AND EXCHANGE PRIVILEGE.

In order to exercise a conversion or exchange privilege, the Holder of a Security of a series with such a privilege shall surrender such Security to the Company at the office or agency maintained for that purpose pursuant to Section 1002, accompanied by a duly executed conversion or exchange notice to the Company substantially in the form set forth in Section 206 stating that the Holder elects to convert or exchange such Security or a specified portion thereof. Such notice shall also state, if different from the name and address of such Holder, the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion or exchange shall be issued. Securities surrendered for conversion or exchange shall (if so required by the Company or the Trustee) be duly endorsed by or accompanied by instruments of transfer in forms satisfactory to the Company and the Trustee duly executed by the registered Holder or its attorney duly authorized in writing; and Securities so surrendered for conversion or exchange (in whole or in part) during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date (excluding Securities or portions thereof called for redemption during the period beginning at the close of business on a Regular Record Date and ending at the opening of business on the first Business Day after the next succeeding Interest Payment Date, or if such Interest Payment Date is not a Business Day, the second such Business Day) shall also be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of such Security then being converted or exchanged, and such interest shall be payable to such registered Holder notwithstanding the conversion or exchange of such Security, subject to the provisions of Section 307 relating to the payment of Defaulted Interest by the Company. As promptly as practicable after the receipt of such notice and of any payment required pursuant to a Board Resolution and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto setting forth the terms of such series of Security, and the surrender of such Security in accordance with such reasonable regulations as the Company may prescribe, the Company shall issue and shall deliver, at the office or agency at which such Security is surrendered, to such Holder or on its written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion or exchange of such Security (or specified portion thereof), in accordance with the provisions of such Board Resolution, Officers' Certificate or supplemental indenture, and cash as provided therein in respect of any fractional share of such Common Stock otherwise issuable upon such conversion or exchange. Such conversion or exchange shall be deemed to have been effected immediately prior to the close of business on the date on which such notice

and such payment, if required, shall have been received in proper order for conversion or exchange by the Company and such Security shall have been surrendered as aforesaid (unless such Holder shall have so surrendered such Security and shall have instructed the Company to effect the conversion or exchange on a particular date following such surrender and such Holder shall be entitled to convert or exchange such Security on such date, in which case such conversion or exchange shall be deemed to be effected immediately prior to the close of business on such date) and at such time the rights of the Holder of such Security as such Security Holder shall cease and the person or persons in whose name or names any certificate or certificates for shares of Common Stock of the Company shall be issuable upon such conversion or exchange shall be deemed to have become the Holder or Holders of record of the shares represented thereby. Except as set forth above and subject to the final paragraph of Section

307, no payment or adjustment shall be made upon any conversion or exchange on account of any interest accrued on the Securities (or any part thereof) surrendered for conversion or exchange or on account of any dividends on the Common Stock of the Company issued upon such conversion or exchange.

In the case of any Security which is converted or exchanged in part only, upon such conversion or exchange the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unconverted or unexchanged portion of such Security.

SECTION 1403. NO FRACTIONAL SHARES.

No fractional share of Common Stock of the Company shall be issued upon conversions or exchanges of Securities of any series. If more than one Security shall be surrendered for conversion or exchange at one time by the same Holder, the number of full shares which shall be issuable upon conversion or exchange 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, except for the provisions of this Section 1403, any Holder of a Security or Securities would be entitled to a fractional share of Common Stock of the Company upon the conversion or exchange of such Security or Securities, or specified portions thereof, the Company shall pay to such Holder an amount in cash equal to the current market value of such fractional share computed, (i) if such Common Stock is listed or admitted to unlisted trading privileges on a national securities exchange or market, on the basis of the last reported sale price regular way on such exchange or market on the last trading day prior to the date of conversion or exchange upon which such a sale shall have been effected, or (ii) if such Common Stock is not at the time so listed or admitted to unlisted trading privileges on a national securities exchange or market, on the basis of the average of the bid and asked prices of such Common Stock in the over-the-counter market, on the last trading day prior to the date of conversion or exchange, as reported by the National Quotation Bureau, Incorporated or similar organization if the National Quotation Bureau, Incorporated is no longer reporting such information, or if not so available, the fair market price as determined by the Board of Directors. For purposes of this Section, "trading day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday other than any day on which the Common Stock is not traded on the Nasdaq National Market, or if the Common Stock is not traded on the Nasdaq National Market, on the principal exchange or market on which the Common Stock is traded or quoted.

SECTION 1404. ADJUSTMENT OF CONVERSION AND EXCHANGE PRICE.

The conversion price of Securities of any series that is convertible or exchangeable into Common Stock of the Company shall be adjusted for any stock dividends, stock splits, reclassifications, combinations or similar transactions in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of the Securities of such series.

Whenever the conversion or exchange price is adjusted, the Company shall compute the adjusted conversion or exchange price in accordance with terms of the applicable Board Resolution or supplemental indenture and shall prepare an Officers' Certificate setting forth the adjusted conversion or exchange price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed at each office or agency maintained for the purpose of conversion or exchange of Securities pursuant to Section 1002 and, if different, with the Trustee. The Company shall forthwith cause a notice setting forth the adjusted conversion or exchange price to be mailed, first class postage prepaid, to each Holder of Securities of such series at its address appearing on the Security Register and to any conversion or exchange agent other than the Trustee.

SECTION 1405. NOTICE OF CERTAIN CORPORATE ACTIONS.

In case:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its retained earnings (other than a dividend for which approval of any shareholders of the Company is required) that would require an adjustment pursuant to Section 1404; or

(2) the Company shall authorize the granting to all or substantially all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights (other than any such grant for which approval of any shareholders of the Company is required); or

(3) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock, or of any consolidation, merger or share exchange to which the Company is a party

and for which approval of any shareholders of the Company is required), or of the sale of all or substantially all of the assets of the Company; or

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

then the Company shall cause to be filed with the Trustee, and shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least 20 days (or 10 days in any case specified in Clause (1) or (2) above) prior to the applicable record date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution, rights, options 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, rights, options or warrants are to be determined,

or (ii) the date on which such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, dissolution, liquidation or winding up. If at any time the Trustee shall not be the conversion or exchange agent, a copy of such notice shall also forthwith be filed by the Company with the Trustee.

SECTION 1406. RESERVATION OF SHARES OF COMMON STOCK.

The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion or exchange of Securities, the full number of shares of Common Stock of the Company then issuable upon the conversion or exchange of all outstanding Securities of any series that has conversion or exchange rights.

SECTION 1407. PAYMENT OF CERTAIN TAXES UPON CONVERSION AND EXCHANGE.

Except as provided in the next sentence, the Company will pay any and all taxes that may be payable in respect of the issue or delivery of shares of its Common Stock on conversion or exchange of Securities pursuant hereto. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of its Common Stock in a name other than that of the Holder of the Security or Securities to be converted or exchanged, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Company the amount of any such tax, or has established, to the satisfaction of the Company, that such tax has been paid.

SECTION 1408. NONASSESSABILITY.

The Company covenants that all shares of its Common Stock which may be issued upon conversion or exchange of Securities will upon issue in accordance with the terms hereof be duly and validly issued and fully paid and nonassessable.

SECTION 1409. PROVISION IN CASE OF CONSOLIDATION, MERGER OR SALE OF ASSETS.

In case of any consolidation or merger of the Company with or into any other Person, any merger of another Person with or into the Company (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company) or any conveyance, sale, transfer or lease of all or substantially all of the assets of the Company, the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security of a series then Outstanding that is convertible or exchangeable into Common Stock of the Company shall have the right thereafter (which right shall be the exclusive conversion right thereafter available to said Holder), during the period such Security shall be convertible or exchangeable, to convert or exchange such Security only into the kind and amount of securities, cash

and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by a holder of the number of shares of Common Stock of the Company into which such Security might have been converted or exchanged immediately prior to such consolidation, merger, conveyance, sale, transfer or

lease, assuming such holder of Common Stock of the Company (i) is not a Person with which the Company consolidated or merged with or into or which merged into or with the Company or to which such conveyance, sale, transfer or lease was made, as the case may be (a "Constituent Person"), or an Affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer, or lease is not the same for each share of Common Stock of the Company held immediately prior to such consolidation, merger, conveyance, sale, transfer or lease by others than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-electing Share"), then for the purpose of this Section 1409 the kind and amount of securities, cash and other property receivable upon such consolidation, merger, conveyance, sale, transfer or lease by the holders of 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, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article or in accordance with the terms of the supplemental indenture or Board Resolutions setting forth the terms of such adjustments. The above provisions of this Section 1409 shall similarly apply to successive consolidations, mergers, conveyances, sales, transfers or leases. Notice of the execution of such a supplemental indenture shall be given by the Company to the Holder of each Security of a series that is convertible or exchangeable into Common Stock of the Company as provided in Section 106 promptly upon such execution.

Neither the Trustee nor any conversion or exchange agent, if any, shall be under any responsibility to determine the correctness of any provisions contained in any such supplemental indenture relating either to the kind or amount of shares of stock or other securities or property or cash receivable by Holders of Securities of a series convertible or exchangeable into Common Stock of the Company upon the conversion or exchange of their Securities after any such consolidation, merger, conveyance, transfer, sale or lease or to any such adjustment, but may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Opinion of Counsel with respect thereto, which the Company shall cause to be furnished to the Trustee upon request.

SECTION 1410. DUTIES OF TRUSTEE REGARDING CONVERSION AND EXCHANGE.

Neither the Trustee nor any conversion agent shall at any time be under any duty or responsibility to any Holder of Securities of any series that is convertible or exchangeable into Common Stock of the Company to determine whether any facts exist which may require any adjustment of the conversion or exchange price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, whether herein or in any supplemental indenture (or whether any provisions of any supplemental indenture are correct), any resolutions of the Board of Directors or written instrument executed by one or more officers of the Company provided to be employed in making the same. Neither the Trustee nor any conversion or exchange agent shall be accountable with respect

to the validity or value (or the kind or amount) of any shares of Common Stock of the Company, or of any securities or property, which may at any time be issued or delivered upon the conversion or exchange of any Securities and neither the Trustee nor any conversion or exchange agent makes any representation with respect thereto. Subject to the provisions of Section 601, neither the Trustee nor any conversion or exchange agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of its Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or to comply with any of the covenants of the Company contained in this Article Fourteen or in the applicable supplemental indenture, resolutions of the Board of Directors or written instrument executed by one or more duly authorized officers of the Company.

SECTION 1411. REPAYMENT OF CERTAIN FUNDS UPON CONVERSION AND EXCHANGE .

Any funds which at any time shall have been deposited by the Company or on its behalf with the Trustee or any other paying agent for the purpose of paying the principal of, and premium, if any, and interest, if any, on any of the Securities (including, but not limited to, funds deposited for the sinking fund referred to in Article Twelve hereof and funds deposited pursuant to Article Thirteen hereof) and which shall not be required for such purposes because of the conversion or exchange of such Securities as provided in this Article Fourteen shall after such conversion or exchange be repaid to the Company by the Trustee upon the Company's written request.

ARTICLE FIFTEEN

SUBORDINATION OF SECURITIES

SECTION 1501. SECURITIES SUBORDINATE TO SENIOR DEBT.

Except as otherwise provided in a supplemental indenture or pursuant to Section 301, the Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article, the indebtedness represented by the Securities and the payment of the principal of and any premium and interest on each and all of the Securities or on the account of the purchase, redemption or other acquisition of the Securities or constituting a sinking fund or defeasance payment by the Company to the Trustee or any Paying Agent, as the case may be, in accordance with Article Twelve or Article Thirteen, respectively, on the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt. Notwithstanding the foregoing, this Article Fifteen shall not apply to the application of any amounts deposited with the Trustee or any Paying Agent pursuant to any sinking fund requirement or defeasance which, at the time such amounts were deposited with the Trustee or Paying Agent, as the case may be, such deposits were not prohibited by the provisions of this Article Fifteen ("Previous Payments").

The expressions "prior payment in full," "payment in full" and "paid in full" and any other similar term or phrase when used in this Article Fifteen with respect to Senior Debt shall mean in the case of Senior Debt consisting of contingent obligations in respect of letters of credit (or local guaranties, as applicable), bankers' acceptances, interest rate protection agreements or currency exchange or purchase

agreements, the setting apart of cash or other payment acceptable to holders of such Senior Debt sufficient to discharge such portion of Senior Debt in an account for the exclusive benefit of the holders thereof, in which account such holders shall be granted by the Company a first priority perfected security interest, which first priority perfected security interest shall have been retained by the holders of Senior Debt for a period of time in excess of all applicable preference or other similar periods, if any, under applicable bankruptcy, insolvency or creditors' rights laws.

SECTION 1502. PAYMENT OVER OF PROCEEDS UPON DISSOLUTION, ETC.

In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, debt restructuring or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company, then and in any such event the holders of Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt in cash or other payment satisfactory to the holders of Senior Debt before the Holders of the Securities are entitled to receive any payment on account of principal of or any premium or interest on the Securities or on the account of the purchase, redemption or other acquisition of Securities or constituting a sinking fund or defeasance payment by the Company to the Trustee or the Paying Agent, as the case may be, in accordance with Article Twelve or Article Thirteen, respectively, on the Securities (other than Previous Payments), and to that end the holders of Senior Debt or their representative or representatives or the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Debt may have been issued shall be entitled to receive, for application to the payment thereof, any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Securities in any such case, proceeding, dissolution, liquidation or other winding up or event, to the extent necessary to pay all Senior Debt in full in cash or other payment satisfactory to the holders of Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of other Senior Debt.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, before all Senior Debt is paid in full in cash or other payment satisfactory to the holders of Senior Debt then, and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all Senior Debt in full, after

giving effect to any concurrent payment or distribution to or for the holders of Senior Debt.

For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment which are subordinated in right of payment to all Senior Debt which may at the time be outstanding to substantially the same extent

as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its properties and assets substantially as an entirety to another Person upon the terms and conditions set forth in Article Eight shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshaling of assets and liabilities of the Company for the purposes of this Section if the Person formed by such consolidation or into which the Company is merged or which acquires by conveyance or transfer such properties and assets substantially as an entirety, as the case may be, shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions set forth in Article Eight.

SECTION 1503. PRIOR PAYMENT TO SENIOR DEBT UPON ACCELERATION OF SECURITIES.

In the event that any Securities are declared due and payable before their Stated Maturity, then and in such event the holders of the Senior Debt outstanding at the time such Securities so become due and payable shall be entitled to receive payment in full in cash or other payment satisfactory to the holders of Senior Debt of all amounts due or to become due on or in respect of all Senior Debt before the Holders of the Securities are entitled to receive any payment by the Company on account of the principal of or any premium or interest on the Securities or on account of the purchase, redemption or other acquisition of Securities or constituting a sinking fund or defeasance payment by the Company to the Trustee or the Paying Agent, as the case may be, in accordance with Article Twelve or Article Thirteen, respectively, on the Securities (other than Previous Payments); provided, however, that nothing in this Section shall prevent the satisfaction of any sinking fund payment in accordance with Article Twelve by delivering and crediting pursuant to Section 1202 Securities which have been acquired (upon redemption or otherwise) prior to such declaration of acceleration or which have been converted pursuant to Article Fourteen; provided further that the Holders of the Securities shall be entitled to receive payment on the Securities to the extent such acceleration is rescinded in accordance with the terms of this Indenture. If the payment of Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Debt of the acceleration.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

The provisions of this Section shall not apply to any payment with respect to which Section 1502 would be applicable.

SECTION 1504. NO PAYMENT IN CERTAIN CIRCUMSTANCES.

The Company may not make any payment of principal of, or premium, if any, or interest on the Securities on or account of the purchase, redemption or other acquisition of Securities or constituting a sinking fund or defeasance payment by the Company to the Trustee or the Paying Agent, as the case may be, in accordance with Article Twelve or Article Thirteen, respectively, on the Securities (other than Previous Payments), if:

(i) a default in the payment of principal, premium, if any, or interest (including a default under any redemption or repurchase obligation) or other amounts with respect to any Senior Debt occurs and is continuing (or, in the case of Senior Debt for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Senior Debt) unless and until such default shall have been cured or waived or shall have ceased to exist; or

(ii) a default, other than a payment default, on any Designated Senior Debt occurs and is continuing that then permits holders of such Designated Senior Debt to accelerate its maturity and the Trustee receives a notice of the default (a "Payment Blockage Notice") from the Company, a holder such Designated Senior Debt or a Representative of such Designated Senior Debt.

; provided, however, that nothing in this Section shall prevent the satisfaction of any sinking fund payment in accordance with Article Twelve by delivering and crediting pursuant to Section 1202 Securities which have been acquired (upon redemption or otherwise) prior to such declaration of acceleration or which have been converted pursuant to Article Fourteen.

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

The Company may and shall resume payments on and distributions in respect of the Securities and may purchase, redeem or otherwise acquire Securities and may make a sinking fund or defeasance payment to the Trustee or Paying Agent, as the case may be, in accordance with Article Twelve or Article Thirteen, respectively, on the Securities, upon the earlier of:

(1) the date upon which the default is cured or waived or ceases to exist, or

(2) in the case of a default referred to in clause (ii) above, 179 days after the Payment Blockage Notice is received,

unless this Article Fifteen otherwise prohibits the payment, distribution, purchase, redemption, acquisition, sinking fund payment or defeasance payment at the time of such payment, distribution, purchase, redemption, acquisition, sinking fund payment or defeasance payment (including, without limitation, in the case of a default referred to in clause (ii) above, as a result of a payment default with respect to the applicable Senior Debt as a consequence of the acceleration of the maturity thereof or otherwise).

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and if such fact shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

The provisions of this Section shall not apply to any payment with respect to which Section 1502 would be applicable.

SECTION 1505. PAYMENT PERMITTED IF NO DEFAULT.

Nothing contained in this Article or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding up, debt restructuring, assignment for the benefit of creditors or other marshaling of assets and liabilities of the Company referred to in Section 1502 or under the conditions described in Section 1503 or 1504, from making payments at any time of principal of and any premium or interest on the Securities or on the account of the purchase, redemption or other acquisition of Securities, or (b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of and any premium or interest on the Securities or on the account of the purchase, redemption or other acquisition of Securities, or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge that such payment would have been prohibited by the provisions of this Article.

SECTION 1506. SUBROGATION TO RIGHTS OF HOLDERS OF SENIOR DEBT.

Subject to the payment in full of all Senior Debt, the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of and any premium and interest on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the

Trustee would be entitled except for the provisions of this Article, and no payments over pursuant to the provisions of this Article to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 1507. PROVISIONS SOLELY TO DEFINE RELATIVE RIGHTS.

The provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article of the holders of Senior Debt, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Securities the principal of and any premium and interest on the Securities as and when the same shall become due and payable in accordance with their terms; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 1508. TRUSTEE TO EFFECTUATE SUBORDINATION.

Each Holder of a Security by its acceptance thereof authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee its attorney-in-fact for any and all such purposes.

SECTION 1509. NO WAIVER OF SUBORDINATION PROVISIONS.

No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article or the obligations hereunder of the Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding; (ii) sell, exchange, release or otherwise dispose of any property pledged, mortgaged or otherwise securing Senior Debt; (iii) release any Person liable in any manner for the collection of Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 1510. NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee or other Representative therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 601, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section at least two Business

Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of and any premium or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date.

Subject to the provisions of Section 601, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee or other Representative therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee or other Representative therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 1511. RELIANCE ON JUDICIAL ORDER OR CERTIFICATE OF LIQUIDATING AGENT.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee, subject to the provisions of Section 601, and the Holders of the Securities shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 1512. TRUSTEE NOT FIDUCIARY FOR HOLDERS OF SENIOR DEBT.

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article or otherwise. With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Debt shall be read into this Indenture against the Trustee.

SECTION 1513. RIGHTS OF TRUSTEE AS HOLDER OF SENIOR DEBT; PRESERVATION OF TRUSTEE'S RIGHTS.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Debt which may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 607.

SECTION 1514. ARTICLE APPLICABLE TO PAYING AGENTS.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Section 1512 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

SECTION 1515. CERTAIN CONVERSIONS DEEMED PAYMENT.

For the purposes of this Article only, (1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article

Fourteen shall not be deemed to constitute a payment or distribution on account of the principal of or any premium or interest on Securities or on account of the purchase, redemption or other acquisition of Securities, and (2) the payment, issuance or delivery of cash, property or securities (other than junior securities and cash paid for fractional shares) upon conversion of a Security shall be deemed to constitute payment on account of the principal of such Security. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and (b) securities of the Company which are subordinated in right of payment to all Senior Debt which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article.

SECTION 1516. OBLIGATIONS OF COMPANY AND RIGHT TO CONVERT UNCONDITIONAL.

Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt, nor shall anything herein or therein prevent the Trustee or the Holder of any Securities from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Debt and the Holders of the Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article Fourteen (if applicable).

SECTION 1517. RELIANCE BY HOLDERS OF SENIOR INDEBTEDNESS ON SUBORDINATION PROVISIONS.

Each Holder by accepting a Security acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Debt, whether such Senior Debt was created or acquired before or after the issuance of the Securities, to acquire and continue to hold, or to continue to hold, such Senior Debt and such holder of Senior Debt shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Debt, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders of Senior Debt unless such holders shall have agreed in writing hereto.

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

SUN MICROSYSTEMS, INC.

By:

Name:
Title:

THE BANK OF NEW YORK, as Trustee

By:

Name:

Title:

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Exhibit 4.3

SUN MICROSYSTEMS, INC.

OFFICERS' CERTIFICATE PURSUANT TO
SECTION 301 OF THE INDENTURE

AUGUST 4, 1999

Michael H. Morris and George Reyes do hereby certify that we are the duly appointed Vice President, General Counsel and Secretary and Vice President and Corporate Treasurer, respectively, of Sun Microsystems, Inc., a Delaware corporation. We further certify, pursuant to resolutions of the Board of Directors and the Debt Securities Committee adopted on June 16, 1999 (a copy of which is attached hereto as Exhibit A-1), that pursuant to Section 301 of the Indenture, dated as of August 1, 1999 (the "Indenture") between the Company and The Bank of New York, as Trustee, four series of debt securities of the Company are hereby established, each with the following respective terms and provisions:

I. 7.00% Senior Notes due 2002.

1. The title of such series of Securities shall be the "7.00% Senior Notes due 2002" (the "2002 Notes"). The price at which the 2002 Notes shall be issued is 99.980%.

2. The aggregate principal amount of the 2002 Notes that may be authenticated and delivered under the Indenture shall be $200,000,000 (except for 2002 Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other 2002 Notes pursuant to Sections 304, 305, 306, 906 and 1107 of the Indenture, and except for any 2002 Notes which, pursuant to Section 303 of the Indenture, shall be deemed never to have been authenticated and delivered thereunder).

3. Interest on the 2002 Notes shall be payable to the Persons in whose names the 2002 Notes (or one or more Predecessor Securities) are registered at the close of business on the Regular Record Date for such interest.

4. The Stated Maturity of the 2002 Notes on which the principal thereof is due and payable is August 15, 2002.

5. The 2002 Notes shall bear interest at 7.00% per annum from August 4, 1999, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable semiannually on February 15 and August 15 of each year (each, an "Interest Payment Date"), commencing February 15, 2000, to the Person in whose name the 2002 Note (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall initially be February 1 or August 1 (as the case may be), whether or not a Business Day, immediately preceding such Interest Payment Date. Interest on the 2002 Notes shall be calculated on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full six-month interest period, on the actual number of days elapsed in that period.

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6. The 2002 Notes shall be issued in the form of one or more Global Note or Notes (the "Global 2002 Note" or "Global 2002 Notes"). So long as the 2002 Notes shall be issued in whole in the form of a Global 2002 Note, the principal of, premium, if any, and interest, if any, on the 2002 Notes shall be paid in immediately available funds to the Depositary or a nominee of the Depositary. If at any time the 2002 Notes are no longer represented by a Global 2002 Note and are issued in definitive form ("Certificated 2002 Notes"), then the principal of, premium, if any, and interest, if any, on each Certificated 2002 Note at Maturity shall be paid to the Holder upon surrender of such Certificated 2002 Note at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the office of The Bank of New York), provided that such Certificated 2002 Note is surrendered to the Trustee, acting as Paying Agent, in time for the Paying Agent to make such payments in such funds in accordance with its normal procedures. Payments of interest with respect to Certificated 2002 Notes other than at Maturity may, at the option of the Company, be made by check mailed to the

address of the Person entitled thereto as it appears on the Security Register on the relevant Regular Record Date or by wire transfer in same day funds to such account as may have been appropriately designated to the Paying Agent by such Person in writing not later than such relevant Regular Record Date. Each payment of principal, premium, if any, and interest, if any, shall be made 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. Transfer of the 2002 Notes shall be registrable on the Securities Register upon the surrender of the 2002 Notes for registration of transfer at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the office of the Trustee).

7. The 2002 Notes are subject to redemption upon receipt of notice by first-class mail at least 30 days and not more than 60 days prior to the Redemption Date, at the option of the Company at any time, as a whole or in part, at a Redemption Price equal to the greater of 100% of (i) the principal amount of the 2002 Note to be redeemed or (ii) an amount, as determined by the Quotation Agent, equal to the sum of the present values of the remaining scheduled payments of principal and interest on the 2002 Notes to be redeemed, not including any portion of payments of interest accrued as of the Redemption Date, discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year comprised of twelve 30-day months, at the adjusted treasury rate plus ten basis points plus, in each case, accrued and unpaid interest on the principal amount being redeemed to the Redemption Date; provided, however, that with respect to interest payments that are due on or prior to the Redemption Date, the Company will make payments of interest to the Holders of record of the 2002 Notes at the close of business on the regular Record Date.

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue, expressed as a percentage of its principal amount, equal to the Comparable Treasury Price for that Redemption Date.

"Comparable Treasury Issue" means the United States treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the 2002 Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial

practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the 2002 Notes.

"Comparable Treasury Rate" means, with respect to any Redemption Date, (i) the average of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, on the third Business Day preceding such Redemption Date, as set forth by the Federal Reserve Bank of New York and designated "Composite 3:30 p.m. Quotations for the U.S. Government Securities," or (ii) if such release, or any successor release, is not published or does not contain such prices on such Business Day, (1) the average of the Reference Treasury Dealer Quotations for that Redemption Date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Trustee obtains fewer that four Reference Treasury Dealer Quotations for the Redemption Date, the average of the Reference Treasury Dealer Quotations obtained, as determined by the Quotation Agent.

"Quotation Agent" means the Reference Treasury Dealer appointed by the Company.

"Reference Treasury Dealer" means (i) Goldman, Sachs & Co. or its successors; provided, however that if any of them ceases to be a primary U.S. government securities dealer in New York City (a "Primary Treasury Dealer"), the Company will substitute for it another Primary Treasury Dealer, and (ii) any other Primary Treasury Dealer(s) selected by the Company.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by the Reference Treasury Dealer at 5:00 p.m. on the third Business Day preceding that Redemption Date.

Unless the Company defaults in payment of the Redemption Price, no interest will accrue on the 2002 Notes called for redemption for the period from and after the Redemption Date.

8. The 2002 Notes are not subject to any sinking fund or analogous provisions. The 2002 Notes will not be redeemable at the option of the Holder thereof prior to Maturity.

9. The 2002 Notes shall be issuable only in denominations of $1,000 and

any integral multiple thereof.

10. Except as stated in Section 7 above, the amount of payments of principal of, or any premium or interest on, any 2002 Notes may not be determined with reference to an index, formula or other method.

11. The 2002 Notes may be purchased only in currency of the United States and payment of principal of, premium, if any, and interest on the 2002 Notes will only be made in currency of the United States.

12. The payment of principal of, premium, if any, or interest on the 2002 Notes will not be payable at the option of the Company or the Holder in any currency or currency units other than in the currency of the United States.

13. The entire principal amount of the 2002 Notes will be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 of the Indenture.

14. The principal amount of the 2002 Notes will be determinable as of any one or more dates prior to Stated Maturity.

15. The defeasance and covenant defeasance provisions of Article Thirteen of the Indenture will apply to the 2002 Notes.

16. The 2002 Notes may not be converted into other securities or property.

17. The Depositary for the Global 2002 Note shall be The Depository Trust Company, a New York Corporation ("DTC"). The 2002 Notes will be represented by one Global 2002 Note registered in the name of DTC or CEDE & Co., as a nominee of DTC. Except as set forth in Section 305 of the Indenture, such Global 2002 Note may be transferred, in whole and not in part, only to Depositary or another nominee of Depositary.

18. In addition to the Events of Default contained in the Indenture, the following will be an Event of Default with respect to the 2002 Notes: (i) failure to make any payment at maturity, including any applicable grace period, in respect of indebtedness, which term means obligations (other than non-recourse obligations or the 2002 Notes) of the Company for borrowed money or evidenced by bonds, debentures, notes or similar instruments ("Indebtedness") in an amount in excess of $50,000,000 and continuance of such failure or (ii) a default with respect to any Indebtedness, which default results in the acceleration of Indebtedness in an amount in excess of $50,000,000 without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of (i) or (ii) above, for a period of 30 days after written notice thereof to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in principal amount of 2002 Notes; provided, however, that if any such failure, default or acceleration referred to in (i) or (ii) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed likewise to have been cured.

19. Sections 1008 and 1009 of the Indenture will apply to the 2002 Notes without variation.

20. There are no additional terms for the 2002 Notes.

II. 7.35% Senior Notes due 2004.

1. The title of such series of Securities shall be the "7.35% Senior Notes due 2004" (the "2004 Notes"). The price at which the 2004 Notes shall be issued is 99.988%.

2. The aggregate principal amount of the 2004 Notes that may be authenticated and delivered under the Indenture shall be $250,000,000 (except for 2004 Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other 2004 Notes pursuant to Sections 304, 305, 306, 906 and 1107 of the Indenture, and except for any 2004 Notes which, pursuant to Section 303 of the Indenture, shall be deemed never to have been authenticated and delivered thereunder).

3. Interest on the 2004 Notes shall be payable to the Persons in whose names the 2004 Notes (or one or more Predecessor Securities) are registered at the close of business on the Regular Record Date for such interest.

4. The Stated Maturity of the 2004 Notes on which the principal thereof

is due and payable is August 15, 2004.

5. The 2004 Notes shall bear interest at 7.35% per annum from August 4, 1999, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable semiannually on February 15 and August 15 of each year (each, an "Interest Payment Date"), commencing February 15, 2000, to the Person in whose name the 2004 Note (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall initially be February 1 or August 1 (as the case may be), whether or not a Business Day, immediately preceding such Interest Payment Date. Interest on the 2004 Notes shall be calculated on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full six-month interest period, on the actual number of days elapsed in that period.

6. The 2004 Notes shall be issued in the form of one or more Global Note or Notes (the "Global 2004 Note" or "Global 2004 Notes"). So long as the 2004 Notes shall be issued in whole in the form of a Global 2004 Note, the principal of, premium, if any, and interest, if any, on the 2004 Notes shall be paid in immediately available funds to the Depositary or a nominee of the Depositary. If at any time the 2004 Notes are no longer represented by a Global 2004 Note and are issued in definitive form ("Certificated 2004 Notes"), then the principal of, premium, if any, and interest, if any, on each Certificated 2004 Note at Maturity shall be paid to the Holder upon surrender of such Certificated 2004 Note at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of The Bank of New York), provided that such Certificated 2004 Note is surrendered to the Trustee, acting as Paying Agent, in time for the Paying Agent to make such payments in such funds in accordance with its normal procedures. Payments of interest with respect to Certificated 2004 Notes other than at Maturity may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as it appears on the Security Register on the relevant Regular Record Date or by wire transfer in same day funds to such account as may have been appropriately designated to the Paying

Agent by such Person in writing not later than such relevant Regular Record Date. Each payment of principal, premium, if any, and interest, if any, shall be made 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. Transfer of the 2004 Notes shall be registrable on the Securities Register upon the surrender of the 2004 Notes for registration of transfer at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of the Trustee).

7. The 2004 Notes are subject to redemption upon receipt of notice by first-class mail at least 30 days and not more than 60 days prior to the Redemption Date, at the option of the Company at any time, as a whole or in part, at a Redemption Price equal to the greater of 100% of (i) the principal amount of the 2004 Note to be redeemed or (ii) an amount, as determined by the Quotation Agent, equal to the sum of the present values of the remaining scheduled payments of principal and interest on the 2004 Notes to be redeemed, not including any portion of payments of interest accrued as of the Redemption Date, discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year comprised of twelve 30-day months, at the adjusted treasury rate plus fifteen basis points plus, in each case, accrued and unpaid interest on the principal amount being redeemed to the Redemption Date; provided, however, that with respect to interest payments that are due on or prior to the Redemption Date, the Company will make payments of interest to the Holders of record of the 2004 Notes at the close of business on the regular Record Date.

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue, expressed as a percentage of its principal amount, equal to the Comparable Treasury Price for that Redemption Date.

"Comparable Treasury Issue" means the United States treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the 2004 Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the 2004 Notes.

"Comparable Treasury Rate" means, with respect to any Redemption Date, (i) the average of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, on the third Business Day preceding such Redemption Date, as set forth by the Federal Reserve Bank of New York and designated "Composite 3:30 p.m. Quotations for the U.S. Government Securities," or (ii) if such release, or any successor release, is not published or does not contain such prices on such Business Day, (1) the

average of the Reference Treasury Dealer Quotations for that Redemption Date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Trustee obtains fewer that four Reference Treasury Dealer Quotations for the Redemption Date, the average of the Reference Treasury Dealer Quotations obtained, as determined by the Quotation Agent.

"Quotation Agent" means the Reference Treasury Dealer appointed by the Company.

"Reference Treasury Dealer" means (i) Goldman, Sachs & Co. or its successors; provided, however that if any of them ceases to be a primary U.S. government securities dealer in New York City (a "Primary Treasury Dealer"), the Company will substitute for it another Primary Treasury Dealer, and (ii) any other Primary Treasury Dealer(s) selected by the Company.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by the Reference Treasury Dealer at 5:00 p.m. on the third Business Day preceding that Redemption Date.

Unless the Company defaults in payment of the Redemption Price, no interest will accrue on the 2004 Notes called for redemption for the period from and after the Redemption Date.

8. The 2004 Notes are not subject to any sinking fund or analogous provisions. The 2004 Notes will not be redeemable at the option of the Holder thereof prior to Maturity.

9. The 2004 Notes shall be issuable only in denominations of $1,000 and any integral multiple thereof.

10. Except as stated in Section 7 above, the amount of payments of principal of, or any premium or interest on, any 2004 Notes may not be determined with reference to an index, formula or other method.

11. The 2004 Notes may be purchased only in currency of the United States and payment of principal of, premium, if any, and interest on the 2004 Notes will only be made in currency of the United States.

12. The payment of principal of, premium, if any, or interest on the 2004 Notes will not be payable at the option of the Company or the Holder in any currency or currency units other than in the currency of the United States.

13. The entire principal amount of the 2004 Notes will be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 of the Indenture.

14. The principal amount of the 2004 Notes will be determinable as of any one or more dates prior to Stated Maturity.

15. The defeasance and covenant defeasance provisions of Article Thirteen of the Indenture will apply to the 2004 Notes.

16. The 2004 Notes may not be converted into other securities or property.

17. The Depositary for the Global 2004 Note shall be The Depository Trust Company, a New York corporation ("DTC"). The 2004 Notes will be represented by one Global 2004 Note registered in the name of DTC or CEDE & Co., as a nominee of DTC. Except as set forth in Section 305 of the Indenture, such Global 2004 Note may be transferred, in whole and not in part, only to Depositary or another nominee of Depositary.

18. In addition to the Events of Default contained in the Indenture, the following will be an Event of Default with respect to the 2004 Notes: (i) failure to make any payment at maturity, including any applicable grace period, in respect of indebtedness, which term means obligations (other than non-recourse obligations or the 2004 Notes) of the Company for borrowed money or evidenced by bonds, debentures, notes or similar instruments ("Indebtedness") in an amount in excess of $50,000,000 and continuance of such failure or (ii) a default with respect to any Indebtedness, which default results in the acceleration of Indebtedness in an amount in excess of $50,000,000 without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of (i) or (ii) above, for a period of

30 days after written notice thereof to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in principal amount of 2004 Notes; provided, however, that if any such failure, default or acceleration referred to in (i) or (ii) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed likewise to have been cured.

19. Sections 1008 and 1009 of the Indenture will apply to the 2004 Notes without variation.

20. There are no additional terms for the 2004 Notes.

III. 7.50% Senior Notes due 2006.

1. The title of such series of Securities shall be the "7.50% Senior Notes due 2006" (the "2006 Notes"). The price at which the 2006 Notes shall be issued is 99.582%.

2. The aggregate principal amount of the 2006 Notes that may be authenticated and delivered under the Indenture shall be $500,000,000 (except for 2006 Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other 2006 Notes pursuant to Sections 304, 305, 306, 906 and 1107 of the Indenture, and except for any 2006 Notes which, pursuant to Section 303 of the Indenture, shall be deemed never to have been authenticated and delivered thereunder).

3. Interest on the 2006 Notes shall be payable to the Persons in whose names the 2006 Notes (or one or more Predecessor Securities) are registered at the close of business on the Regular Record Date for such interest.

4. The Stated Maturity of the 2006 Notes on which the principal thereof is due and payable is August 15, 2006.

5. The 2006 Notes shall bear interest at 7.50% per annum from August 4, 1999, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable semiannually on February 15 and August 15 of each year (each, an "Interest Payment Date"), commencing February 15, 2000, to the Person in whose name the 2006 Note (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall initially be February 1 or August 1 (as the case may be), whether or not a Business Day, immediately preceding such Interest Payment Date. Interest on the 2006 Notes shall be calculated on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full six-month interest period, on the actual number of days elapsed in that period.

6. The 2006 Notes shall be issued in the form of one or more Global Note or Notes (the "Global 2006 Note" or "Global 2006 Notes"). So long as the 2006 Notes shall be issued in whole in the form of a Global 2006 Note, the principal of, premium, if any, and interest, if any, on the 2006 Notes shall be paid in immediately available funds to the Depositary or a nominee of the Depositary. If at any time the 2006 Notes are no longer represented by a Global 2006 Note and are issued in definitive form ("Certificated 2006 Notes"), then the principal of, premium, if any, and interest, if any, on each Certificated 2006 Note at Maturity shall be paid to the Holder upon surrender of such Certificated 2006 Note at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of The Bank of New York, provided that such Certificated 2006 Note is surrendered to the Trustee, acting as Paying Agent, in time for the Paying Agent to make such payments in such funds in accordance with its normal procedures. Payments of interest with respect to Certificated 2006 Notes other than at Maturity may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as it appears on the Security Register on the relevant Regular Record Date or by wire transfer in same day funds to such account as may have been appropriately designated to the Paying Agent by such Person in writing not later than such relevant Regular Record Date. Each payment of principal, premium, if any, and interest, if any, shall be made 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. Transfer of the 2006 Notes shall be registrable on the Securities Register upon the surrender of the 2006 Notes for registration of transfer at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of the Trustee).

7. The 2006 Notes are subject to redemption upon receipt of notice by first-class mail at least 30 days and not more than 60 days prior to the Redemption Date, at the option of the Company at any time, as a whole or in part, at a Redemption Price equal to the greater of (i) 100% of the principal amount of the 2006 Note to be redeemed; and (ii) an amount, as determined by the Quotation Agent, equal to the sum of the present values of the remaining scheduled payments of principal and interest on the 2006 Notes to be redeemed,

not including any portion of payments of interest accrued as of the Redemption Date, discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year comprised of twelve 30-day months, at the adjusted treasury rate plus twenty basis points plus, in each case, accrued and unpaid interest on the principal amount being redeemed to the Redemption Date; provided, however, that with respect to interest payments that are

due on or prior to the Redemption Date, the Company will make payments of interest to the Holders of record of the 2006 Notes at the close of business on the regular Record Date.

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue, expressed as a percentage of its principal amount, equal to the Comparable Treasury Price for that Redemption Date.

"Comparable Treasury Issue" means the United States treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the 2006 Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of 2006 Notes.

"Comparable Treasury Rate" means, with respect to any Redemption Date, (i) the average of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, on the third Business Day preceding such Redemption Date, as set forth by the Federal Reserve Bank of New York and designated "Composite 3:30 p.m. Quotations for the U.S. Government Securities," or (ii) if such release, or any successor release, is not published or does not contain such prices on such Business Day, (1) the average of the Reference Treasury Dealer quotations for that Redemption Date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Trustee obtains fewer that four Reference Treasury Dealer Quotations for the Redemption Date, the average of the Reference Treasury Dealer Quotations obtained, as determined by the Quotation Agent.

"Quotation Agent" means the Reference Treasury Dealer appointed by the Company.

"Reference Treasury Dealer" means (i) Goldman, Sachs & Co. or its successors; provided, however that if any of them ceases to be a primary U.S. government securities dealer in New York City (a "Primary Treasury Dealer"), the Company will substitute for it another Primary Treasury Dealer, and (ii) any other Primary Treasury Dealer(s) selected by the Company.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by the Reference Treasury Dealer at 5:00 p.m. on the third Business Day preceding that Redemption Date.

Unless the Company defaults in payment of the Redemption Price, no interest will accrue on the 2006 Notes called for redemption for the period from and after the Redemption Date.

8. The 2006 Notes are not subject to any sinking fund or analogous provisions. The 2006 Notes will not be redeemable at the option of the Holder thereof prior to Maturity.

9. The 2006 Notes shall be issuable only in denominations of $1,000 and any integral multiple thereof.

10. Except as stated in Section 7 above, the amount of payments of principal of, or any premium or interest on, any 2006 Notes may not be determined with reference to an index, formula or other method.

11. The 2006 Notes may be purchased only in currency of the United States and payment of principal of, premium, if any, and interest on the 2006 Notes will only be made in currency of the United States.

12. The payment of principal of, premium, if any, or interest on the 2006 Notes will not be payable at the option of the Company or the Holder in any currency or currency units other than in the currency of the United States.

13. The entire principal amount of the 2006 Notes will be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 of the Indenture.

14. The principal amount of the 2006 Notes will be determinable as of any one or more dates prior to Stated Maturity.

15. The defeasance and covenant defeasance provisions of Article Thirteen of the Indenture will apply to the 2006 Notes.

16. The 2006 Notes may not be converted into other securities or property.

17. The Depositary for the Global 2006 Note shall be The Depository Trust Company, a New York corporation ("DTC"). The 2006 Notes will be represented by one Global 2006 Note registered in the name of DTC or CEDE & Co., as a nominee of DTC. Except as set forth in Section 305 of the Indenture, such Global 2006 Note may be transferred, in whole and not in part, only to Depositary or another nominee of Depositary.

18. In addition to the Events of Default contained in the Indenture, the following will be an Event of Default with respect to the 2006 Notes: (i) failure to make any payment at maturity, including any applicable grace period, in respect of indebtedness, which term means obligations (other than non-recourse obligations or the 2006 Notes) of the Company for borrowed money or evidenced by bonds, debentures, notes or similar instruments ("Indebtedness") in an amount in excess of $50,000,000 and continuance of such failure or (ii) a default with respect to any Indebtedness, which default results in the acceleration of Indebtedness in an amount in excess of $50,000,000 without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of (i) or (ii) above, for a period of 30 days after written notice thereof to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in principal amount of 2006 Notes; provided, however, that if any such failure, default or acceleration referred to in (i) or (ii) above shall cease or be cured, waived,

rescinded or annulled, then the Event of Default by reason thereof shall be deemed likewise to have been cured.

19. Sections 1008 and 1009 of the Indenture will apply to the 2006 Notes without variation.

20. There are no additional terms for the 2006 Notes.

IV. 7.65% Senior Notes due 2009.

1. The title of such series of Securities shall be the "7.65% Senior Notes due 2009" (the "2009 Notes"). The price at which the 2009 Notes shall be issued is 99.547%.

2. The aggregate principal amount of the 2009 Notes that may be authenticated and delivered under the Indenture shall be $550,000,000 (except for 2009 Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other 2009 Notes pursuant to Sections 304, 305, 306, 906 and 1107 of the Indenture, and except for any 2009 Notes which, pursuant to Section 303 of the Indenture, shall be deemed never to have been authenticated and delivered thereunder).

3. Interest on the 2009 Notes shall be payable to the Persons in whose names the 2009 Notes (or one or more Predecessor Securities) are registered at the close of business on the Regular Record Date for such interest.

4. The Stated Maturity of the 2009 Notes on which the principal thereof is due and payable is August 15, 2009.

5. The 2009 Notes shall bear interest at 7.65% per annum from August 4, 1999, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable semiannually on February 15 and August 15 of each year (each, an "Interest Payment Date"), commencing February 15, 2000, to the Person in whose name the 2009 Note (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall initially be February 1 or August 1 (as the case may be), whether or not a Business Day, immediately preceding such Interest Payment Date. Interest on the 2009 Notes shall be calculated on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full six-month interest period, on the actual number of days elapsed in that period.

6. The 2009 Notes shall be issued in the form of one or more Global

Note or Notes (the "Global 2009 Note" or "Global 2009 Notes"). So long as the 2009 Notes shall be issued in whole in the form of a Global 2009 Note, the principal of, premium, if any, and interest, if any, on the 2009 Notes shall be paid in immediately available funds to the Depositary or a nominee of the Depositary. If at any time the 2009 Notes are no longer represented by a Global 2009 Note and are issued in definitive form ("Certificated 2009 Notes"), then the principal of, premium, if any, and interest, if any, on each Certificated 2009 Note at Maturity shall be paid to the Holder upon surrender of such

Certificated 2009 Note at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of The Bank of New York, provided that such Certificated 2009 Note is surrendered to the Trustee, acting as Paying Agent, in time for the Paying Agent to make such payments in such funds in accordance with its normal procedures. Payments of interest with respect to Certificated 2009 Notes other than at Maturity may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as it appears on the Security Register on the relevant Regular Record Date or by wire transfer in same day funds to such account as may have been appropriately designated to the Paying Agent by such Person in writing not later than such relevant Regular Record Date. Each payment of principal, premium, if any, and interest, if any, shall be made 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. Transfer of the 2009 Notes shall be registrable on the Securities Register upon the surrender of the 2009 Notes for registration of transfer at the office or agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of the Trustee).

7. The 2009 Notes are subject to redemption upon receipt of notice by first-class mail at least 30 days and not more than 60 days prior to the Redemption Date, at the option of the Company at any time, as a whole or in part, at a Redemption Price equal to the greater of (i) 100% of the principal amount of the 2009 Note to be redeemed; and (ii) an amount, as determined by the Quotation Agent, equal to the sum of the present values of the remaining scheduled payments of principal and interest on the 2009 Notes to be redeemed, not including any portion of payments of interest accrued as of the Redemption Date, discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year comprised of twelve 30-day months, at the adjusted treasury rate plus twenty-five basis points plus, in each case, accrued and unpaid interest on the principal amount being redeemed to the Redemption Date; provided, however, that with respect to interest payments that are due on or prior to the Redemption Date, the Company will make payments of interest to the Holders of record of the 2009 Notes at the close of business on the regular Record Date.

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue, expressed as a percentage of its principal amount, equal to the Comparable Treasury Price for that Redemption Date.

"Comparable Treasury Issue" means the United States treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the 2009 Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of 2009 Notes.

"Comparable Treasury Rate" means, with respect to any Redemption Date, (i) the average of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, on the third Business Day preceding such Redemption Date, as set forth by the Federal Reserve Bank of New York and designated "Composite 3:30 p.m. Quotations for the

U.S. Government Securities," or (ii) if such release, or any successor release, is not published or does not contain such prices on such Business Day, (1) the average of the Reference Treasury Dealer quotations for that Redemption Date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Trustee obtains fewer that four Reference Treasury Dealer Quotations for the Redemption Date, the average of the Reference Treasury Dealer Quotations obtained, as determined by the Quotation Agent.

"Quotation Agent" means the Reference Treasury Dealer appointed by the Company.

"Reference Treasury Dealer" means (i) Goldman, Sachs & Co. or its

successors; provided, however that if any of them ceases to be a primary U.S. government securities dealer in New York City (a "Primary Treasury Dealer"), the Company will substitute for it another Primary Treasury Dealer, and (ii) any other Primary Treasury Dealer(s) selected by the Company.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by the Reference Treasury Dealer at 5:00 p.m. on the third Business Day preceding that Redemption Date.

Unless the Company defaults in payment of the Redemption Price, no interest will accrue on the 2009 Notes called for redemption for the period from and after the Redemption Date.

8. The 2009 Notes are not subject to any sinking fund or analogous provisions. The 2009 Notes will not be redeemable at the option of the Holder thereof prior to Maturity.

9. The 2009 Notes shall be issuable only in denominations of $1,000 and any integral multiple thereof.

10. Except as stated in Section 7 above, the amount of payments of principal of, or any premium or interest on, any 2009 Notes may not be determined with reference to an index, formula or other method.

11. The 2009 Notes may be purchased only in currency of the United States and payment of principal of, premium, if any, and interest on the 2009 Notes will only be made in currency of the United States.

12. The payment of principal of, premium, if any, or interest on the 2009 Notes will not be payable at the option of the Company or the Holder in any currency or currency units other than in the currency of the United States.

13. The entire principal amount of the 2009 Notes will be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 of the Indenture.

14. The principal amount of the 2009 Notes will be determinable as of any one or more dates prior to Stated Maturity.

15. The defeasance and covenant defeasance provisions of Article Thirteen of the Indenture will apply to the 2009 Notes.

16. The 2009 Notes may not be converted into other securities or property.

17. The Depositary for the Global 2009 Note shall be The Depository Trust Company, a New York corporation ("DTC"). The 2009 Notes will be represented by one Global 2009 Note registered in the name of DTC or CEDE & Co., as a nominee of DTC. Except as set forth in Section 305 of the Indenture, such Global 2009 Note may be transferred, in whole and not in part, only to Depositary or another nominee of Depositary.

18. In addition to the Events of Default contained in the Indenture, the following will be an Event of Default with respect to the 2009 Notes: (i) failure to make any payment at maturity, including any applicable grace period, in respect of indebtedness, which term means obligations (other than non-recourse obligations or the 2009 Notes) of the Company for borrowed money or evidenced by bonds, debentures, notes or similar instruments ("Indebtedness") in an amount in excess of $50,000,000 and continuance of such failure or (ii) a default with respect to any Indebtedness, which default results in the acceleration of Indebtedness in an amount in excess of $50,000,000 without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of (i) or (ii) above, for a period of 30 days after written notice thereof to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in principal amount of 2009 Notes; provided, however, that if any such failure, default or acceleration referred to in (i) or (ii) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed likewise to have been cured.

19. Sections 1008 and 1009 of the Indenture will apply to the 2009 Notes without variation.

20. There are no additional terms for the 2009 Notes.

V. In rendering this Officers' Certificate, each of undersigned has read the

Indenture, including Sections 102, 201, 301 and 303 thereof, and has made such examinations and investigations which, in his or her opinion, are necessary to enable such person to express an informed opinion as to whether all covenants and conditions required under the Indenture to be complied with or satisfied in connection with the Trustee's authentication and delivery of the 2002 Notes, 2004 Notes, the 2006 Notes and the 2009 Notes have been complied with or satisfied, and, in such person's opinion, all such covenants and conditions have been complied with and satisfied.

Attached hereto as Exhibits B-1, B-2, B-3, and B-4 are the forms of Global 2002 Note, Global 2004 Note, Global 2006 Note and Global 2009 Note (together, the "Global Securities"). We

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further approve all of the terms and conditions set forth on or referred to in the attached forms of Global Securities. In the event that Certificated 2002 Notes, Certificated 2004 Notes, Certificated 2006 Notes or Certificated 2009 Notes (together, the "Certificated Securities") are issued in exchange for a Global Security, the respective form of certificate evidencing the Certificated Security shall be in substantially the form of the attached Global Security, with such grammatical and other changes as are necessary to evidence the Securities in definitive form rather than as Global Securities.

Capitalized terms used herein that are not otherwise defined herein shall have the meanings assigned to them in the Indenture.

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IN WITNESS WHEREOF, the undersigned have executed this certificate as of the date set forth above.

SUN MICROSYSTEMS, INC.

By:

Michael H. Morris
Vice President, General Counsel and Secretary

By:

George Reyes
Vice President and Corporate Treasurer

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<SEQUENCE>6
<DESCRIPTION>FORM OF SENIOR NOTE
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Exhibit 4.4

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.

SUN MICROSYSTEMS, INC.
% Senior Note due 200_

No. $_____
CUSIP No.

Sun Microsystems, Inc., a corporation duly organized and existing under the laws of Delaware (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of _____ ($_____) on _____, and to pay interest thereon from _____, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on _____ and _____ in each year, commencing _____, at the rate of __% per annum, until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the _____ or _____(whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. Interest on the Security shall be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full six-month interest period, on the basis of the actual days elapsed in such period.

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So long as all of the Securities of this series are represented by Global Securities, the principal of, premium, if any, and interest, if any on this Global Security shall be paid in same day funds to the Depositary, or to such name or entity as is requested by an authorized representative of the Depositary. If at any time the Securities of this series are no longer represented by the Global Securities and are issued in definitive form ("Certificated Securities"), then the principal of, premium, if any, and interest, if any, on each Certificated Security at Maturity shall be paid to the Holder upon surrender of such Certificated Security at the office of agency maintained by the Company in the Borough of Manhattan, The City of New York (which shall initially be the principal corporate trust office of the Bank of New York) or at such other place or places as may be designated in or pursuant to the Indenture, provided that such Certificated Security is surrendered to the Trustee, acting as Paying Agent, in time for the Paying Agent to make such payments in such funds in accordance with its normal procedures. Payments of interest with respect to Certificated Securities other than at Maturity may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as it appears on the Security Register on the relevant Regular or Special Record Date or by wire transfer in same day funds to such account as may have been appropriately designated to the Paying Agent by such Person in writing not later than such relevant Regular or Special Record Date.

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

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

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

SUN MICROSYSTEMS, INC.

By:

Attest:

- ---

Trustee's Certificate of Authentication.

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

Dated:

THE BANK OF NEW YORK
As Trustee

By:

Authorized Signatory

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REVERSE OF SECURITY.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of August 1, 1999 (herein called the "Indenture," which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture and all indentures supplemental thereto for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof limited in aggregate principal amount to $_____.

The Security is subject to redemption upon receipt of notice by first-class mail at least 30 days and not more than 60 days prior to the Redemption Date, at the option of the Company at any time, as a whole or in part, at a Redemption Price equal to the greater of (i) 100% of the principal amount of the Security to be redeemed or (ii) an amount, as determined by the Quotation Agent, equal to the sum of the present values of the remaining scheduled payments of principal and interest on the Securities to be redeemed, not including any portion of payments of interest accrued as of the Redemption Date, discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year comprised of twelve 30-day months, at the adjusted treasury rate plus ten basis points plus, in each case, accrued and unpaid interest on the principal amount being redeemed to the Redemption Date; provided, however, that with respect to interest payments that are due on or prior to the Redemption Date, the Company will make payments of interest to the Holders of record of the Securities at the close of business on the regular Record Date.

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue, expressed as a percentage of its principal amount, equal to the Comparable Treasury Price for that Redemption Date.

"Comparable Treasury Issue" means the United States treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the Securities to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Securities.

"Comparable Treasury Rate" means, with respect to any Redemption Date, (i) the average of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, on the third Business Day preceding such Redemption Date, as set forth by the Federal Reserve Bank of New York and designated "Composite 3:30 p.m. Quotations for the U.S. Government Securities," or (ii) if such release, or any successor release, is not published or does not contain such prices on such Business Day, (1) the average of the Reference Treasury Dealer Quotations for that Redemption Date, after excluding the highest and lowest Reference Treasury

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Dealer Quotations, or (2) if the Trustee obtains fewer that four Reference Treasury Dealer Quotations for the Redemption Date, the average of the Reference Treasury Dealer Quotations obtained, as determined by the Quotation Agent.

"Quotation Agent" means the Reference Treasury Dealer appointed by the Company.

"Reference Treasury Dealer" means (i) Goldman, Sachs & Co. or its successors; provided, however that if any of them ceases to be a primary U.S. government securities dealer in New York City (a "Primary Treasury Dealer"), the Company will substitute for it another Primary Treasury Dealer, and (ii) any other Primary Treasury Dealer(s) selected by the Company.

"Reference Treasury Dealer Quotations" means, with respect to each

Reference Treasury Dealer and any Redemption Date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue, expressed in each case as a percentage of its principal amount, quoted in writing to the Trustee by the Reference Treasury Dealer at 5:00 p.m. on the third Business Day preceding that Redemption Date.

Unless the Company defaults in payment of the Redemption Price, no interest will accrue on the Securities called for redemption for the period from and after the Redemption Date.

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

The Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.

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

In addition to the Events of Default set forth in Section 501 of the Indenture, the following will be an Event of Default with respect to the Securities: (i) failure to make any payment at maturity, including any applicable grace period, in respect of indebtedness, which term means obligations (other than non-recourse obligations or the Securities) of the Company for borrowed money or evidenced by bonds, debentures, notes or similar instruments ("Indebtedness") in an amount in excess of $50,000,000 and continuance of such failure or (ii) a default with respect to any Indebtedness, which default results in the acceleration of Indebtedness in an amount in excess of $50,000,000 without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of (i) or (ii) above, for a period of 30 days after written notice thereof to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in principal amount of Securities; provided, however, that if any such failure, default or acceleration referred to in (i) or (ii) above shall cease or be cured, waived,

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rescinded or annulled, then the Event of Default by reason thereof shall be deemed likewise to have been cured.

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 of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of more than 50% in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, 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 of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding 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 principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest 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 any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

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The Securities of this series are issuable only in registered form without coupons in denominations of $1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor 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 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, without regard to conflict of laws principles thereof.

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

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ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

- ----------

- ----------

- ----------
(Please print or typewrite name and address including postal zip code of assignee)

- ----------
the within Global Note of SUN MICROSYSTEMS, INC. and all rights hereunder, hereby irrevocably constituting and appointing

attorney
- ----------
to transfer said Global Note on the books of the within-named Company, with full power of substitution in the premises.

Dated:

SIGN HERE

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE WITHIN INSTRUMENT IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE GUARANTEED

</TEXT>
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-----END PRIVACY-ENHANCED MESSAGE-----

EX-4.1 2 rrd144599_18201.htm INDENTURE RELATED TO THE 0.625% CONVERTIBLE SENIOR NOTES, DUE 2012, DATED AS OF JANUARY 26, 2007, BETWEEN SUN MICROSYSTEMS, INC. AND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE (INCLUDING FORM OF 0.625% CONVERTIBLE SENIOR NOTE DUE 2012).

EXECUTION COPY

SUN MICROSYSTEMS, INC.
as Issuer

and

U.S. BANK NATIONAL ASSOCIATION as Trustee

Indenture

dated as of January 26, 2007

$350,000,000

0.625% Convertible Senior Notes due 2012

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EXHIBIT A	Form of Note
EXHIBIT B	Restricted Common Stock Legend and IAI Common Stock Legend

CROSS REFERENCE TABLE*

*Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

TIA Section	Indenture Section

310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(b)	7.08; 7.10
(c)	N.A.
311(a)	N.A.
(b)	N.A.
(c)	N.A.
312(a)	2.05
(b)	12.04
(c)	12.04
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06
(c)	12.03
(d)	7.06
314(a)	4.04; 4.05; 12.03
(b)	N.A.
(c)(1)	12.05
(c)(2)	12.05
(c)(3)	N.A.
(d)	N.A.
(e)	12.06
(f)	N.A.
315(a)	7.01
(b)	7.05; 12.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a) (last sentence)	2.08
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	12.01

N.A. means not applicable

INDENTURE, dated as of January 26, 2007, between Sun Microsystems, Inc., a Delaware corporation, as the "Company" and U.S. Bank National Association, a national banking association, as Trustee.

RECITALS

The Company has duly authorized the execution and delivery of the Indenture to provide for the initial issuance of $350,000,000 aggregate principal amount of the Company's 0.625% Convertible Senior Notes Due 2012 (the "Notes"). All things necessary to make the Indenture a valid agreement of the Company, in accordance with its terms, have been

done, and the Company has done all things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee and duly issued by the Company, the valid obligations of the Company as hereinafter provided. This Indenture is subject to, and will be governed by, the provisions of the Trust Indenture Act that are required to be a part of and govern indentures qualified under the Trust Indenture Act.

THIS INDENTURE WITNESSETH

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

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1

Definitions

.

"Additional Interest" means additional interest owed to the Holders pursuant to the Registration Rights Agreement.

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

"Affiliated Entity" has the meaning given such term in the Note Purchase Agreement.

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

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

"Applicable Conversion Rate" means the Conversion Rate on any Trading Day.

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

"Bank Purchase Transfer Event" has the meaning given such term in the Note Purchase Agreement.

"Bank Purchaser" means Citibank, N.A.

"Bankruptcy Default" has the meaning assigned to such term in Section 6.01.

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

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

"Board Resolution" means a resolution duly adopted by the Board of Directors which is certified by the Secretary or an Assistant Secretary of the Company and remains in full force and effect as of the date of its certification.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized or obligated to close.

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

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

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

"Change in Control" means the occurrence of a Fundamental Change of the type described in the clauses (i) or (ii) of the definition of "Fundamental Change" contained in Section 3.01(a), giving effect to the last two paragraphs of Section 3.01(a).

"Close of Business" means 5:00 p.m. (New York City time).

"Closing Price" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either

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case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is listed or admitted for trading or, if the Common Stock is not listed or admitted for trading on a U.S. national or regional securities exchange, as reported on the quotation system on which such security is quoted. If the Common Stock is not listed or admitted for trading on a United States national or regional securities exchange and not reported on a quotation system on the relevant date, the "closing price" will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Stock is not so quoted, the last reported sale price will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized investment banking firms selected by the Company for this purpose.

"Common Stock" means the common stock of the Company, $0.00067 par value, as it exists on the date of this Indenture and any shares of any class or classes of Capital Stock of the Company resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, however, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Notes shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

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

"Conversion Date" means the date on which the Holder of the Note has complied with all requirements under this Indenture to convert such Note.

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

"Conversion Rate" means 138.6482 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment pursuant to Article 10.

"Conversion Reference Period" means (a) for Notes that are converted during the period beginning on the 23rd scheduled Trading Day prior to the Maturity Date, the twenty consecutive Trading Days beginning on, and including, the 20th scheduled Trading Day prior to the Maturity Date and (b) in all other instances, the twenty consecutive Trading Days beginning on the third Trading Day following the Conversion Date.

"Conversion Value" means, per $1,000 principal amount of Notes, the amount equal to the average of the products for each Trading Day of the Conversion Reference Period of (a) the Applicable Conversion Rate for such day multiplied by (b) the average of the Volume Weighted Average Price per share of the Common Stock on such day.

"Corporate Trust Office" means the office of the Trustee at which the trust created by this Indenture is principally administered, which at the date of the Indenture is located at U.S. Bank National Association, 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, Attention: Corporate Trust Services (Sun Microsystems, Inc. 0.625% Convertible Senior Notes due 2012).

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

"Daily Share Amounts" means, for each Trading Day of the Conversion Reference Period and each $1,000 principal amount of Notes surrendered for conversion, a number of shares of Common Stock (but in no event less than zero) determined by the following formula:

$$\frac{\text{(Volume Weighted Average Price per share of Common Stock for such Trading Day} \times \text{Conversion Rate in effect on the Trading Day)} - \$1000}{\text{Volume Weighted Average Price per share of Common Stock for such Trading Day} \times 20}$$

"Debt" means, with respect to any Person, without duplication, (1) all indebtedness of such Person for borrowed money (other than non-recourse obligations); and (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments.

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

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

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

"Event of Default" has the meaning assigned to such term in Section 6.01.

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

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

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

"Global Note" means a Note in registered global form without interest coupons that is deposited with the Depositary or its custodian and registered in the name of the Depositary or its nominee.

"Global Note Legend" means the legend set forth in Exhibit A

"Holder" or "Noteholder" means the registered holder of any Note.

"IAI Certificated Note" means a Certificated Note that bears the IAI Note Legend.

"IAI Common Stock Legend" means the legend set forth in Exhibit B.

"IAI Global Note" means a Global Note that bears the IAI Note Legend representing Notes initially issued and sold pursuant to the Note Purchase Agreement to the Initial Purchasers, all of which are Institutional Accredited Investors.

"IAI Note" means a Note that bears the IAI Note Legend.

"IAI Note Legend" means the legend set forth in Exhibit A.

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

"Initial Purchasers" means the Purchasers named in Exhibit A to the Note Purchase Agreement.

"Institutional Accredited Investor" means an institutional "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"interest," in respect of the Notes, unless the context otherwise requires, refers to interest and Additional Interest, if any.

"Interest Payment Date" means each February 1 and August 1 of each year, commencing August 1, 2007.

"Issue Date" means the date on which the Notes are originally issued under this Indenture.

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

"Maturity Date" means February 1, 2012.

"NASD" means the National Association of Securities Dealers, Inc.

"Note Purchase Agreement" means that certain Note Purchase Agreement, dated as of January 23, 2007, among the Company, the Initial Purchasers, Sponsor solely for purposes of Articles 1 and 9 and Sections 5.5, 5.6 and 7.1 thereto and KKR PEI Investments, L.P. solely for purposes of Section 4.6 thereto.

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

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

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

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

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

"Permitted Transfer" has the meaning given such term in Section 7.1(a) of the Note Purchase Agreement.

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

"Register" has the meaning assigned to such term in Section 2.03.

"Registrar" means a Person engaged to maintain the Register.

"Registration Rights Agreement" means the Registration Rights Agreement dated as of January 26, 2007, among the Company and Initial Purchasers.

"Regular Record Date" for the interest payable on any Interest Payment Date means the January 15 or July 15 (whether or not a Trading Day) next preceding such Interest Payment Date.

"Resale Restriction Termination Date" means, as to any Note, the later of January 26, 2009 and the date that is two years after the last date on which the Company or any Affiliate of the Company was the owner of such Note.

"Restricted Certificated Note" means a Certificated Note that bears the Restricted Note Legend.

"Restricted Common Stock Legend" means the legend set forth in Exhibit B.

"Restricted Global Note" means a Global Note that bears the Restricted Note Legend representing Notes transferred pursuant to Rule 144A and in accordance with the Note Purchase Agreement.

"Restricted Note" means a Note that bears the Restricted Note Legend. "Restricted Note Legend" means the legend set forth in Exhibit A. "Rule 144" means Rule 144 under the Securities Act.

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

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

"Shelf Registration Statement" has the meaning given such term in the Registration Rights Agreement.

"Significant Subsidiary" means, in respect of any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X under the Securities Act and the

Exchange Act.

“Sponsor” means Kohlberg Kravis Roberts & Co. L.P.

“Sponsor Purchasers” means the Initial Purchasers, other than the Bank Purchasers, and their Affiliates that acquire beneficial ownership of Securities in a Permitted Transfer.

“Stated Maturity” means (i) with respect to the Notes, February 1, 2012, or (ii) with respect to any scheduled payment of interest on the Notes, the date specified as the fixed date on which such interest payment is due and payable as set forth in this Indenture and the Notes, not including any contingent obligation to repay, redeem or repurchase prior to the regularly scheduled date for payment.

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

Company.

A “Termination of Trading” will be deemed to have occurred if the Common Stock (or other common stock into which the Convertible Subordinated Notes are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on an established U.S. system of automated dissemination of quotations of securities prices and no American Depositary Shares or similar instruments for such common stock are so listed or approved for listing in the United States.

“Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange,

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the principal national securities exchange on which the Common Stock is listed, is open for trading or, if the Common Stock is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

“Trading Price” with respect to the Notes, on any date of determination, means the average of the secondary market bid quotations obtained by the Trustee for $2.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for $2.0 million principal amount of Notes from a nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Closing Price (as provided to the Trustee by the Company) and the Conversion Rate. Any such determination by the Trustee will be conclusive absent manifest error.

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

“Trust Indenture Act” means the Trust Indenture Act of 1939.

“Volume Weighted Average Price” on any Trading Day means the price per share of the Common Stock as displayed on Bloomberg (or any successor service) page SUNW.Q <Equity> AQR SEC in respect of the period from 9:30 a.m. to 3:50 p.m. (New York City time), on such Trading Day; or, if such price is not available, the market value

per share of the Common Stock on such day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company.

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

Section 1.2 Other Definitions

.

Term	Defined in Section
"Act"	1.05
"Aggregate Amount"	10.10
"Antitrust Laws"	10.01(c)
"Average Sale Price"	10.08
"beneficial owner"	3.01(a)

"Cash Percentage"	10.01
"Cash Percentage Notice"	10.01
"Change in Control Effective Date"	10.13(b)
"Company Order"	2.02
"Conversion Agent"	2.03
"Conversion Rate Cap"	10.15
"Conversion Trigger Price"	Note – paragraph 7
"Defaulted Interest"	11.02
"Distributed Assets"	10.08(a)
"Expiration Date"	10.10
"Expiration Time"	10.10
"Fundamental Change"	3.01(a)
"Fundamental Change Purchase Date"	3.01(a)
"Fundamental Change Purchase Notice"	3.01(c)
"Fundamental Change Purchase Price"	3.01(a)
"Initial Purchasers"	2.01
"Legal Holiday"	12.07
"Make-Whole Shares"	10.13(a)
"Primary Registrar"	2.03
"Purchased Shares"	10.10
"QIB"	2.01(b)
"Reference Period"	10.08(a)
"Reference Property"	10.12
"Remaining Shares"	10.01
"Required Cash Amount"	10.01
"Restricted Securities"	2.14
"Rights"	10.23
"Shareholders Rights Plan"	10.23
"Special Record Date"	11.02
"Stock Price"	10.13(b)
"Trigger Event"	10.11

Section 1.3 Incorporation by Reference of Trust Indenture Act

. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. The following Trust Indenture Act terms used in this Indenture have the following meanings:

"Commission" means the Securities and Exchange Commission.

"indenture securities" means the Notes.

"indenture security holder" means a Noteholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company.

All other Trust Indenture Act terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by Securities Exchange Commission rule have the meanings assigned to them by such definitions.

Section 1.4

Rules of Construction

. Unless the context otherwise requires or except as otherwise expressly *provided*,

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

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

accordance with GAAP;

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

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

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

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

(g) "or" is not exclusive;

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

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

singular.

Section 1.5

Acts of Holders

. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments (which may take the form of an electronic writing or messaging or otherwise be in accordance with customary procedures of the Depositary or the Trustee) of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing (which may be in electronic form); and, except as herein otherwise expressly provided, such action

shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent (either of which may be in electronic form) shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

ARTICLE 2.

THE NOTES

Section 2.1 Form, Dating and Denominations; Legends

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(a) The Notes and the Trustee's certificate of authentication will be substantially in the form attached as Exhibit A. The terms and provisions contained in the form of the Note annexed as Exhibit A constitute and are hereby expressly made a part of the Indenture. The Notes may have notations, legends or endorsements required by law, rules of or agreements with national securities exchanges to which the Company is subject, or usage. Each Note will be dated the date of its authentication. The Notes will be issuable only in denominations of $1,000 in principal amount and any integral multiple thereof.

(b) Restricted Notes. All of the Notes are initially being offered and sold pursuant to the Note Purchase Agreement to Initial Purchasers, all of which are Institutional Accredited Investors, and are initially being issued in the form of an IAI Global Note (which will bear the Global Note Legend and the IAI Note Legend set forth in Exhibit A hereto), which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the Depositary, and registered in the name of its nominee, Cede & Co., duly executed by the Company and authenticated by the Trustee as hereinafter provided. All Notes transferred to an Initial Purchaser or a Sponsor Purchaser shall be issued in the form of one or more IAI Global Notes bearing the Global Note Legend and the IAI Note Legend. All Notes transferred by Initial Purchasers or Sponsor Purchasers to qualified institutional buyers as defined in Rule 144A (collectively, "QIBs" or individually, each a "QIB") in reliance on Rule 144A under the Securities Act and in accordance with the Note Purchase Agreement, other than any such Notes transferred by Initial Purchasers to Sponsor Purchasers or any such Notes that are offered and sold to the Initial Purchasers or any Sponsor

Purchasers, shall be issued in the form of one or more Restricted Global Notes (which will bear the Global Note Legend and the Restricted Note Legend set forth in Exhibit A hereto), which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the Depositary, and registered in the name of its nominee, Cede & Co., duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of each of the IAI Global Notes and the Restricted Global Notes may from time to time be increased or decreased

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by adjustments made on the records of the Trustee as hereinafter provided, subject in each case to compliance with the Applicable Procedures.

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

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

(d) Book Entry Provisions. The Company shall use its reasonable efforts to execute and the Trustee shall, in accordance with this Section 2.01(d), authenticate and deliver one or more Global Notes that (i) shall be registered in the name of the Depositary, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (iii) shall bear the Global Note Legend substantially to the effect set forth in Exhibit A. This Section 2.01(d) shall only apply to Global Notes deposited with or on behalf of the Depositary.

(e) Restriction on Affiliate Transfers. Other than transfers of Notes from any Initial Purchaser or any Sponsor Purchaser to another Initial Purchaser or Sponsor Purchaser, no transfer of Notes to Affiliates of the Company will be permitted.

Section 2.2

Execution and Authentication

. An Officer shall sign the Notes for the Company by manual or facsimile signature attested by the manual or facsimile signature of the Secretary or an Assistant Secretary of the Company. Typographic and other minor errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Note which has been authenticated and delivered by the Trustee.

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

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

The Trustee shall authenticate and make available for delivery Notes for original issue in the aggregate principal amount of $350,000,000 upon receipt of a written order or orders of the Company signed by an Officer of the Company (a "Company Order"). The Company Order shall specify the amount of Notes to be authenticated, shall provide that all such Notes will be represented initially by a Global Note and the date on which each original issue of Notes is to be authenticated. The initial aggregate principal amount of Notes outstanding at any time may not exceed $350,000,000 except as provided in Section 2.07 and except as provided in the next succeeding paragraph.

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

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

Section 2.3 Registrar, Paying Agent and Conversion Agent

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

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

The Company hereby initially designates the Trustee as Paying Agent, Registrar, and Conversion Agent, and the Corporate Trust Office of the Trustee as such office or agency of the Company for each of the aforesaid purposes.

Section 2.4 Paying Agent To Hold Money In Trust

. Prior to 11:00 a.m., New York City time, on each date on which the principal amount of or interest, if any, on any Notes is due and payable, the Company shall deposit with a Paying Agent a sum sufficient to pay such principal amount or interest, if any, so becoming due. A Paying Agent shall hold in trust for the benefit of Noteholders or the Trustee all money held by the Paying Agent for the payment of principal amount of or interest, if any, on the Notes, and shall notify the Trustee of any default by the Company (or any other obligor on the Notes) in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 11:00 a.m., New York City time, on each date on which a payment of the principal amount of or interest on any Notes is due and payable, segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such

Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

Section 2.5

Noteholder Lists

. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Noteholders. If the Trustee is not the Primary Registrar, the Company shall furnish to the Trustee on or before each semiannual interest payment date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders.

Section 2.6

Transfer and Exchange

. Subject to compliance with any applicable additional requirements contained in

Section 2.14, when a Note is presented to a Registrar with a request to register a transfer thereof or to exchange such Note for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met; *provided, however*, that every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form in the applicable form included in Exhibit A, and in form satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Note for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.03, the Company shall execute and the Trustee shall authenticate Notes of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto, and *provided*, that this sentence shall not apply to any exchange pursuant to Section 2.10, Section 3.04, Section 9.03(b) or Section 10.02(g) not involving any transfer.

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

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

Each Holder of a Note agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.7

Replacement Notes

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

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

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

Every new Note issued pursuant to this Section 2.07 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and

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shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

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

Section 2.8

Outstanding Notes

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

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Company receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If a Paying Agent holds at 11:00 a.m., New York City time, on the Maturity Date Cash sufficient to pay the principal amount of the Notes payable on that date, then on and after the Maturity Date, such Notes shall cease to be outstanding and the principal amount thereof shall cease to bear interest.

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

Section 2.9

Treasury Notes

. In determining whether the Holders of the required principal amount of Notes have concurred in any notice, direction, waiver or consent, Notes owned by the Company or any other obligor on the Notes or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded; *provided, however*, that this Section 2.09 shall not apply to any applicable Notes owned by an Initial Purchaser, or a Sponsor Purchaser to which such Notes are transferred in compliance with the applicable provisions of the Note Purchase Agreement, that is deemed to be an Affiliate of the Company solely by virtue of a nominee of Sponsor serving as a director on the Board of Directors other than any such Notes that were transferred to a holder that is not an Initial Purchaser or a Sponsor Purchaser after the Issue Date that were subsequently reacquired by an Initial Purchaser or a Sponsor Purchaser if and for so long as there is a Board Designee (as defined in the Note Purchase Agreement) on the Board of Directors. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Company or any other obligor on the Notes or any Affiliate of the Company or of such other obligor. Any Notes or shares of Common Stock issued upon the conversion of Notes that are purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold

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pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Notes or shares of Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

Section 2.10 Temporary Notes

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

Section 2.11 Cancellation

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

Section 2.12 CUSIP Numbers

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

Section 2.13 Book-entry Provisions For Global Notes

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(a) Transfers of Global Notes shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. In addition, Certificated Notes shall be transferred to all beneficial owners, as identified by the Depositary, in exchange for their beneficial interests in Global Notes only if (i) the Depositary notifies the Company that the Depositary is unwilling or unable to continue as depositary for any Global Note (or the Depositary ceases to be a "clearing agency" registered under Section 17A of the Exchange Act) and a successor Depositary is not appointed by the Company within 90 days of such notice or cessation or (ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the Depositary to issue Certificated Notes.

(b) In connection with the transfer of a Global Note in its entirety to beneficial owners pursuant to Section 2.13(a), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations.

(c) Any Certificated Note constituting a Restricted Certificated Note or an IAI Certificated Note delivered in exchange for an interest in a Global Note pursuant to Section 2.13(a) shall, except as otherwise provided by Section 2.14, bear the Restricted Note Legend or the IAI Note Legend, as applicable.

(d) The Holder of any Global Note may grant proxies and otherwise authorize any

Person to take any action that a Holder is entitled to take under this Indenture or the Notes. Section 2.14 Special Transfer Provisions .

(a) The Initial Purchasers, the Sponsor Purchasers and the Bank Purchaser may only transfer Notes in accordance with the Note Purchase Agreement, *provided*, such transfers also comply with the transfer restrictions set forth in the IAI Note Legend. Unless and until the Trustee receives written notice from the Company or a Holder that a transfer of a Note has not been made in compliance with the Note Purchase Agreement, the Trustee may assume without inquiry that such transfer was made in accordance with the Note Purchase Agreement.

(b) Notwithstanding any other provisions of this Indenture, but except as provided in Section 2.14(c), a Global Note may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) Every Note that bears or is required under this Section 2.14(c) to bear the Restricted Note Legend or the IAI Note Legend, and any Common Stock that bears or is required under this Section 2.14(c) to bear the Restricted Common Stock Legend or the IAI Common Stock Legend (collectively, the "Restricted Securities") shall be subject to the restrictions on transfer set forth in the Restricted Note Legend, the IAI Note Legend, the Restricted Common Stock Legend or the IAI Common Stock Legend, as the case may be, unless such restrictions on transfer shall be waived by written consent of the Company, and the holder of each such Restricted Security, by such Notes holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.14(c), the term "transfer" encompasses any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof), and any stock certificate representing shares of Common Stock issued upon

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conversion of any Note, shall bear a Restricted Note Legend, IAI Note Legend, Restricted Common Stock Legend or

IAI Common Stock Legend, as the case may be, unless such Note or such shares of Common Stock have been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 or any similar provision then in force, or such shares of Common Stock have been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has been declared effective under the Securities Act or pursuant to Rule 144 under the Securities Act, or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms or as to conditions for removal of the Restricted Note Legend set forth therein have been satisfied may, upon surrender of such Note for exchange to the Registrar in accordance with the provisions of Section 2.06, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restricted Note Legend. If the Restricted Note surrendered for exchange is represented by a Global Note bearing the Restricted Note Legend, the principal amount of the legended Global Note shall be reduced by the appropriate principal amount and the principal amount of a Global Note without the Restricted Note Legend shall be increased by an equal principal amount. If a Global Note without the Restricted Note Legend is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver an unlegended Global Note to the Depositary.

Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Common Stock Legend set forth therein have been satisfied may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear the Restricted Common Stock Legend required by this Section 2.14.

(d) By its acceptance of any Note bearing the Restricted Note Legend or the IAI Note Legend, as the case may be, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Restricted Note Legend or the IAI Note Legend, as the case may be, and agrees that it will transfer such Note only as provided in this Indenture and as permitted by applicable law.

(e) The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.13 or this Section 2.14. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time during normal hours of operation of the Registrar upon the giving of reasonable notice to the Registrar.

ARTICLE 3.

PURCHASES

Section 3.1 Repurchase At the Option of the Holder

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(a) If there shall have occurred a Fundamental Change, each Holder shall have the right, at such Holder’s option, to require the Company to purchase for Cash all or any portion of such Holder’s Notes in integral multiples of $1,000 principal amount on a date selected by the Company (the “Fundamental Change Purchase Date”), which Fundamental Change Purchase Date shall be no later than 35 Trading Days after the occurrence of such Fundamental Change, unless such 35 Trading Days would not provide Holders with at least 20 Trading Days’ notice, in which event the Fundamental Change Purchase Date shall be the day that provides the shortest period necessary to provide 20 Trading Days’ notice as required by subsection (b) of this Section 3.01, at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest to, but excluding, the Fundamental Change Purchase Date (the “Fundamental Change Purchase Price”), subject to satisfaction by or on behalf of the Holder of the

requirements set forth in Section 3.01(c); provided that if the Fundamental Change Purchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, interest accrued to the Interest Payment Date will be paid to Holders of the Notes as of the preceding Regular Record Date.

A "Fundamental Change" shall be deemed to have occurred at such time as either of the following events shall occur:

(i) any person or group, other than the Company, its Subsidiaries or any employee benefits plan of the Company or its Subsidiaries, files a Schedule 13D or Schedule TO) or any successor schedule, form or report) pursuant to the Exchange Act, disclosing that such person has become the beneficial owner of shares with a majority of the total voting power of the Company's outstanding Voting Securities; unless such beneficial ownership arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act;

(ii) the Company consolidates with or merges with or into another person (other than a Subsidiary of the Company), or sells, conveys, transfers, leases or otherwise disposes of all or substantially all of its properties and assets to any person (other than a Subsidiary of the Company) or any person (other than a Subsidiary of the Company) consolidates with or merges with or into the Company, and the outstanding Voting Securities of the Company are reclassified into, converted for or converted into the right to receive any other property or security, provided that none of these circumstances will be a Fundamental Change if persons that beneficially own the Voting Securities of the Company immediately prior to the transaction own, directly or indirectly, shares with a majority of the total voting power of all outstanding Voting Securities of the surviving or transferee person immediately after the transaction in substantially the same proportion as their

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ownership of the Company's Voting Securities immediately prior to the transaction, and *provided* that for the avoidance of doubt, notwithstanding anything herein to the contrary, non-exclusive licenses by the Company shall not be deemed a sale, conveyance, transfer, lease or other disposition;

(iii) the Company's stockholders or Board of Directors adopts a plan for the liquidation or dissolution of the Company; or

(iv) upon the occurrence of a Termination of Trading.

For purposes of defining a Fundamental Change:

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

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

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

Notwithstanding the foregoing, it will not constitute a Fundamental Change if both (x) at least 90% of the consideration for the Common Stock (excluding Cash payments for fractional shares and Cash payments made in respect of dissenter's appraisal rights and Cash payments of the Required Cash Amount, if any) in the transaction or transactions otherwise constituting the Fundamental Change consists of common stock, together with any associated

rights, traded on a U.S. national securities exchange or approved for trading on an established U.S. system of automated dissemination of quotations of securities prices, or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change, and (y) as a result of such transaction or transactions the Notes become convertible solely into such common stock and associated rights (subject to settlement upon conversion in the manner contemplated by Section 10.01, using the value of such common stock and associated rights for reference).

(b) As promptly as practicable following the date the Company publicly announces the Fundamental Change transaction, but in no event less than 20 Trading Days prior to the anticipated effective date of a Fundamental Change in the case of a Fundamental Change within the control of the Company or of which the Company has at least 30 Trading Days prior notice, the Company shall mail a written notice of Fundamental Change by first-class mail to the Trustee and to each Holder at their addresses shown in the register of the Registrar (and to beneficial owners as required by applicable law). The notice shall include a form of Fundamental Change Purchase Notice to be completed by the Noteholder and shall state:

(i) briefly, the events causing such Fundamental Change;

(ii) the anticipated effective date of such Fundamental Change;

(iii) the date by which the Fundamental Change Purchase Notice pursuant

to this Section 3.01 must be given;

(iv) the Fundamental Change Purchase Price;

(v) the Fundamental Change Purchase Date;

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

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

(viii) that Notes with respect to which a Fundamental Change Purchase

Notice has been given by the Holder may be converted pursuant to Article 10 hereof only if the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(ix) briefly, the procedures a Holder must follow to exercise rights under this Section 3.01;

(x) that Notes must be surrendered to the Paying Agent to collect payment

of the Fundamental Change Purchase Price;

(xi) that the Fundamental Change Purchase Price for any Note as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn, together with any accrued interest payable with respect thereto, will be paid on or prior to the third Trading Day following the later of the Fundamental Change Purchase Date and the time of surrender of such Note;

(xii) briefly, the conversion rights of the Notes;

(xiii) the procedures for withdrawing a Fundamental Change Purchase

Notice;

(xiv) that, unless the Company defaults in making payment of such Fundamental Change Purchase Price and interest due, if any, interest on Notes surrendered for purchase will cease to accrue on and after the Fundamental Change Purchase Date; and

(xv) the CUSIP number of the Notes.

(c) A Holder may exercise its rights specified in Section 3.01(a) by delivery of a written notice of purchase (a "Fundamental Change Purchase Notice") to the Paying Agent at any time prior to the Close of Business on the Fundamental Change Purchase Date, stating:

(i) the certificate number of the Note which the Holder will deliver to be purchased, if Certificated Notes have been issued, or notice compliant with the relevant DTC procedures if the Notes are not certificated;

(ii) the portion of the principal amount of the Note which the Holder will deliver to be purchased, which portion must be $1,000 or an integral multiple thereof; and

(iii) that such Note shall be purchased pursuant to the terms and conditions specified in this Article 3.

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

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

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.01 shall be consummated by the delivery of the consideration to be received by the Holder (together with accrued and unpaid interest) on or prior to the third Business Day following the later of the Fundamental Change Purchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 3.01.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 3.01(c) shall have the right to withdraw such Fundamental Change Purchase Notice at any time prior to the Close of Business on the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.02.

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

There shall be no purchase of any Notes pursuant to this Section 3.01 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Notes, of the required Fundamental Change Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Fundamental Change Purchase Price). The Paying Agent will promptly return to the respective Holders thereof any Notes (x) with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change

Purchase Price) in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.2 Effect of Fundamental Change Purchase Notice

.

(a) Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 3.01(c), the Holder of the Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Purchase Price and any accrued and unpaid interest, with respect to such Note. Such Fundamental Change Purchase Price and interest shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on or prior to the third Business Day following the later of (x) the Fundamental Change Purchase Date, with respect to such Note (provided the conditions in Section 3.01(c) have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01(c). Notes in respect of which a Fundamental Change Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

(b) A Fundamental Change Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Fundamental Change Purchase Notice at any time prior to the Close of Business on the Fundamental Change Purchase Date specifying:

(i) the certificate number of the Note which the Holder will deliver to be purchased, if Certificated Notes have been issued, or notice compliant with the relevant DTC procedures, if the Notes are not certificated,

(ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note which remains subject to the original Fundamental Change Purchase Notice and which has been or will be delivered for purchase by the Company.

A written notice of withdrawal of a Fundamental Change Purchase Notice may be in the form set forth in the preceding paragraph.

Section 3.3 Deposit of Fundamental Change Purchase Price

. Prior to 1:00 p.m. (New York City time) on or prior to the third Business Day following the

Fundamental Change Purchase Date, the Company shall deposit with the Trustee or with the Paying

Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Trading Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof which are to be purchased as of the Fundamental Change Purchase Date.

If the Trustee or the Paying Agent holds money sufficient to pay the Fundamental Change Purchase Price of a Note on the third Business Day following the Fundamental Change Purchase Date in accordance with the terms hereof, then, immediately after the Fundamental Change Purchase Date, interest on such Note will cease to accrue, whether or not the Note is delivered to the Trustee or the Paying Agent, and all other rights of the holder shall terminate, other than the right to receive the Fundamental Change Purchase Price upon delivery of the Note.

Section 3.4

Notes Purchased In Part

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

Section 3.5 Covenant To Comply With Securities Laws Upon Repurchase of Notes

. When complying with the provisions of Section 3.01 (provided, that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions available under applicable law, the Company shall:

(a) comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act, as applicable;

(b) file the related Schedule TO (or any successor schedule, form or report) if required under the Exchange Act, as applicable;

(c) otherwise comply with all federal and state securities laws so as to permit the rights and obligations under Section 3.01 to be exercised in the time and in the manner specified therein.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.01, the Company's compliance with such laws and regulations shall not in and of itself cause a breach of its obligations under Section 3.01.

ARTICLE 4.

COVENANTS

Section 4.1

Payment of Notes

.

(a) The Company agrees to pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and the Indenture. Not later than 10:00 a.m. (New York City time) on the due date of any principal of or interest on any Notes, or any purchase price of the Notes, the Company will deposit with the Trustee (or Paying Agent) money in immediately available funds sufficient to pay such amounts, provided that if the Company or any Affiliate of the Company is acting as Paying Agent, it will, on or before each due date, segregate and hold in a separate trust fund for the benefit of the Holders a sum of money sufficient to pay such amounts until paid to such Holders or otherwise disposed of as provided in the Indenture. In each case the Company will promptly notify the Trustee of its compliance with this paragraph.

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

(c) The Company agrees to pay interest on overdue principal, and, to the extent lawful, overdue installments of interest at the rate per annum specified in the Notes plus 2%.

(d) Payments in respect of the Notes represented by the Global Notes are to be made by wire transfer of immediately available funds to the accounts specified by the Holders of the Global Notes. With respect to Certificated Notes, the Company will make all payments by wire transfer of immediately available funds to the accounts specified by the Holders thereof or, if no such account is specified, by mailing a check to each Holder’s registered address.

Section 4.2 Maintenance of Office or Agency

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

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

Section 4.3

Existence

. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and the material rights and franchises of the Company, except in the case of such rights and franchises, where

the failure to do so would not have a material adverse effect on the business of the Company and its subsidiaries, taken as a whole, or the Company has otherwise determined that it is not in the best interest of the Company to do so; and provided further that this Section does not prohibit any transaction otherwise permitted by Section 5.01.

Section 4.4 Rule 144A Information and Annual Reports

.

(a) At any time the Company is not subject to Sections 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any Noteholder, beneficial owner or prospective purchaser of Notes or any shares of Common Stock issued upon conversion of any Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A under the Securities Act.

(b) The Company shall deliver to the Trustee, such annual, quarterly and current reports or other information and documents that are required to be filed with the Commission, copies of the Company's annual reports (which shall contain audited financial statements of the Company), and quarterly and current reports and of the other information and documents (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act at the time the Company is required to file such annual, quarterly and current reports and other information and documents; provided that any such annual, quarterly and current reports, other information or documents required to be filed with the Commission shall be deemed delivered to the Trustee at the same time the same is filed with the Commission. The Company shall be deemed to have complied with the previous sentence to the extent that the Company shall have filed or furnished such annual, quarterly and current reports or other information and documents to the SEC via EDGAR (or any successor electronic delivery procedure). In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, the Company shall continue to provide the Trustee and, upon written request, to each Noteholder, annual, quarterly and current reports or other information and documents containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In

such event, such annual, quarterly and current reports shall be provided at the times the Company would have been required to provide the applicable report had it continued to have been subject to such reporting requirements.

Section 4.5

Reports to Trustee

.

(a) The Company will deliver to the Trustee within 120 days after the end of each fiscal year a certificate from the principal executive, financial or accounting officer of the Company stating that the officer has conducted or supervised a review of the activities of the Company and its Subsidiaries and their performance under the Indenture and that, based upon such review, the Company has fulfilled its obligations hereunder or, if there has been a Default, specifying the Default and its nature and status.

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

Section 4.6 Stay, Extension and Usury Laws

. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (in each case, to the extent that it may lawfully do so) hereby covenants that it will not, by resort to any such law to the extent it would hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.7

Payment of Additional Interest

. If Additional Interest is payable by the Company pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable, (ii) the reason why such Additional Interest is payable and (iii) the date on which such Additional Interest is payable. Unless and until a Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

ARTICLE 5.

CONSOLIDATION, MERGER, SALE OR LEASE OF ASSETS

Section 5.1 Consolidation, Merger, Sale or Lease of Assets by the Company

.

(a) The Company, without the consent of the Holders of any of the outstanding Notes, may

(i) consolidate with or merge with or into any Person, or

(ii) sell, convey, transfer, or otherwise dispose of or lease all or substantially all of its assets as an entirety or substantially an entirety, in one transaction or a series of related transactions, to any Person;

provided, that

(A) either (x) the Company is the continuing Person or (y) the resulting, surviving or transferee Person is a corporation, partnership, limited liability company or trust organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly assumes by supplemental indenture all of the obligations of the Company under the Indenture and the Notes and the Registration Rights Agreement;

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

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

provided, however, that in the event of a consolidation or merger of a wholly-owned subsidiary of the Company with and into the Company, the Company shall not be required to deliver such certificate or opinion.

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

ARTICLE 6.
DEFAULT AND REMEDIES

Section 6.1 Events of Default

. An "Event of Default" occurs with respect to the Notes if:

(a) the Company defaults in the payment of the principal of any Note, or any Fundamental Change Purchase Price when the same becomes due and payable on the Maturity Date, on the Fundamental Change Purchase Date, upon acceleration, or otherwise;

(b) the Company fails to provide the notice required by Section 3.01(b) on a timely basis;

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

(d) the Company fails to deliver all cash and any shares of Common Stock when such cash and Common Stock, if any, are required to be delivered upon conversion of a Note, and the Company does not remedy such default within 10 days;

(e) the Company fails to comply with any other covenant or agreement of the Company in the Indenture or the Notes and the default or breach continues for a period of 60 consecutive days after receipt of written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Notes then outstanding; provided, however, that the Company shall have 120 days after receipt of such notice to remedy, or receive a waiver for, any failure to comply with Section 4.04(b) of this Indenture so long as the Company is attempting to cure such failure as promptly as reasonably practicable;

(f) (i) the failure by the Company to make any payment by the end of any applicable grace period after maturity of any principal and/or accrued interest with respect to Debt, where the amount of such unpaid and due principal and/or accrued interest is in an aggregate amount in excess of $100,000,000, or (ii) there is an acceleration of any principal and/or accrued interest with respect to Debt where the amount of such accelerated principal and interest is in an amount in excess of $100,000,000 because of a default with respect to such Debt; in any such case of (i) or (ii), without such Debt having been paid or discharged or such acceleration having been cured, waived, rescinded or annulled within a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding; provided, however, if any such failure or acceleration referred to in (i) or (ii) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred and any acceleration hereunder as a result of the related Event of Default shall be automatically rescinded;

(g) the Company or any Significant Subsidiary, pursuant to or under or within the meaning of any Bankruptcy Law,

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

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the Company or any Significant Subsidiary in an involuntary case or proceeding, or adjudicates the Company or any Significant Subsidiary insolvent or bankrupt; (ii) appoints any receiver, trustee, assignee, liquidator, custodian or similar official of the Company or any Significant Subsidiary or for any substantial part of its property; or (iii) orders the winding up or liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 60 days (an event of default specified in clause (g) or (h) a “Bankruptcy Default”).

Section 6.2

Acceleration

.

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

(b) The Holders of a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may waive all past defaults and rescind and annul a declaration of acceleration with respect to such Notes and its consequences if:

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

(ii) the rescission would not conflict with any judgment or decree of a

court of competent jurisdiction.

Section 6.3 Other Remedies

. If an Event of Default occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

Section 6.4

Waiver of Past Defaults

. Except as otherwise provided in Sections 6.02, 6.07 and 9.02(b), the Holders of a majority in principal amount of the outstanding Notes may, by notice to the Trustee, waive an existing Default and its consequences. Upon such waiver, the Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.5

Control by Majority

. The Holders of a majority in aggregate principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders of Notes not joining in the giving of such direction, and may take any other action it deems proper that is not inconsistent with any such direction received from Holders of Notes.

Section 6.6

Limitation on Suits

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

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

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

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

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

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

Section 6.7 Rights of Holders to Receive Payment

. Notwithstanding anything to the contrary, the right of a Holder of a Note to receive payment of principal of or interest on its Note on or after the Stated Maturities thereof, or to bring suit for the enforcement of any such payment on or after such respective dates, may not be impaired or affected without the consent of that Holder.

Section 6.8

Collection Suit by Trustee

. If an Event of Default in payment of principal or interest specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust for the whole amount

of principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent lawful, overdue installments of interest, in each case at the rate specified in the Notes, and such further amount as is sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee hereunder.

Section 6.9 Trustee May File Proofs of Claim

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

Section 6.10 Priorities

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

First: to the Trustee for all amounts due hereunder;

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

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

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

Section 6.11 Restoration of Rights and Remedies

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

Section 6.12 Undertaking for Costs

. In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good

faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by a Holder to enforce payment of principal of or interest on any Note on the respective due dates, or a suit by Holders of more than 10% in principal amount of the outstanding Notes.

Section 6.13 Rights and Remedies Cumulative

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

Section 6.14 Delay or Omission Not Waiver

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

ARTICLE 7.

THE TRUSTEE

Section 7.1

General

.

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

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

(c) No provision of the Indenture shall be construed to relieve the Trustee from

liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

Section 7.2

Certain Rights of Trustee

. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) In the absence of bad faith on its part, the Trustee may rely, and will be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but, in the case of any document which is specifically required to be furnished to the Trustee pursuant to any provision hereof, the Trustee shall examine the document to determine whether it conforms to the requirements of the Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). The Trustee, in its discretion, may make further inquiry or investigation into such facts or matters as it sees fit.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel conforming to Section 12.06 and the Trustee will not be liable for any action it takes or omits to take in good faith in reliance on the certificate or opinion.

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

(d) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders, unless such Holders have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

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

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

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

Section 7.3

Individual Rights of Trustee

. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311. For purposes of Trust Indenture Act Section 311(b)(4) and (6):

(a) "cash transaction" means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(b) "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or

merchandise previously constituting the security, provided the security is received by the Trustee

simultaneously with the creation of the creditor relationship arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 7.4

Trustee's Disclaimer

. The Trustee (i) makes no representation as to the validity or adequacy of the Indenture or the Notes, (ii) is not accountable for the Company's use or application of the proceeds from the Notes and (iii) is not responsible for any statement in the Notes other than its certificate of authentication.

Section 7.5

Notice of Default

. If any Default occurs and is continuing and is known to the Trustee, the Trustee will send notice of the Default to each Holder within 90 days after it occurs, unless the Default has been cured; provided that, except in the case of a default in the payment of the principal of or interest on any Note, the Trustee may withhold the notice if and so long as the board of directors, the executive committee or a trust committee of directors of the Trustee in good faith determines that withholding the notice is in the interest of the Holders. Notice to Holders under this Section will be given in the manner and to the extent provided in Trust Indenture Act Section 313(c).

Section 7.6

Reports by Trustee to Holders

. Within 60 days after each May 15, beginning with May 15, 2007, the Trustee will mail to each Holder, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such May 15, if required by Trust Indenture Act Section 313(a), and file such reports with each stock exchange upon which its Notes are listed and with the Commission as required by Trust Indenture Act Section 313(d).

Section 7.7

Compensation and Indemnity

.

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

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

connection with the exercise or performance of any of its powers or duties under the Indenture and the Notes.

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

Section 7.8

Replacement of Trustee

.

(a) The Trustee may resign at any time by written notice to the Company.

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

(ii) If the Trustee is no longer eligible under Section 7.10 or in the circumstances described in Trust Indenture Act Section 310(b), any Holder that satisfies the requirements of Trust Indenture Act Section 310(b) may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

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

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

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

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

(d) Notwithstanding replacement of the Trustee pursuant to this Section, the

Company's obligations under Section 7.07 will continue for the benefit of the retiring Trustee.

(e) The Trustee agrees to give the notices provided for in, and otherwise comply

with, Trust Indenture Act Section 310(b).

Section 7.9 Successor Trustee by Merger

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

Section 7.10 Eligibility

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

Section 7.11 Money Held in Trust

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

ARTICLE 8.

DISCHARGE

Section 8.1 Satisfaction and Discharge of the Indenture

.

(a) This Indenture shall cease to be of further effect if either: (i) all outstanding Notes (other than Notes replaced pursuant to Section 2.07) have been delivered to the Trustee for cancellation or (ii) all outstanding Notes have become due and payable on the Maturity Date or upon repurchase pursuant to Article 3, and the Company irrevocably deposits, prior to the applicable date on which such payment is due and payable, with the Trustee or the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) Cash, and, if applicable as herein provided and in accordance herewith, such other consideration, sufficient to pay all amounts due and owing on all outstanding Notes (other than Notes replaced pursuant to Section 2.07) on the Maturity Date or the Fundamental Change Purchase Date, as the case may be; provided that, in either case, the Company pays to the Trustee all other sums payable hereunder by the Company.

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

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

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.07 shall survive and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the provisions of Section 2.03, Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.12, Section 3.01, Article 5, Article 10 and this Article 8, shall survive and the Company shall be required to make all payments and deliveries required by such Sections or Articles, as the case may be, irrespective of any prior satisfaction and discharge until the Notes have been paid in full.

Section 8.2

Application of Trust Money

. Subject to the provisions of Section 8.03, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 8.01 and shall apply the deposited money in accordance with this Indenture and the Notes to the payment of the principal amount of and interest on the Notes.

Section 8.3

Repayment to Company

. The Trustee and each Paying Agent shall promptly pay to the Company upon request any excess money (x) deposited with them pursuant to Section 8.01 and (y) held by them at any time.

The Trustee and each Paying Agent shall also pay to the Company upon request any money held by them for the payment of the principal amount of Notes or interest thereon that remains unclaimed for two years after a right to such money has matured (which maturity shall occur, for the avoidance of doubt, on the Maturity Date or the Fundamental Change Purchase Date (with respect to any Notes repurchased pursuant to Article 3)). After payment to the Company, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

Section 8.4

Reinstatement

. If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 8.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 8.02; provided, however, that if the Company has made any payment of the principal amount of or interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive any such payment from the money held by the Trustee or such Paying Agent.

ARTICLE 9.

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 9.1 Amendments Without Consent of Holders

. The Company and the Trustee may amend or supplement the Indenture or the Notes without notice to or the consent of any Noteholder:

(a) to cure any ambiguity, omission, defect or inconsistency in the Indenture or the Notes;

(b) to comply with Article 5 or Section 10.12;

(c) to comply with the Trust Indenture Act or any amendment thereto, or to comply with any requirements of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;

(d) to evidence and provide for the acceptance of an appointment hereunder by a successor Trustee;

(e) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(f) to secure the Notes;

(g) to add guarantees with respect to the Notes;

(h) 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;

(i) to add any additional Events of Default;

(j) to comply with the rules of any applicable securities depositary; or

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(k) to make any other change that does not materially adversely affect the rights of any Holder.

Section 9.2 Amendments With Consent of Holders

.

(a) Except as otherwise provided in Section 6.07 or paragraph (b), the Company and the Trustee may amend the Indenture and the Notes with the written consent of the Holders of a majority in principal amount of the outstanding Notes, and the Holders of a majority in principal amount of the outstanding Notes by written notice to the Trustee may waive future compliance by the Company with any provision of the Indenture or the Notes.

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

(i) reduce the principal amount of, Fundamental Change Purchase Price with respect to, or any premium or interest payment on any Note,

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

in the Note,

(iii) change the Stated Maturities of any installment of principal of any Note,

(iv) make any change that adversely affects the Holders' right to convert any Note,

(v) make any change that adversely affects the Holders' right to require the Company to purchase the Notes in accordance with the terms thereof and this Indenture,

(vi) impair the right to convert or receive any principal or interest payment with respect to, a Note, or right to institute suit for the enforcement of any payment with respect to, or conversion of, the Notes, or

(vii) make any change in the percentage of the principal amount of the Notes required for amendments or waivers.

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

(d) An amendment, supplement or waiver under this Section will become effective on receipt by the Trustee of written consents from the Holders of the requisite percentage in principal amount of the outstanding Notes. After an amendment, supplement or waiver under this Section becomes effective, the Company will send to the Holders affected thereby a notice

briefly describing the amendment, supplement or waiver. The Company will send supplemental indentures to Holders upon request. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

(e) With respect to the amendments set forth in Section 9.01 and this Section 9.02, no such amendment to cure any ambiguity, defect or inconsistency made solely to conform the Indenture to the provisions of the description of the Notes as set forth in any final offering memorandum will be deemed to adversely affect the interests of the Noteholders.

Section 9.3

Effect of Consent

.

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

(b) If an amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder to deliver it to the Trustee so that the Trustee may place an appropriate notation of the changed terms on the Note and return it to the Holder, or exchange it for a new Note that reflects the changed terms. The Trustee may also place an appropriate notation on any Note thereafter authenticated. However, the effectiveness of the amendment, supplement or waiver is not affected by any failure to annotate or exchange Notes in this fashion.

Section 9.4 Trustee's Rights and Obligations

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

Section 9.5 Conformity With Trust Indenture Act

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

Section 9.6

Payments for Consents

. Neither the Company nor any of its Subsidiaries or Affiliates may, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or agreed to be paid to all Holders of the Notes that consent, waive or agree to amend such term or provision within the time period set forth in the solicitation documents relating to the consent, waiver or amendment.

ARTICLE 10.

CONVERSION

Section 10.1 Conversion Privilege

.

(a) A Holder of a Note may convert such Note at any time on or prior to the Close of Business on the Business Day immediately preceding the Maturity Date upon the occurrence of any of the events set forth in paragraph 7(a), paragraph 7(b), paragraph 7(c), paragraph 7(d) or paragraph 7(e) of the Notes, subject to the provisions of this Article 10. Except as set forth below under Section 10.01(c) and in Section 10.11 and Section 10.12, if a Holder surrenders its Notes for conversion, such Holder will receive, in respect of each $1,000 of principal amount of Notes to be converted:

(i) Cash in an amount equal to the lesser of (A) $1,000 and (B) the Conversion Value (the "Required Cash Amount"), and

(ii) if the Conversion Value is greater than $1,000, a number of shares of Common Stock (the "Remaining Shares"), equal to the sum of the Daily Share Amounts for each of the twenty consecutive Trading Days in the Conversion Reference Period, subject to the right of the Company to deliver Cash in lieu of all or a portion of such Remaining Shares as described below.

(b) By the Close of Business on the Business Day prior to the first scheduled Trading Day of the applicable Conversion Reference Period, the Company may specify a percentage of the Daily Share Amount that will be settled in Cash (the "Cash Percentage") and will notify the Noteholder of such Cash Percentage through written notice to the

Trustee (the "Cash Percentage Notice"). If the Company elects to specify a Cash Percentage, (x) the amount of Cash that the Company will deliver pursuant to clause (b) of this Section 10.01 in respect of each Trading Day in the applicable Conversion Reference Period will equal the product of: (i) the Cash Percentage, (ii) the Daily Share Amount for such Trading Day, and (iii) the Volume Weighted Average Price of the Common Stock for such Trading Day and (y) the number of shares of Common Stock deliverable in respect of each Business Day in the applicable Conversion Reference Period (in lieu of the full Daily Share Amount for such Trading Day pursuant to clause (b) above) will be a percentage of the Daily Share Amount equal to 100% minus the Cash Percentage. If the Company does not specify a Cash Percentage by the Close of Business on the Trading Day prior to the first

scheduled Trading Day of the applicable Conversion Reference Period, the Company shall settle 100% of the Daily Share Amount for each Trading Day in the applicable Conversion Reference Period with shares of Common Stock; provided, however, that the Company will pay Cash in lieu of fractional shares otherwise issuable upon conversion of such Note, pursuant to Section 10.03 hereof. The Company may, at its option, revoke any Cash Percentage Notice through written notice to the Trustee by the Close of Business on the Business Day prior to the scheduled first Trading Day of the applicable Conversion Reference Period.

(c) Notwithstanding anything herein to the contrary, the Company shall not be obligated to deliver shares in connection with any conversion of Notes if to do so would constitute a violation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, any foreign antitrust requirements or any similar laws ("Antitrust Laws") and, to the extent the Company has elected to settle the Conversion Value in excess of the Required Cash Amount in shares (or is required to do so because it has not made any election to the contrary), the Company may defer delivery of the Remaining Shares until permitted under such laws (although such shares will be delivered promptly to the maximum extent permitted) and for avoidance of doubt, in no such event shall the Company be required to deliver cash in lieu of the Remaining Shares. In this regard, in the event of any conversion by any Initial Purchaser or any Sponsor Purchaser while there is an Affiliate or representative of any Initial Purchaser or any Sponsor Purchaser on the Board of Directors or, in any event, prior to the Designee Termination Date (as defined in the Note Purchase Agreement), in connection with and prior to such conversion, such Person will either (i) certify to the Company that no filings or clearances are required under Antitrust Laws and delivery of shares issued upon such conversion would not violate any Antitrust Laws (and, if requested, provide reasonably detailed information supporting such determination), or (ii) certify that such filings or clearances are required, in which case such Person and the Company will provide reasonable cooperation with one another in connection with the making of such filings and obtaining of such clearances and such Person shall acknowledge that the Remaining Shares (or such portion of the Remaining Shares as to which restrictions under Antitrust Laws are applicable) shall not be required to be delivered until such time as all such filings have been made and such clearances obtained (including the expiration of any applicable waiting periods) or are no longer required. For purposes of the foregoing certifications, it will be assumed that the maximum number of Remaining Shares of Common Stock deliverable upon conversion of the Notes would be delivered. In connection with a certification pursuant to clause (i), such certification may be based on an irrevocable commitment to sell immediately upon receipt (which will be deemed satisfied if same day) a sufficient number of shares of Common Stock such that no filings or clearances are required under applicable Antitrust Laws in connection with the conversion of such Notes, *provided*, that if such commitment is the basis for such certification, such Person shall furnish reasonable evidence of such commitment in connection with such conversion and certification.

(d) A Holder may convert a portion of the principal amount of a Note if the portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of a Note.

(e) In the event of a stock split, combination, dividend or any other event resulting in an adjustment to the Conversion Rate pursuant to Section 10.06, 10.07, 10.08, 10.09 or 10.10, during the applicable Conversion Reference

Period, appropriate adjustment to the equation for calculating Conversion Value and Remaining Shares shall be made, as determined by the Board of Directors.

(f) Notes with respect to which a Fundamental Change Purchase Notice has been given by the Holder may be converted pursuant to this Article 10 only if the Fundamental Change Purchase Notice has been withdrawn in accordance with Section 3.02.

(g) Whenever any event described in paragraph 7(a), paragraph 7(b), paragraph 7(c), paragraph 7(d) or paragraph 7 (e) of the Notes shall occur such that the Notes become convertible as provided in this Article 10, the Company shall (x) issue a press release and use its reasonable efforts to post such information on its website or otherwise publicly disclose this information or (y) promptly deliver, in accordance with Section 12.03, written notice of the convertibility of the Notes to the Trustee and each Noteholder and to the Conversion Agent for the benefit of the Noteholders, which press release, website posting, public disclosure or written notice, as the case may be, shall include:

(i) a description of such event;

(ii) a description of the periods during which the Notes shall be convertible as provided in paragraph 7(a), paragraph 7(b), paragraph 7(c), paragraph 7(d) or paragraph 7(e) of the Notes as a result of such event;

(iii) a statement of whether an adjustment to the Conversion Rate shall take

effect in respect of such event pursuant to Section 10.13; and

(iv) the procedures Noteholders must follow to convert their Notes in

accordance with this Article 10, including the name and address of the Conversion Agent. Section 10.2 Conversion Procedure .

(a) To convert a Note represented by a Global Note, a Noteholder must convert by book-entry transfer to the Conversion Agent through the facilities of the DTC. To convert a Note that is represented by a Certificated Note, a Noteholder must (1) complete and manually sign a Conversion Notice, a form of which is on the back of the Note, and deliver such Conversion Notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) if required by the Conversion Agent, furnish appropriate endorsement and transfer documents, and (4) if required, pay all transfer or similar taxes. The Conversion Agent shall, within one (1) Business Day of any Conversion Date, provide notice to the Company, as set forth in Section 12.03, of the occurrence of such Conversion Date.

(b) As promptly as practicable following the end of the Conversion Reference Period applicable to the Notes being converted, the Company shall deliver to the Holder, through the Conversion Agent, the Required Cash Amount and Remaining Shares, if any (including Cash in lieu of Remaining Shares pursuant to Section 10.01 hereof and Cash in lieu of fractional shares pursuant to Section 10.03 hereof). The person in whose name the certificate representing any shares is registered shall be treated as a stockholder of record on and after the last Trading Day of the Conversion Reference Period; provided, however, that no surrender of a Note on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the Remaining Shares upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the Close of Business on the next succeeding day on which such stock transfer books are open. Upon conversion of a Note, such person shall no longer be a Holder of such Note.

(c) No payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 10. Upon conversion of a Note, a Noteholder will not receive, except as described below, any Cash payment representing accrued interest. Instead, accrued interest will be deemed paid by the

Cash and/or shares of common stock, if any, received by the Noteholder upon conversion. Delivery to the Noteholder of such Cash and/or shares of Common Stock will thus be deemed (1) to satisfy the Company's obligation to pay the principal amount of a Note, and (2) to satisfy the Company's obligation to pay accrued and unpaid interest on the Note. As a result, upon conversion of a Note, accrued and unpaid interest on such Note is deemed paid in full rather than cancelled, extinguished or forfeited.

(d) Holders of Notes surrendered for conversion during the period from the Close of Business on any Regular Record Date next preceding any Interest Payment Date to the opening of business of such Interest Payment Date will receive the semiannual interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion, and such Notes upon surrender must be accompanied by funds equal to the amount of such payment; provided that no such payment need be made (x) in connection with any conversion following the Regular Record Date immediately preceding the Maturity Date, (y) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date or (z) to the extent of any Defaulted Interest, if any Defaulted Interest exists at the time of conversion with respect to such Note. The Company shall not be required to convert any Notes that are surrendered for conversion without payment of interest as required by this paragraph.

(e) If the Holder converts more than one Note at the same time, the Required Cash Amount and the Remaining Shares, if any (together with the Cash payment, if any, in lieu of fractional shares) shall be based on the total principal amount of the Notes converted.

(f) If the last day on which a Note may be converted is a Legal Holiday, the Note may be surrendered on the next succeeding day that is not a Legal Holiday.

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

Section 10.3 Fractional Shares

. The Company will not issue a fractional share of Common Stock upon conversion of a Note. Instead, the Company will deliver Cash in lieu of a fractional share based on arithmetic average of the Volume Weighted Average Price of Common Stock for each of the twenty consecutive Trading Days of the Conversion Reference Period, rounded to the nearest whole cent (the "Average Price").

Section 10.4 Taxes On Conversion

. If a Holder converts a Note, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the Common Stock is to be delivered in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

Section 10.5 Company To Provide Common Stock

.

The Company shall at all times have authorized and reserved and keep available for issuance a sufficient number of shares of Common Stock to permit the delivery in respect of all outstanding Notes of the number of Remaining Shares

due upon conversion, including as may be adjusted for share splits, combinations or other similar transactions (assuming, for purposes of this sentence, that the Company elects to deliver solely shares of Common Stock in respect of its obligation to deliver the Remaining Shares).

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

The Company will comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon payment of the Remaining Shares, if applicable, upon conversion of Notes, if any, and will list or cause to have quoted such shares of Common Stock on

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each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

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

Section 10.6 Adjustment for Change In Capital Stock

.

(a) If the Company shall, at any time and from time to time while any of the Notes are outstanding, issue a dividend or make a distribution on its Common Stock payable in shares of its Common Stock to all holders of its Common Stock, then the Conversion Rate at the opening of business on the Ex-Dividend Date for such dividend or distribution will be adjusted by multiplying such Conversion Rate by a fraction:

(i) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the Close of Business on the Business Day immediately preceding the Ex-Dividend Date for such dividend or distribution, plus the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the Business Day immediately preceding such Ex-Dividend Date.

If any dividend or distribution of the type described in this Section 10.06(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared. Except as set forth in the preceding sentence, in no event shall the Conversion Rate be decreased pursuant to this Section 10.06(a).

(b) If the Company shall, at any time or from time to time while any of the Notes are outstanding, subdivide or reclassify its outstanding shares of Common Stock into a greater number of shares of Common Stock, then the Conversion Rate in effect at the opening of business on the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, if the Company shall, at any time or from time to time while any of the Notes are outstanding, combine or reclassify its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then the Conversion Rate in effect at the opening of business on the day upon which such combination or reclassification becomes effective shall be proportionately decreased. In each such case, the Conversion Rate shall be adjusted by multiplying such

Conversion Rate by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding

immediately after giving effect to such subdivision, combination or reclassification and the denominator of which shall be the number of shares of Common Stock

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

Section 10.7 Adjustment for Rights Issue

. If the Company shall, at any time or from time to time while the Notes are outstanding, distribute rights or warrants to all holders of its Common Stock entitling them, for a period expiring within 60 days after the record date for such distribution, to purchase shares of Common Stock at less than the average of the Closing Prices for the five consecutive Trading Days immediately preceding the first public announcement of the distribution, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the Ex-Dividend Date for such distribution by a fraction:

(x) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Business Day immediately preceding the Ex-Dividend Date for such distribution, plus the total number of additional shares of Common Stock so offered for purchase; and

(y) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the Business Day immediately preceding the Ex-Dividend Date for such distribution, plus the number of shares of Common Stock that the aggregate offering price of the total number of shares of Common Stock so offered would purchase at the Current Market Price of the Common Stock on the declaration date for such distribution (determined by multiplying such total number of shares of Common Stock so offered by the exercise price of such rights or warrants and dividing the product so obtained by such Current Market Price).

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution.

To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants or upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so distributed, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if the Ex-Dividend Date for such distribution had not occurred. In determining whether any rights or warrants entitle the holders to purchase shares of Common Stock at less than the average of the Closing Prices for the five consecutive Trading Days immediately preceding the first public announcement of the relevant distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights and the value of such consideration if other than Cash, to be determined in good faith by the Board of Directors. Except as set forth in this paragraph, in no event shall the Conversion Rate be decreased pursuant to this Section 10.07.

Section 10.8 Adjustment for Other Distributions

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(a) If the Company shall, at any time or from time to time while the Notes are outstanding, distribute to all holders of its Common Stock any of its Capital Stock, assets, or debt securities or any rights, warrants or options to purchase securities of the Company (excluding (w) any distribution of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit of the Company referred to in Section 10.08(b) below, (x) any distributions described in Section 10.06(a) above, (y) any rights or warrants described in Section 10.07 above, (z) any all-cash dividends or other cash distributions referred to in Section 10.09 below) (such Capital Stock, assets, debt securities or rights to purchase securities of the Company being distributed hereinafter in this Section 10.08 called the "Distributed Assets"), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect immediately prior to the opening of business on the Ex-Dividend Date with respect to such distribution by a fraction:

(i) the numerator of which will be the Current Market Price of the Common Stock, and

(ii) the denominator of which will be the Current Market Price of the Common Stock minus the fair market value, as determined by the Board of Directors, of the portion of Distributed Assets so distributed applicable to one share of the Common Stock (determined on the basis of the number of shares of Common Stock outstanding on such Ex-Dividend Date).

Such increase shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. In the event that such distribution is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such distribution had not been declared. Except as set forth in the prior sentence, in no event shall the Conversion Rate be decreased pursuant to this Section 10.08(a).

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10.08(a) by reference to the actual or when issued trading market for any Distributed Assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price for purposes of clause (i) above, unless the Board of Directors determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holders.

(b) With respect to an adjustment pursuant to this Section 10.08 where there has been a payment of a dividend or other distribution on Common Stock of shares of capital stock of, or similar equity interests in, a subsidiary or other business unit of the Company, the Conversion Rate will be adjusted by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date with respect to such distribution by a fraction:

(i) the numerator of which shall be (a) the average of the closing sale prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the five Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date for such dividend or distribution on the principal national securities exchange or inter-dealer quotation system on which such securities are then listed or traded, plus (b) the average of the Closing Prices over the five Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date for such dividend or distribution (the "Average Sale Price"), and

(ii) the denominator of which shall be the Average Sale Price.

Section 10.9 Adjustment for Cash Dividends

. If the Company shall, at any time or from time to time while any of the Notes are outstanding, by dividend or otherwise, distribute to all or substantially all holders of its shares of Common Stock, Cash (excluding (x) any distributions described in Section 10.10 below or (y) any dividend or distribution in connection with the Company's liquidation, dissolution or winding up), then the Conversion Rate shall be adjusted so that the same shall equal the rate

determined by multiplying the Conversion Rate in effect immediately prior to the opening of business of the Ex-Dividend Date for such distribution by a fraction:

(x) the numerator of which shall be equal to the Current Market Price per share of Common Stock; and

(y) the denominator of which shall be equal to the Current Market Price per share of Common Stock on such date, less the amount of the distribution per share of Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. In the event that such distribution is not so made, the

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

Section 10.10 Adjustment for Certain Tender Offers or Exchange Offers

. In case the Company or any of its Subsidiaries shall, at any time or from time to time, while any of the Notes are outstanding, distribute Cash or other consideration in respect of a tender offer or an exchange offer (that is treated as a "tender offer" under U.S. federal securities laws) made by the Company or any Subsidiary for all or any portion of the Common Stock, where the sum of the aggregate amount of such Cash distributed and the aggregate fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the Expiration Date (as defined below), of such other consideration distributed (such sum, the "Aggregate Amount") expressed as an amount per share of Common Stock validly tendered or exchanged, and not withdrawn, pursuant to such tender offer or exchange offer as of the Expiration Time (as defined below) (such tendered or exchanged shares of Common

Stock, the "Purchased Shares") exceeds the Closing Price per share of the Common Stock on the first Trading Day immediately following the last date (such last date, the "Expiration Date") on which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as the same may be amended through the Expiration Date), then, and in each case, immediately after the close of business on such date, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Trading Day immediately following the Expiration Date by a fraction:

(x) the numerator of which is equal to the sum of (A) the Aggregate Amount and (B) the product of (I) an amount equal to (1) the number of shares of Common Stock outstanding as of the last time (the "Expiration Time") at which tenders or exchanges could have been made pursuant to such tender offer or exchange offer less (2) the Purchased Shares and (II) the Closing Price per share of the Common Stock on the first Trading Day immediately following the Expiration Date; and

(y) the denominator of which shall be equal to the product of (A) the number of shares of Common Stock outstanding as of the Expiration Time (including all Purchased Shares) and (B) the Closing Price per share of the Common Stock on the first Trading Day immediately following the Expiration Date.

An adjustment, if any, to the Conversion Rate pursuant to this Section 10.10 shall become effective immediately prior to the opening of business on the second Trading Day immediately following the Expiration Date. In the event that the Company or a Subsidiary is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such tender offer or exchange offer had not been made. Except as set forth in the preceding sentence, if the application of this Section 10.10 to any tender offer or exchange offer would

result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section 10.10.

Section 10.11 Provisions Governing Adjustment to Conversion Rate

. Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 (and no adjustment to the Conversion Rate under Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under Section 10.08, except as set forth in Section 10.23. If any such right, option or warrant, including any such existing rights, options or warrants distributed

prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof), except as set forth in Section 10.23. In addition, except as set forth in Section 10.23, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 was made (including any adjustment contemplated in Section 10.23), (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

Section 10.12 Disposition Events

. If any of the following events (any such event, a "Disposition Event") occurs:

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

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

(c) any sale, conveyance, lease, or other disposal of all or substantially all the

properties and assets of the Company to any other Person;

in each case, as a result of which all of the holders of Common Stock shall be entitled to receive Cash, securities or other property for their shares of Common Stock, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in

force at the date of execution of such supplemental indenture, if such supplemental indenture is then required to so comply) providing that notwithstanding the provisions of Section 10.01, and subject to the provisions of paragraph 7 of the Notes, the Conversion Value with respect to each $1,000 principal amount of Notes converted following the effective date of any Disposition Event, shall be calculated based on the kind and amount of Cash, securities or other property (collectively, "Reference Property") received upon the occurrence of such Disposition Event by a holder of Common Stock holding, immediately prior to the transaction, a number of shares of Common Stock equal to the Conversion Rate immediately

prior to such Disposition Event; provided that if the Disposition Event provides the holders of Common Stock with the right to receive more than a single type of consideration determined based in part upon any form of stockholder election, the Reference Property shall be comprised of the weighted average of the types and amounts of consideration received by the holders of the Common Stock.

If the Conversion Value of the Notes shall be based on Reference Property as set forth above, the Company's obligation to deliver the consideration described in Section 10.01 with respect to each $1,000 principal amount of Notes tendered for conversion after the effective date of any such Disposition Event, shall, notwithstanding anything to the contrary set forth in Section 10.01, be settled in Cash and units of Reference Property (if applicable) and the Company shall deliver, as promptly as practicable immediately following the last Trading Day of the Conversion Reference Period:

(1) Cash in an amount equal to the lesser of (A) $1,000 and (B) the Conversion Value, and

(2) if the Conversion Value is greater than $1,000, an amount in Reference Property, determined as set forth in Section 10.01(b), with a fair market value, as determined by the Conversion Agent, equal to the Conversion Value less $1,000; and

(3) an amount in Cash in lieu of any fractional shares of Common Stock, if applicable, calculated based on the Average Price,

provided that, in each case, (x) the Conversion Value and the Daily Share Amounts, shall be determined as if the words "Volume Weighted Average Price per share of Common Stock" in the definition of each such term were replaced by the words "Volume Weighted Average Price per unit of Reference Property composed of the kind and amount of Cash, securities or other property that a holder of one share of Common Stock immediately prior to such Disposition Event would have owned or been entitled to receive," (y) the Volume Weighted Average Price shall be determined with respect to such a unit of Reference Property and (z) references to "Remaining Shares" and "shares of Common Stock" were instead references to "a unit of Reference Property composed of the kind and amount of Cash, securities or other property that a holder of one share of Common Stock immediately prior to such Disposition Event would have owned or been entitled to receive."

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 10. If, in the case of any such Disposition Event, the stock or other securities and assets receivable thereupon by a holder of Common Stock includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Disposition Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Noteholders 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 Noteholder, at the address of such Noteholder as it appears on the register of the Notes 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 10.12 shall similarly apply to successive Disposition

Events.

If this Section 10.12 applies to any event or occurrence, none of Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 shall apply.

Section 10.13 Adjustment to Conversion Rate Upon Change in Control Transactions, Discretionary Adjustment .

(a) If, after the Issue Date, a Change in Control occurs and a Holder elects to convert its Notes in connection with such Change in Control, the Company will increase the Conversion Rate for the Notes surrendered for conversion by a number of additional shares of Common Stock (the "Make-Whole Shares"), as described in this Section 10.13. A conversion of Notes will be deemed for the purposes of this Section 10.13 to be "in connection with" a Change in Control transaction if the notice of conversion of the Notes is received by the Conversion Agent from and including the effective date of the Change in Control transaction up to and including the Trading Day prior to the related Fundamental Change Purchase Date.

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

(c) The Stock Prices set forth in the first row of the table below will be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. In addition, the number of Make-Whole Shares on the table below will be subject to adjustment in the same manner as the Conversion Rate as set forth in Section 10.06 through Section 10.10.

Stock Price	January 26, 2007	February 1, 2008	February 1, 2009	February 1, 2010	February 1, 2011	February 1, 2012
$5.77	34.7	34.7	34.7	34.7	34.7	34.7
$6.00	31.5	31.6	31.3	30.5	29.0	27.9
$7.00	21.2	20.7	19.6	17.9	14.7	4.6
$8.00	14.7	13.9	12.6	10.6	7.2	0.0
$9.00	10.4	9.5	8.2	6.3	3.4	0.0
$10.00	7.5	6.6	5.5	3.8	1.6	0.0
$11.00	5.5	4.7	3.7	2.4	0.8	0.0
$12.00	4.1	3.4	2.5	1.5	0.4	0.0
$13.00	3.0	2.4	1.7	0.9	0.2	0.0

$14.00	2.3	1.8	1.2	0.6	0.1	0.0
$15.00	1.7	1.3	0.8	0.4	0.0	0.0
$16.00	1.3	1.0	0.6	0.2	0.0	0.0
$17.00	1.0	0.7	0.4	0.1	0.0	0.0
$18.00	0.8	0.5	0.3	0.1	0.0	0.0
$19.00	0.6	0.4	0.2	0.0	0.0	0.0
$20.00	0.4	0.3	0.1	0.0	0.0	0.0
$25.00	0.1	0.0	0.0	0.0	0.0	0.0
$30.00	0.0	0.0	0.0	0.0	0.0	0.0

(d) If the exact Stock Prices and Change in Control Effective Dates are not set forth in the table, then: (i) if the Stock Price is between two Stock Prices in the table or the Change in Control Effective Date is between two Change in Control Effective Dates in the table, the Make-Whole Shares issued upon conversion of the Notes will be determined by a straight-line interpolation between the number of Make-Whole Shares set forth for the higher and lower Stock Prices and the earlier and later Change in Control Effective Dates in the table, based on a 365-day year, (ii) if the Stock Price is in excess of $30.00 per share, subject to adjustment as set forth in Section 10.13(c), no Make-Whole Shares will be issued upon conversion of the Notes; and (iii) if the Stock Price is less than $5.77 per share, subject to adjustment as set forth in Section 10.13(c), no Make-Whole Shares will be issued upon conversion of the Notes.

(e) The Company may make such increases in the Conversion Rate, in addition to those required by Sections 10.06, 10.07, 10.08, 10.09 and 10.10 as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(f) To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to holders of record of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and

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such notice shall state the increased Conversion Rate and the period during which it will be in effect.

Section 10.14 When Adjustment May Be Deferred

. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. Any adjustments that are less than 1% of the Conversion Rate shall be carried forward and taken into account in determining any subsequent adjustment. In addition, the Company shall make any carry forward adjustments not otherwise effected upon notice of a required purchase of the notes pursuant to Section 3.01, and on January 1, 2012.

Section 10.15 When No Adjustment Required

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(a) No adjustment need be made for a transaction referred to in Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 if Noteholders participate, without conversion, in the transaction or event that would otherwise give rise to an adjustment pursuant to such Section at the same time as holders of the Common Stock participate with respect to such transaction or event and on the same terms as holders of the Common Stock participate with respect to such transaction or event as if Noteholders, at such time, held a number of shares of Common Stock equal to the

Conversion Rate at such time.

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

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

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

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

(f) The Conversion Rate shall not exceed 173.3482 shares per $1,000 principal amount of the Notes on account of adjustments to the Conversion Rate pursuant to this Article 10, subject to the adjustments set forth in Sections 10.06, 10.07, 10.08, 10.09 and 10.10 above. Further, notwithstanding anything in this Article 10 (subject only to the provisions of the second succeeding sentence), the conversion rate shall not exceed 1,007.2226 per $1,000 principal amount of the Notes, other than as a result of adjustments to the Conversion Rate in the manner set forth in Sections 10.06, 10.07 and 10.08 (such limitations herein referred to as the “Conversion Rate Cap”). The Company shall not take any action if, as a result of such action, the adjustment to the

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Conversion Rate that would otherwise be made pursuant to the provisions of 10.09 or 10.10 would be limited by the Conversion Rate Cap, unless such action would not result in a violation of NASD Rule 4350 as such rule or successor to such rule may be then in effect and interpreted by the NASD. If such action would not result in a violation of NASD Rule 4350, then the Conversion Rate Cap shall not apply to such action taken by the Company.

Section 10.16 Notice of Adjustment

. Whenever the Conversion Rate is adjusted, the Company shall promptly mail to

Noteholders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company’s independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

Section 10.17 Notice of Certain Transactions

. If (a) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 10.06, 10.07, 10.08, 10.09 or 10.10 (unless no adjustment is to occur pursuant to Section 10.14 or Section 10.15), (b) the Company takes any action that would require a supplemental indenture pursuant to Section 10.12, or (c) there is a liquidation or dissolution of the Company, then the Company shall mail to Noteholders and file with the Trustee and the Conversion Agent a notice stating the proposed Ex-Dividend Date for a dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, binding share exchange, transfer, liquidation or dissolution. The Company shall file and mail the notice at least 15 days before such date; provided that if the Company elects to make a distribution described in Section 10.07, Section 10.08, or Section 10.09, and in the case of Section 10.08 or Section 10.09, that has a per share value equal to more than 10% of the Closing Price per share of Common Stock on the day preceding the declaration date for such distribution, the Company shall give notice to Holders at least 20 Trading Days prior to the Ex-dividend Date for such distribution. Failure to file or mail the notice or any defect in it shall not affect the validity of the transaction.

Section 10.18 Right of Holders to Convert

. Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right to convert its Note in accordance with this Article 10 and paragraph 7 of the Notes and to bring an action for the enforcement of any such right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

Section 10.19 Company Determination Final

. The Company shall be responsible for making all calculations called for hereunder and under the Notes. These calculations include, but are not limited to, Conversion Value, the Conversion Date, the Volume Weighted Average Price, the Conversion Reference Period, the

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Closing Price, the Conversion Price, the Required Cash Amount, the Applicable Conversion Rate and the number of shares of Common Stock, if any, to be issued upon conversion of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations will be final and binding on Noteholders. The Company shall provide a schedule of the Company's calculations to the Trustee, and the Trustee is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 10.20 Trustee's Adjustment Disclaimer

. The Trustee has no duty to determine when an adjustment under this Article 10 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under Section 10.12 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Notes. The Trustee shall not be responsible for the Company's failure to comply with this Article 10. Each Conversion Agent shall have the same protection under this Section 10.20 as the Trustee.

Section 10.21 Simultaneous Adjustments

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(a) For purposes of Section 10.08, Section 10.06(a) and Section 10.07, any dividend or distribution to which Section 10.08 is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the debt securities, assets or shares of Capital Stock other than such shares of Common Stock or rights (and any Conversion Rate adjustment required by Section 10.08 with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights (and any further Conversion Rate adjustment required by Section 10.06(a) and Section 10.07 with respect to such dividend or distribution shall then be made), except any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the Business Day immediately preceding such Ex-Dividend Date" within the meaning of Section 10.06(a).

(b) The reclassification of the Common Stock into securities including securities other than Common Stock (other than any reclassification upon an event to which Section 10.12 applies) shall be deemed to involve (a) a distribution of such securities other than the Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be the "Ex-Dividend Date" within the meaning of this Section 10.08), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective," as the case may be, and "the day upon which such

subdivision or combination becomes effective" within the meaning of Section 10.06(b)).

Section 10.22 Successive Adjustments

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

Section 10.23 Rights Issued in Respect of Common Stock Issued Upon Conversion.

In the event the Company adopts or implements a shareholder rights agreement (a "Shareholder Rights Plan") pursuant to which rights ("Rights") are distributed to the holders of Common Stock of the Company and such Shareholder Rights Plan provides that each share of Common Stock issued upon conversion of the Notes at any time prior to the distribution of separate certificates representing such Rights will be entitled to receive such Rights, then there shall not be any adjustment to the conversion privilege or Conversion Rate at any time prior to the distribution of separate certificates representing such Rights. If, however, prior to any conversion, the Rights have separated from the Common Stock, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all holders of the Common Stock, its assets, debt securities or rights as described in Section 10.08 above, subject to readjustment in the event of the expiration, termination or redemption of such Rights.

Section 10.24 Withholding Taxes for Adjustments in Conversion Rate

. The Company may, at its option, set-off withholding taxes due with respect to Notes against payments of Cash and Common Stock on the Notes to the extent required by law. In the case of any such set-off against Common Stock delivered upon conversion of the Notes, such Common Stock shall be valued based on the arithmetic average of the Volume Weighted Average Price for each Trading Day in the relevant Conversion Reference Period.

ARTICLE 11.

PAYMENT OF INTEREST

Section 11.1 Interest Payments

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

Section 11.2 Defaulted Interest

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

(a) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Notes are registered at the Close of Business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment (the "Special Record Date"). The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Notes at his address as it appears on the list of Noteholders maintained pursuant to Section 2.05 not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Notes are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

Section 11.3 Interest Rights Preserved

. Subject to the foregoing provisions of this Article 11 and Section 2.06, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Notes.

ARTICLE 12.

MISCELLANEOUS

Section 12.1 Trust Indenture Act of 1939

. The Indenture shall incorporate and be governed by the provisions of the Trust Indenture

Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

Section 12.2 Noteholder Communications; Noteholder Actions

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

(b) Any request, demand, authorization, direction, notice, consent to amendment, supplement or waiver or other action provided by this Indenture to be given or taken by a Holder (an "act") may be evidenced by an instrument signed by the Holder delivered to the Trustee. The fact and date of the execution of the instrument, or the authority of the person executing it, may be proved in any manner that the Trustee deems sufficient.

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

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

(d) The Company may, but is not obligated to, fix a record date (which need not be within the time limits otherwise prescribed by Trust Indenture Act Section 316(c)) for the purpose of determining the Holders entitled to act with respect to any amendment or waiver or in any other regard, except that during the continuance of an Event of Default, only the Trustee may set a record date as to notices of default, any declaration or acceleration or any other remedies or other consequences of the Event of Default. If a record date is fixed, those Persons that were

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Holders at such record date and only those Persons will be entitled to act, or to revoke any previous act, whether or not those Persons continue to be Holders after the record date. No act will be valid or effective for more than 90 days after the record date.

Section 12.3 Notices

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

if to the Company:
Sun Microsystems, Inc.
4150 Network Circle
Santa Clara, CA 95054
Attention: Michael Dillon
Tel: (650) 960-1300
Fax: (650) 786-2368

if to the Trustee:

U.S. Bank National Association 633 West Fifth Street, 24th Floor Los Angeles, CA 90071

Attention: Corporate Trust Services (Sun Microsystems, Inc. 0.625% Convertible Senior Notes due 2012) Tel: (213)

615-6043 Fax: (213) 615-6197

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

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

(c) Where the Indenture provides for notice, the notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and the waiver will be

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the equivalent of the notice. Waivers of notice by Holders must be filed with the Trustee, but such filing is not a condition precedent to the validity of any action taken in reliance upon such waivers.

Section 12.4 Communication by Holders with Other Holders

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

Section 12.5 Certificate and Opinion as to Conditions Precedent

. Upon any request or application by the Company to the Trustee to take any action under the Indenture, the Company will furnish to the Trustee:

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

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

Section 12.6 Statements Required in Certificate or Opinion

. Each certificate or opinion with respect to compliance with a condition or covenant provided for in the Indenture must include:

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

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

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

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

officials with respect to matters of fact.

Section 12.7 Legal Holiday

. A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Notes, interest shall accrue for the intervening period.

Section 12.8 Rules by Trustee, Paying Agent, Conversion Agent and Registrar

. The Trustee may make reasonable rules for action by or a meeting of Noteholders. The

Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 12.9 Governing Law

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

Section 12.10 No Adverse Interpretation of Other Agreements

. The Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any Subsidiary of the Company, and no such indenture or loan or debt agreement may be used to interpret the Indenture.

Section 12.11 Successors

. All agreements of the Company in the Indenture and the Notes will bind its successors. All agreements of the Trustee in the Indenture will bind its successor.

Section 12.12 Duplicate Originals

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

Section 12.13 Separability

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

Section 12.14 Table of Contents and Headings

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

Section 12.15 No Liability of Directors, Officers, Employees, Incorporators, Members and Stockholders

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

SIGNATURES

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

SUN MICROSYSTEMS, INC.
as Issuer

By:

Name:
Title:

U.S. BANK NATIONAL ASSOCIATION
as Trustee

By:

Name: Paula M. Oswald
Title: Vice President

EXHIBIT A

[FACE OF NOTE]

[Global Notes Legend]

[The following legend shall appear on the face of each Global Note:

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE

DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.]

[The following legend shall appear on the face of each Global Security for which The Depository Trust Company is

to be the Depositary:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK

CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS

REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS

REQUESTED BY THE AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN

AUTHORIZED REPRESENTATIVE OR DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR REGISTERED NOTES IN DEFINITIVE REGISTERED FORM IN THE LIMITED

CIRCUMSTANCES REFERRED TO IN THE INDENTURE, THIS GLOBAL NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OR SUCH SUCCESSOR DEPOSITARY.]

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[IAI Note Legend]

[The following legend shall appear on the face of each IAI Note:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. IN NO EVENT MAY THIS NOTE BE SOLD, ASSIGNED, PLEDGED, LOANED, HEDGED OR OTHERWISE DISPOSED OF OR ENCUMBERED (COLLECTIVELY, A "TRANSFER") BY A SPONSOR PURCHASER PRIOR TO APRIL 26, 2007; PROVIDED, HOWEVER, THAT A SPONSOR PURCHASER MAY TRANSFER A NOTE PRIOR TO SUCH TIME TO AN AFFILIATED ENTITY, PROVIDED THAT SUCH TRANSFEREE IS A SPONSOR

PURCHASER AND AGREES TO BE BOUND BY THE TRANSFER PROVISIONS OF THE INDENTURE, THE NOTE PURCHASE AGREEMENT AND THE REGISTRATION RIGHTS AGREEMENT AND THE TRANSFERING HOLDER AGREES TO CONTINUE TO BE SO BOUND. ANY SPONSOR PURCHASER HOLDING THIS NOTE AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE OTHER THAN DURING THE TIMES DESCRIBED IN THE NOTE PURCHASE AGREEMENT AND ONLY PURSUANT TO (1) A TRANSFER TO THE COMPANY, (2) A PERMITTED TRANSFER, (3) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF

SPONSOR, PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (4) SOLELY IF NO REGISTRATION STATEMENT UNDER THE SECURITIES ACT IS AVAILABLE FOR SUCH SALE, TO A "QUALIFIED INSTITUTIONAL BUYER" THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, OR (5) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO

RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO REGULATION S UNDER THE SECURITIES ACT. NO BANK PURCHASER SHALL TRANSFER THIS NOTE OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT PURSUANT TO A WRITTEN INSTRUCTION BY THE SPONSOR PURCHASERS OR PURSUANT TO A BANK PURCHASER TRANSFER EVENT, IN EACH CASE AS PROVIDED IN THE NOTE PURCHASE AGREEMENT. THIS LEGEND SHALL BE REMOVED, AND REPLACED BY A NEW LEGEND, IN EACH CASE IF APPLICABLE, UPON THE TRANSFER OF THE NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE PURSUANT TO EITHER OF THE TWO IMMEDIATELY PRECEDING SENTENCES. IF THE PROPOSED TRANSFER IS PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY CLAUSE (5) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY OR 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. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS NOTE OR ANY COMMON STOCK

ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT AS PERMITTED BY THE SECURITIES ACT.

THIS NOTE AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE IS ADDITIONALLY SUBJECT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE NOTE PURCHASE AGREEMENT.

IN CONNECTION WITH ANY TRANSFER OF THIS NOTE OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER

INFORMATION, INCLUDING AN “ASSIGNMENT FORM” IN THE FORM ATTACHED TO THE BACK OF THIS NOTE, AS SUCH REGISTRAR OR TRANSFER AGENT MAY REASONABLY REQUEST TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.]

[Restricted Note Legend]

[The following legend shall appear on the face of each Restricted Note:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, AGREES THAT IT WILL NOT PRIOR TO THE DATE THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUANCE OF THIS NOTE EVIDENCED HEREBY AND THE LAST DATE ON WHICH THE COMPANY OR ANY “AFFILIATE” (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY WAS THE OWNER OF THE SECURITY (THE “RESTRICTION TERMINATION DATE”) RESELL OR OTHERWISE TRANSFER THIS NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES

ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE

SECURITIES ACT OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY

APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS NOTE OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT AS PERMITTED BY THE SECURITIES ACT.]

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Sun Microsystems, Inc.

0.625 % Convertible Senior Notes Due February 1, 2012

CUSIP No. [_____][1]

$ _____

No. [_____]

Sun Microsystems, Inc., a Delaware corporation (the “Company,” which term includes any successor under the Indenture hereinafter referred to), for value received, promises to pay to

_____, or its registered assigns, the principal sum of ___ DOLLARS ($ _____) on February 1, 2012[, which principal amount may from time to time be increased or decreased to such other principal amount (which, taken together with the principal amounts of all other outstanding Notes, shall not exceed $350,000,000) by adjustments on the Schedule of Exchanges of Notes on the other side of this Note in accordance with the Indenture.][1]

Initial Interest Rate: 0.625% per annum.

Interest Payment Dates: February 1 and August 1, commencing August 1, 2007.

Regular Record Dates: January 15 and July 15.

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

[1] Include only if the Note is a Global Note

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

Date:

SUN MICROSYSTEMS, INC.

By:

Name:
Title:

Attest:

By:

Name:
Title:

(Form of Trustee's Certificate of Authentication)

This is one of the 0.625% Convertible Senior Notes Due February 1, 2012 described in the Indenture referred to in this Note.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By:

Authorized Signatory

[REVERSE SIDE OF NOTE]

Sun Microsystems, Inc.

0.625% Convertible Senior Notes Due February 1, 2012

1. Principal and Interest.

The Company promises to pay the principal of this Note on February 1, 2012.

The Company promises to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth on the face of this Note, at the rate of 0.625% per annum (subject to adjustment as provided below).

Interest will be payable semiannually in arrears (to the holders of record of the Notes at the close of business on the January 15 or July 15 immediately preceding the interest payment date) on each interest payment date, commencing August 1, 2007.

Interest on this Note will accrue from the most recent date to which interest has been paid on this Note or the Note surrendered in exchange for this Note (or, if there is no existing default in the payment of interest and if this Note is authenticated between a regular record date and the next interest payment date, from such interest payment date) or, if no interest has been paid, from the Issue Date. Interest will be computed in the basis of a 360-day year of twelve 30-day months.

The Company will pay interest on overdue principal, premium, if any, and, to the extent lawful, interest at a rate per annum of 0.625%. Interest not paid when due and any interest on principal, premium or interest not paid when due will be paid to the Persons that are Holders on a special record date, which will established as set forth in the Indenture referred to below.

Additional interest will accrue on the Notes at an additional rate per year equal to 0.25% per annum of the principal amount of the Notes under the circumstances set forth in the Registration Rights Agreement (as defined below).

Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day, without additional interest.

2. Registration Rights Agreement.

The Holder of this Note is entitled to the benefits of the Registration Rights Agreement, dated January 26, 2007, between the Company and the Purchasers named therein (the “Registration Rights Agreement”). In the event of a Registration Default, as defined in the Registration Rights Agreement, the Holder is entitled to additional interest for the period from and including the day following the occurrence of the Registration Default to, but excluding, the earlier of the day on which the Registration Default has been cured or the date on which there are no Registrable

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Securities, as defined in the Registration Rights Agreement. Additional interest will accrue at an additional rate per year equal to 0.25% per annum of the principal amount of the Notes.

3. Method of Payment.

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

4. Paying Agent, Conversion Agent and Registrar.

Initially, the Trustee will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar without notice, other than notice to the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent,

Registrar or co-registrar. The Company may maintain deposit accounts and conduct other banking transactions with the Trustee in the normal course of business.

5. Indenture.

This is one of the Notes issued under an Indenture dated as of January 26, 2007 (as amended from time to time, the "Indenture"), between the Company and U.S. Bank National Association, as Trustee. Capitalized terms used herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture will control.

The Notes are general unsecured obligations of the Company.

6. Repurchase at the Option of the Holder upon a Fundamental Change.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase the Notes held by such Holder on the date, at the purchase price and as otherwise provided in the Indenture.

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

If Cash (and/or securities if permitted under the Indenture) sufficient to pay the Fundamental Change Purchase Price of, together with any accrued and unpaid interest with respect to, all Notes or

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portions thereof to be purchased as of the Fundamental Change Purchase Date is deposited with the Paying Agent on or prior to the third Business Day following the Fundamental Change Purchase Date, interest shall cease to accrue on such Notes (or portions thereof) immediately after such Fundamental Change Purchase Date whether or not the Note is delivered to the Paying Agent, and the Holder thereof shall have no other rights as such (other than the right to receive the Fundamental Change Purchase Price and accrued and unpaid interest upon surrender of such Notes).

7. Conversion.

A Holder of a Note may convert such Note into Cash and, to the extent the Conversion Value of such Note is greater than $1,000, Cash, shares of Common Stock or a combination thereof, at the option of the Company, as described in the Indenture before the Close of Business on the Business Day immediately preceding Maturity Date, if at least one of the following conditions is satisfied:

(a) during any calendar quarter commencing at any time after March 31, 2007, and only during such calendar quarter, if the Closing Price of the Common Stock for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of the preceding calendar quarter exceeds 130% of the Conversion Price per share of Common Stock on the last day of such preceding calendar quarter (the "Conversion Trigger Price");

(b) during the five Business Day period immediately after any five consecutive Trading Day period (the "Measurement Period") in which the Trading Price per $1,000 principal amount of Notes for each day of such Measurement Period was less than 98% of the product of the Closing Price of the Common Stock on such date and the Conversion Rate on such date;

(c) the Company elects to distribute to all holders of Common Stock (i) rights or warrants entitling all holders of the

Common Stock to subscribe for or purchase, for a period expiring within 60 days after the record date for such distribution, Common Stock at less than the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of the distribution, or (ii) Cash, debt securities (or other evidences of Debt) or other assets (excluding dividends or distributions described in Section 10.06 of the Indenture), which distribution, together with all other distributions within the preceding twelve months, has a per share value exceeding 10% of the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of the distribution; or

(d) if a Change in Control occurs or if the Company is a party to a consolidation, merger, binding share exchange or transfer or lease of all or substantially all of the Company's assets, pursuant to which the Common Stock would be converted into Cash, securities or other assets; or

(e) at any time on or after January 1, 2012 until the Close of Business on the Business Day immediately preceding the Maturity Date.

The Conversion Agent will determine on the Company's behalf at the beginning of each calendar quarter commencing at any time after March 31, 2007 through the calendar quarter ending

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December 31, 2011 whether the Notes are convertible as a result of the price of the Common Stock pursuant to clause (a) above and will notify the Company and the Trustee if the Notes are so convertible.

The Trustee shall have no obligation to determine the Trading Price of the Notes pursuant to clause (b) above unless the Company has requested such determination; and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than 98% of the product of the Closing Price and the Conversion Rate. At such time, the Company shall instruct the Trustee to determine the Trading Price beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Price and the Conversion Rate.

If the Company makes a distribution described in subsection (c)(i) or (c)(ii), the Company must notify Holders at least 20 Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender their Notes for conversion at any time until the earlier of the Close of Business on the Business Day prior to the Ex-Dividend Date for such distribution or the Company's announcement that such distribution will not take place, even if the Notes are not convertible at that time.

The Company will notify Noteholders and the Trustee as promptly as practicable following the date on which the Company publicly announces any transaction described in clause (d) above, but in no event less than 20 Trading Days' prior to the anticipated effective date of such transaction in the case of a Change in Control within the control of the Company or of which the Company has at least 30 Trading Days prior notice. Noteholders may surrender their Notes for conversion at any time after the date that is 15 Trading Days prior to the anticipated effective date of such transaction until 35 Trading Days after the actual date of such transaction (or, if such transaction also constitutes a Fundamental Change, until the Fundamental Change Purchase Date).

8. Defaults and Remedies.

If an Event of Default, as defined in the Indenture, occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Notes may declare all the Notes to be due and payable, subject to certain limitations set forth in the Indenture. If a bankruptcy or insolvency default with respect to the Company occurs and is continuing, the Notes automatically become due and payable. Holders may not enforce the Indenture or the Notes except as provided in the

Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in principal amount of the Notes then outstanding may direct the Trustee in its exercise of remedies.

9. Amendment and Waiver.

Subject to certain exceptions set forth in the Indenture, the Indenture and the Notes may be amended, or default may be waived, with the consent of the Holders of a majority in principal amount of the outstanding Notes. Without notice to or the consent of any Holder, the Company and

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the Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, defect or inconsistency or if such amendment or supplement does not adversely affect the interests of the Holders in any material respect.

10. Registered Form; Denominations; Transfer; Exchange.

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

11. Persons Deemed Owners.

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

12. Unclaimed Money or Notes.

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

13. Trustee Dealings with the Company.

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

14. No Recourse Against Others.

A director, officer, incorporator, agent, subsidiary, employee, member or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

15. Authentication.

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

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16. Governing Law.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS NOTE.

17. Abbreviations.

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

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

[FORM OF TRANSFER NOTICE]

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

Insert Taxpayer Identification No.

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

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

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

Date: Your Signature:

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

*Signature guaranteed by:

By:

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

CONVERSION NOTICE

To convert this Note, check the box: [ ]

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

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

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

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

and irrevocably appoint

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

Date:

Your Signature:

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

*Signature guaranteed by:

By:

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

SCHEDULE OF EXCHANGES OF NOTES[2]

The following exchanges of a part of this Global Note for an interest in another Global Note or for Notes in certificated form, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of Increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature or authorized signatory of Trustee

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

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to

(Insert assignee's social security or tax I.D. no.)

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

and irrevocably appoint

_____

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

Your Signature:

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

Date:

Medallion Signature Guarantee:

[FOR INCLUSION ONLY IF THIS NOTE BEARS AN IAI NOTE LEGEND —] Other than pursuant to the sale or transfer of a Note to a transferee that is not an Affiliate of the Initial Purchaser pursuant to an effective Shelf Registration Statement filed in connection with the Registration Rights Agreement, dated as of January 26, 2007, between the Company and the purchasers named therein, in connection with any transfer of any of the Notes evidenced by this certificate which are "restricted securities" (as defined in Rule 144 (or any successor thereto) under the Securities Act), the undersigned confirms that the Notes are being transferred to a Person that is not an Affiliate of the Company and:

CHECK ONE BOX BELOW

(1) [ ] To the Company.
(2) [ ] In connection with a Permitted Transfer.

(3) [ ] A transfer to a transferee that is not an Affiliate of any Sponsor Purchaser pursuant to Rule 144 under the Securities Act.

(4) [ ] Solely if no registration statement under the Securities Act is available for such sale, a transfer to a person that is not an "Affiliate" of any Sponsor Purchaser (as described in Rule 144 under the Securities Act) pursuant to Rule 144A under the Securities Act or pursuant to Regulation S under the Securities Act.

Unless one of the boxes is checked, the Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; provided, however, that if box (2) is checked, the Trustee may require, prior to registering any such transfer of the Notes, such certifications and other information, including legal opinions, as the Company has reasonably requested in writing, by delivery to the Trustee of a standing letter of instruction, to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933.

Your Signature:

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

Date:

Medallion Signature Guarantee:

[FOR INCLUSION ONLY IF THIS NOTE BEARS A RESTRICTED NOTE LEGEND —] Other than pursuant to the sale or transfer of the Note under an effective Shelf Registration Statement filed in connection with the Registration Rights Agreement, dated as of January 26, 2007, between the Company and the purchasers named therein, in connection with any transfer of any of the Notes evidenced by this certificate which are "restricted securities" (as defined in Rule 144 (or any successor thereto) under the Securities Act), the undersigned confirms that the Notes are being transferred to a Person that is not an Affiliate of the Company and:

CHECK ONE BOX BELOW

(1) [ ] to the Company; or

(2) [ ] pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or

(3) [ ] pursuant to and in compliance with Regulation S under the Securities Act of 1933; or

(4) [ ] pursuant to an exemption from registration under the Securities Act of 1933 provided by Rule 144 thereunder.

Unless one of the boxes is checked, the Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; provided, however, that if box (3) or (4) is checked, the Trustee may require, prior to registering any such transfer of the Notes, such certifications and other information, and if box (4) is checked such legal opinions, as the Company has reasonably requested in writing, by delivery to the Trustee of a standing letter of instruction, to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933; provided that this paragraph shall not be applicable to any Notes which are not "restricted securities" (as defined in Rule 144 (or any successor thereto) under the Securities Act).

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Your Signature:

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

Date:

Medallion Signature Guarantee:

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EXHIBIT B

FORM OF RESTRICTED COMMON STOCK LEGEND AND IAI COMMON STOCK LEGEND

[IAI Common Stock Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. IN NO EVENT MAY THIS SECURITY BE SOLD, ASSIGNED, PLEDGED, LOANED HEDGED OR OTHERWISE DISPOSED OF OR ENCUMBERED (COLLECTIVELY, A "TRANSFER") BY A SPONSOR PURCHASER PRIOR TO APRIL 26, 2007; PROVIDED, HOWEVER, THAT A SPONSOR PURCHASER MAY TRANSFER A NOTE PRIOR TO SUCH TIME TO AN

AFFILIATED ENTITY, PROVIDED THAT SUCH TRANSFEREE IS A SPONSOR

PURCHASER AND AGREES TO BE BOUND BY THE TRANSFER PROVISIONS OF THE INDENTURE, THE NOTE PURCHASE AGREEMENT AND THE REGISTRATION RIGHTS AGREEMENT AND THE TRANSFERING HOLDER AGREES TO CONTINUE TO BE SO BOUND. ANY SPONSOR PURCHASER HOLDING THIS NOTE AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS SECURITY EVIDENCED HEREBY OTHER THAN DURING THE TIMES DESCRIBED IN THE NOTE PURCHASE AGREEMENT AND ONLY PURSUANT TO (1) A TRANSFER TO THE COMPANY, (2) A PERMITTED

TRANSFER, (3) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR, PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY

APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (4) SOLELY IF NO REGISTRATION STATEMENT UNDER THE 1933 ACT IS AVAILABLE FOR SUCH SALE, TO A "QUALIFIED INSTITUTIONAL BUYER" THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144A UNDER THE SECURITIES ACT OR (5) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO REGULATION S UNDER THE SECURITIES ACT. NO BANK PURCHASER SHALL TRANSFER THIS SECURITY EXCEPT PURSUANT TO A WRITTEN INSTRUCTION BY THE SPONSOR PURCHASER OR PURSUANT TO A BANK PURCHASER TRANSFER EVENT, IN EACH CASE AS PROVIDED IN THE NOTE PURCHASE AGREEMENT. THIS LEGEND SHALL BE REMOVED, AND REPLACED BY A NEW LEGEND, IN EACH CASE IF

APPLICABLE, UPON THE TRANSFER OF THE SECURITY EVIDENCED HEREBY

PURSUANT TO EITHER OF THE TWO IMMEDIATELY PRECEDING SENTENCES. IF THE PROPOSED TRANSFER IS PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY CLAUSE (5) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY OR 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. IN ANY CASE THE HOLDER HEREOF WILL

NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

THIS SECURITY IS ADDITIONALLY SUBJECT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE NOTE PURCHASE AGREEMENT.

IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUEST TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[Restricted Common Stock Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES THAT IT WILL NOT PRIOR TO THE DATE THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUANCE OF THIS SECURITY EVIDENCED HEREBY AND THE LAST DATE ON WHICH THE COMPANY OR ANY “AFFILIATE” (AS DEFINED IN RULE 144 UNDER THE

SECURITIES ACT) OF THE COMPANY WAS THE OWNER OF THE SECURITY (THE “RESTRICTION TERMINATION DATE”) RESELL OR OTHERWISE TRANSFER THIS SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY OTHER THAN (1) TO THE COMPANY, (2) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A OR (2) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

EX-4.2 3 rrd144599_18202.htm INDENTURE RELATED TO THE 0.750% CONVERTIBLE SENIOR NOTES, DUE 2014, DATED AS OF JANUARY 26, 2007, BETWEEN SUN MICROSYSTEMS, INC. AND U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE (INCLUDING FORM OF 0.750% CONVERTIBLE SENIOR NOTE DUE 2014).

EXECUTION COPY

SUN MICROSYSTEMS, INC.
as Issuer

and

U.S. BANK NATIONAL ASSOCIATION as Trustee

Indenture

dated as of January 26, 2007

$350,000,000

0.750% Convertible Senior Notes due 2014

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CROSS REFERENCE TABLE*

*Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

TIA Section	Indenture Section

310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(b)	7.08; 7.10
(c)	N.A.
311(a)	N.A.
(b)	N.A.
(c)	N.A.
312(a)	2.05
(b)	12.04
(c)	12.04
313(a)	7.06
(b)(1)	N.A.
(b)(2)	7.06
(c)	12.03
(d)	7.06
314(a)	4.04; 4.05; 12.03
(b)	N.A.
(c)(1)	12.05
(c)(2)	12.05
(c)(3)	N.A.
(d)	N.A.
(e)	12.06
(f)	N.A.
315(a)	7.01
(b)	7.05; 12.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a) (last sentence)	2.08
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	12.01

N.A. means not applicable

INDENTURE, dated as of January 26, 2007, between Sun Microsystems, Inc., a Delaware corporation, as the "Company" and U.S. Bank National Association, a national banking association, as Trustee.

RECITALS

The Company has duly authorized the execution and delivery of the Indenture to provide for the initial issuance of $350,000,000 aggregate principal amount of the Company's 0.750% Convertible Senior Notes Due 2014 (the "Notes"). All things necessary to make the Indenture a valid agreement of the Company, in accordance with its terms, have been

done, and the Company has done all things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee and duly issued by the Company, the valid obligations of the Company as hereinafter provided. This Indenture is subject to, and will be governed by, the provisions of the Trust Indenture Act that are required to be a part of and govern indentures qualified under the Trust Indenture Act.

THIS INDENTURE WITNESSETH

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

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1

Definitions

.

"Additional Interest" means additional interest owed to the Holders pursuant to the Registration Rights Agreement.

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

"Affiliated Entity" has the meaning given such term in the Note Purchase Agreement.

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

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

"Applicable Conversion Rate" means the Conversion Rate on any Trading Day.

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

"Bank Purchase Transfer Event" has the meaning given such term in the Note Purchase Agreement.

"Bank Purchaser" means Citibank, N.A.

"Bankruptcy Default" has the meaning assigned to such term in Section 6.01.

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

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

"Board Resolution" means a resolution duly adopted by the Board of Directors which is certified by the Secretary or an Assistant Secretary of the Company and remains in full force and effect as of the date of its certification.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized or obligated to close.

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

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

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

"Change in Control" means the occurrence of a Fundamental Change of the type described in the clauses (i) or (ii) of the definition of "Fundamental Change" contained in Section 3.01(a), giving effect to the last two paragraphs of Section 3.01(a).

"Close of Business" means 5:00 p.m. (New York City time).

"Closing Price" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either

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case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is listed or admitted for trading or, if the Common Stock is not listed or admitted for trading on a U.S. national or regional securities exchange, as reported on the quotation system on which such security is quoted. If the Common Stock is not listed or admitted for trading on a United States national or regional securities exchange and not reported on a quotation system on the relevant date, the "closing price" will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Stock is not so quoted, the last reported sale price will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized investment banking firms selected by the Company for this purpose.

"Common Stock" means the common stock of the Company, $0.00067 par value, as it exists on the date of this Indenture and any shares of any class or classes of Capital Stock of the Company resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, however, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Notes shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

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

"Conversion Date" means the date on which the Holder of the Note has complied with all requirements under this Indenture to convert such Note.

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

"Conversion Rate" means 138.6482 shares of Common Stock per $1,000 principal amount of Notes, subject to adjustment pursuant to Article 10.

"Conversion Reference Period" means (a) for Notes that are converted during the period beginning on the 23rd scheduled Trading Day prior to the Maturity Date, the twenty consecutive Trading Days beginning on, and including, the 20th scheduled Trading Day prior to the Maturity Date and (b) in all other instances, the twenty consecutive Trading Days beginning on the third Trading Day following the Conversion Date.

"Conversion Value" means, per $1,000 principal amount of Notes, the amount equal to the average of the products for each Trading Day of the Conversion Reference Period of (a) the Applicable Conversion Rate for such day multiplied by (b) the average of the Volume Weighted Average Price per share of the Common Stock on such day.

"Corporate Trust Office" means the office of the Trustee at which the trust created by this Indenture is principally administered, which at the date of the Indenture is located at U.S. Bank National Association, 633 West Fifth Street, 24th Floor, Los Angeles, CA 90071, Attention: Corporate Trust Services (Sun Microsystems, Inc. 0.750% Convertible Senior Notes due 2014).

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

"Daily Share Amounts" means, for each Trading Day of the Conversion Reference Period and each $1,000 principal amount of Notes surrendered for conversion, a number of shares of Common Stock (but in no event less than zero) determined by the following formula:

$$\frac{\text{(Volume Weighted Average Price per share of Common Stock for such Trading Day} \times \text{Conversion Rate in effect on the Trading Day)} - \$1000}{\text{Volume Weighted Average Price per share of Common Stock for such Trading Day} \times 20}$$

"Debt" means, with respect to any Person, without duplication, (1) all indebtedness of such Person for borrowed money (other than non-recourse obligations); and (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments.

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

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

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

"Event of Default" has the meaning assigned to such term in Section 6.01.

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

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

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

"Global Note" means a Note in registered global form without interest coupons that is deposited with the Depositary or its custodian and registered in the name of the Depositary or its nominee.

"Global Note Legend" means the legend set forth in Exhibit A

"Holder" or "Noteholder" means the registered holder of any Note.

"IAI Certificated Note" means a Certificated Note that bears the IAI Note Legend.

"IAI Common Stock Legend" means the legend set forth in Exhibit B.

"IAI Global Note" means a Global Note that bears the IAI Note Legend representing Notes initially issued and sold pursuant to the Note Purchase Agreement to the Initial Purchasers, all of which are Institutional Accredited Investors.

"IAI Note" means a Note that bears the IAI Note Legend.

"IAI Note Legend" means the legend set forth in Exhibit A.

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

"Initial Purchasers" means the Purchasers named in Exhibit A to the Note Purchase Agreement.

"Institutional Accredited Investor" means an institutional "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"interest," in respect of the Notes, unless the context otherwise requires, refers to interest and Additional Interest, if any.

"Interest Payment Date" means each February 1 and August 1 of each year, commencing August 1, 2007.

"Issue Date" means the date on which the Notes are originally issued under this Indenture.

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

"Maturity Date" means February 1, 2014.

"NASD" means the National Association of Securities Dealers, Inc.

"Note Purchase Agreement" means that certain Note Purchase Agreement, dated as of January 23, 2007, among the Company, the Initial Purchasers, Sponsor solely for purposes of Articles 1 and 9 and Sections 5.5, 5.6 and 7.1 thereto and KKR PEI Investments, L.P. solely for purposes of Section 4.6 thereto.

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

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

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

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

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

"Permitted Transfer" has the meaning given such term in Section 7.1(a) of the Note Purchase Agreement.

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

"Register" has the meaning assigned to such term in Section 2.03.

"Registrar" means a Person engaged to maintain the Register.

"Registration Rights Agreement" means the Registration Rights Agreement dated as of January 26, 2007, among the Company and Initial Purchasers.

"Regular Record Date" for the interest payable on any Interest Payment Date means the January 15 or July 15 (whether or not a Trading Day) next preceding such Interest Payment Date.

"Resale Restriction Termination Date" means, as to any Note, the later of January 26, 2009 and the date that is two years after the last date on which the Company or any Affiliate of the Company was the owner of such Note.

"Restricted Certificated Note" means a Certificated Note that bears the Restricted Note Legend.

"Restricted Common Stock Legend" means the legend set forth in Exhibit B.

"Restricted Global Note" means a Global Note that bears the Restricted Note Legend representing Notes transferred pursuant to Rule 144A and in accordance with the Note Purchase Agreement.

"Restricted Note" means a Note that bears the Restricted Note Legend. "Restricted Note Legend" means the legend set forth in Exhibit A. "Rule 144" means Rule 144 under the Securities Act.

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

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

"Shelf Registration Statement" has the meaning given such term in the Registration Rights Agreement.

"Significant Subsidiary" means, in respect of any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X under the Securities Act and the

Exchange Act.

“Sponsor” means Kohlberg Kravis Roberts & Co. L.P.

“Sponsor Purchasers” means the Initial Purchasers, other than the Bank Purchasers, and their Affiliates that acquire beneficial ownership of Securities in a Permitted Transfer.

“Stated Maturity” means (i) with respect to the Notes, February 1, 2014, or (ii) with respect to any scheduled payment of interest on the Notes, the date specified as the fixed date on which such interest payment is due and payable as set forth in this Indenture and the Notes, not including any contingent obligation to repay, redeem or repurchase prior to the regularly scheduled date for payment.

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

Company.

A “Termination of Trading” will be deemed to have occurred if the Common Stock (or other common stock into which the Convertible Subordinated Notes are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on an established U.S. system of automated dissemination of quotations of securities prices and no American Depositary Shares or similar instruments for such common stock are so listed or approved for listing in the United States.

“Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange,

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the principal national securities exchange on which the Common Stock is listed, is open for trading or, if the Common Stock is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

“Trading Price” with respect to the Notes, on any date of determination, means the average of the secondary market bid quotations obtained by the Trustee for $2.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for $2.0 million principal amount of Notes from a nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Closing Price (as provided to the Trustee by the Company) and the Conversion Rate. Any such determination by the Trustee will be conclusive absent manifest error.

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

“Trust Indenture Act” means the Trust Indenture Act of 1939.

“Volume Weighted Average Price” on any Trading Day means the price per share of the Common Stock as displayed on Bloomberg (or any successor service) page SUNW.Q <Equity> AQR SEC in respect of the period from 9:30 a.m. to 3:50 p.m. (New York City time), on such Trading Day; or, if such price is not available, the market value

per share of the Common Stock on such day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company.

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

Section 1.2 Other Definitions

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Term	Defined in Section
"Act"	1.05
"Aggregate Amount"	10.10
"Antitrust Laws"	10.01(c)
"Average Sale Price"	10.08
"beneficial owner"	3.01(a)

"Cash Percentage"	10.01
"Cash Percentage Notice"	10.01
"Change in Control Effective Date"	10.13(b)
"Company Order"	2.02
"Conversion Agent"	2.03
"Conversion Rate Cap"	10.15
"Conversion Trigger Price"	Note – paragraph 7
"Defaulted Interest"	11.02
"Distributed Assets"	10.08(a)
"Expiration Date"	10.10
"Expiration Time"	10.10
"Fundamental Change"	3.01(a)
"Fundamental Change Purchase Date"	3.01(a)
"Fundamental Change Purchase Notice"	3.01(c)
"Fundamental Change Purchase Price"	3.01(a)
"Initial Purchasers"	2.01
"Legal Holiday"	12.07
"Make-Whole Shares"	10.13(a)
"Primary Registrar"	2.03
"Purchased Shares"	10.10
"QIB"	2.01(b)
"Reference Period"	10.08(a)
"Reference Property"	10.12
"Remaining Shares"	10.01
"Required Cash Amount"	10.01
"Restricted Securities"	2.14
"Rights"	10.23
"Shareholders Rights Plan"	10.23
"Special Record Date"	11.02
"Stock Price"	10.13(b)
"Trigger Event"	10.11

Section 1.3 Incorporation by Reference of Trust Indenture Act

. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. The following Trust Indenture Act terms used in this Indenture have the following meanings:

"Commission" means the Securities and Exchange Commission.

"indenture securities" means the Notes.

"indenture security holder" means a Noteholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company.

All other Trust Indenture Act terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by Securities Exchange Commission rule have the meanings assigned to them by such definitions.

Section 1.4

Rules of Construction

. Unless the context otherwise requires or except as otherwise expressly *provided*,

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

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

accordance with GAAP;

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

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

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

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

(g) "or" is not exclusive;

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

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

singular.

Section 1.5

Acts of Holders

. Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments (which may take the form of an electronic writing or messaging or otherwise be in accordance with customary procedures of the Depositary or the Trustee) of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing (which may be in electronic form); and, except as herein otherwise expressly provided, such action

shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent (either of which may be in electronic form) shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

ARTICLE 2.

THE NOTES

Section 2.1 Form, Dating and Denominations; Legends

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(a) The Notes and the Trustee's certificate of authentication will be substantially in the form attached as Exhibit A. The terms and provisions contained in the form of the Note annexed as Exhibit A constitute and are hereby expressly made a part of the Indenture. The Notes may have notations, legends or endorsements required by law, rules of or agreements with national securities exchanges to which the Company is subject, or usage. Each Note will be dated the date of its authentication. The Notes will be issuable only in denominations of $1,000 in principal amount and any integral multiple thereof.

(b) Restricted Notes. All of the Notes are initially being offered and sold pursuant to the Note Purchase Agreement to Initial Purchasers, all of which are Institutional Accredited Investors, and are initially being issued in the form of an IAI Global Note (which will bear the Global Note Legend and the IAI Note Legend set forth in Exhibit A hereto), which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the Depositary, and registered in the name of its nominee, Cede & Co., duly executed by the Company and authenticated by the Trustee as hereinafter provided. All Notes transferred to an Initial Purchaser or a Sponsor Purchaser shall be issued in the form of one or more IAI Global Notes bearing the Global Note Legend and the IAI Note Legend. All Notes transferred by Initial Purchasers or Sponsor Purchasers to qualified institutional buyers as defined in Rule 144A (collectively, "QIBs" or individually, each a "QIB") in reliance on Rule 144A under the Securities Act and in accordance with the Note Purchase Agreement, other than any such Notes transferred by Initial Purchasers to Sponsor Purchasers or any such Notes that are offered and sold to the Initial Purchasers or any Sponsor

Purchasers, shall be issued in the form of one or more Restricted Global Notes (which will bear the Global Note Legend and the Restricted Note Legend set forth in Exhibit A hereto), which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the Depositary, and registered in the name of its nominee, Cede & Co., duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of each of the IAI Global Notes and the Restricted Global Notes may from time to time be increased or decreased

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by adjustments made on the records of the Trustee as hereinafter provided, subject in each case to compliance with the Applicable Procedures.

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

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

(d) Book Entry Provisions. The Company shall use its reasonable efforts to execute and the Trustee shall, in accordance with this Section 2.01(d), authenticate and deliver one or more Global Notes that (i) shall be registered in the name of the Depositary, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (iii) shall bear the Global Note Legend substantially to the effect set forth in Exhibit A. This Section 2.01(d) shall only apply to Global Notes deposited with or on behalf of the Depositary.

(e) Restriction on Affiliate Transfers. Other than transfers of Notes from any Initial Purchaser or any Sponsor Purchaser to another Initial Purchaser or Sponsor Purchaser, no transfer of Notes to Affiliates of the Company will be permitted.

Section 2.2

Execution and Authentication

. An Officer shall sign the Notes for the Company by manual or facsimile signature attested by the manual or facsimile signature of the Secretary or an Assistant Secretary of the Company. Typographic and other minor errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Note which has been authenticated and delivered by the Trustee.

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

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

The Trustee shall authenticate and make available for delivery Notes for original issue in the aggregate principal amount of $350,000,000 upon receipt of a written order or orders of the Company signed by an Officer of the Company (a "Company Order"). The Company Order shall specify the amount of Notes to be authenticated, shall provide that all such Notes will be represented initially by a Global Note and the date on which each original issue of Notes is to be authenticated. The initial aggregate principal amount of Notes outstanding at any time may not exceed $350,000,000 except as provided in Section 2.07 and except as provided in the next succeeding paragraph.

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

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

Section 2.3 Registrar, Paying Agent and Conversion Agent

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

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

The Company hereby initially designates the Trustee as Paying Agent, Registrar, and Conversion Agent, and the Corporate Trust Office of the Trustee as such office or agency of the Company for each of the aforesaid purposes.

Section 2.4 Paying Agent To Hold Money In Trust

. Prior to 11:00 a.m., New York City time, on each date on which the principal amount of or interest, if any, on any Notes is due and payable, the Company shall deposit with a Paying Agent a sum sufficient to pay such principal amount or interest, if any, so becoming due. A Paying Agent shall hold in trust for the benefit of Noteholders or the Trustee all money held by the Paying Agent for the payment of principal amount of or interest, if any, on the Notes, and shall notify the Trustee of any default by the Company (or any other obligor on the Notes) in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall, before 11:00 a.m., New York City time, on each date on which a payment of the principal amount of or interest on any Notes is due and payable, segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such

Paying Agent. Upon doing so, the Paying Agent (other than the Company) shall have no further liability for the money.

Section 2.5

Noteholder Lists

. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Noteholders. If the Trustee is not the Primary Registrar, the Company shall furnish to the Trustee on or before each semiannual interest payment date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders.

Section 2.6

Transfer and Exchange

. Subject to compliance with any applicable additional requirements contained in

Section 2.14, when a Note is presented to a Registrar with a request to register a transfer thereof or to exchange such Note for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met; *provided, however*, that every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form in the applicable form included in Exhibit A, and in form satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Note for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.03, the Company shall execute and the Trustee shall authenticate Notes of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto, and *provided*, that this sentence shall not apply to any exchange pursuant to Section 2.10, Section 3.04, Section 9.03(b) or Section 10.02(g) not involving any transfer.

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

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

Each Holder of a Note agrees to indemnify the Company and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.7

Replacement Notes

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

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

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

Every new Note issued pursuant to this Section 2.07 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and

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shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

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

Section 2.8

Outstanding Notes

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

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Company receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If a Paying Agent holds at 11:00 a.m., New York City time, on the Maturity Date Cash sufficient to pay the principal amount of the Notes payable on that date, then on and after the Maturity Date, such Notes shall cease to be outstanding and the principal amount thereof shall cease to bear interest.

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

Section 2.9

Treasury Notes

. In determining whether the Holders of the required principal amount of Notes have concurred in any notice, direction, waiver or consent, Notes owned by the Company or any other obligor on the Notes or by any Affiliate of the Company or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded; *provided, however*, that this Section 2.09 shall not apply to any applicable Notes owned by an Initial Purchaser, or a Sponsor Purchaser to which such Notes are transferred in compliance with the applicable provisions of the Note Purchase Agreement, that is deemed to be an Affiliate of the Company solely by virtue of a nominee of Sponsor serving as a director on the Board of Directors other than any such Notes that were transferred to a holder that is not an Initial Purchaser or a Sponsor Purchaser after the Issue Date that were subsequently reacquired by an Initial Purchaser or a Sponsor Purchaser if and for so long as there is a Board Designee (as defined in the Note Purchase Agreement) on the Board of Directors. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Company or any other obligor on the Notes or any Affiliate of the Company or of such other obligor. Any Notes or shares of Common Stock issued upon the conversion of Notes that are purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold

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pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Notes or shares of Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

Section 2.10 Temporary Notes

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

Section 2.11 Cancellation

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

Section 2.12 CUSIP Numbers

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

Section 2.13 Book-entry Provisions For Global Notes

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(a) Transfers of Global Notes shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. In addition, Certificated Notes shall be transferred to all beneficial owners, as identified by the Depositary, in exchange for their beneficial interests in Global Notes only if (i) the Depositary notifies the Company that the Depositary is unwilling or unable to continue as depositary for any Global Note (or the Depositary ceases to be a "clearing agency" registered under Section 17A of the Exchange Act) and a successor Depositary is not appointed by the Company within 90 days of such notice or cessation or (ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the Depositary to issue Certificated Notes.

(b) In connection with the transfer of a Global Note in its entirety to beneficial owners pursuant to Section 2.13(a), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations.

(c) Any Certificated Note constituting a Restricted Certificated Note or an IAI Certificated Note delivered in exchange for an interest in a Global Note pursuant to Section 2.13(a) shall, except as otherwise provided by Section 2.14, bear the Restricted Note Legend or the IAI Note Legend, as applicable.

(d) The Holder of any Global Note may grant proxies and otherwise authorize any

Person to take any action that a Holder is entitled to take under this Indenture or the Notes. Section 2.14 Special Transfer Provisions .

(a) The Initial Purchasers, the Sponsor Purchasers and the Bank Purchaser may only transfer Notes in accordance with the Note Purchase Agreement, *provided*, such transfers also comply with the transfer restrictions set forth in the IAI Note Legend. Unless and until the Trustee receives written notice from the Company or a Holder that a transfer of a Note has not been made in compliance with the Note Purchase Agreement, the Trustee may assume without inquiry that such transfer was made in accordance with the Note Purchase Agreement.

(b) Notwithstanding any other provisions of this Indenture, but except as provided in Section 2.14(c), a Global Note may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) Every Note that bears or is required under this Section 2.14(c) to bear the Restricted Note Legend or the IAI Note Legend, and any Common Stock that bears or is required under this Section 2.14(c) to bear the Restricted Common Stock Legend or the IAI Common Stock Legend (collectively, the "Restricted Securities") shall be subject to the restrictions on transfer set forth in the Restricted Note Legend, the IAI Note Legend, the Restricted Common Stock Legend or the IAI Common Stock Legend, as the case may be, unless such restrictions on transfer shall be waived by written consent of the Company, and the holder of each such Restricted Security, by such Notes holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.14(c), the term "transfer" encompasses any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof), and any stock certificate representing shares of Common Stock issued upon

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conversion of any Note, shall bear a Restricted Note Legend, IAI Note Legend, Restricted Common Stock Legend or

IAI Common Stock Legend, as the case may be, unless such Note or such shares of Common Stock have been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 or any similar provision then in force, or such shares of Common Stock have been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has been declared effective under the Securities Act or pursuant to Rule 144 under the Securities Act, or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms or as to conditions for removal of the Restricted Note Legend set forth therein have been satisfied may, upon surrender of such Note for exchange to the Registrar in accordance with the provisions of Section 2.06, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restricted Note Legend. If the Restricted Note surrendered for exchange is represented by a Global Note bearing the Restricted Note Legend, the principal amount of the legended Global Note shall be reduced by the appropriate principal amount and the principal amount of a Global Note without the Restricted Note Legend shall be increased by an equal principal amount. If a Global Note without the Restricted Note Legend is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver an unlegended Global Note to the Depositary.

Any such shares of Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Common Stock Legend set forth therein have been satisfied may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear the Restricted Common Stock Legend required by this Section 2.14.

(d) By its acceptance of any Note bearing the Restricted Note Legend or the IAI Note Legend, as the case may be, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Restricted Note Legend or the IAI Note Legend, as the case may be, and agrees that it will transfer such Note only as provided in this Indenture and as permitted by applicable law.

(e) The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.13 or this Section 2.14. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time during normal hours of operation of the Registrar upon the giving of reasonable notice to the Registrar.

ARTICLE 3.

PURCHASES

Section 3.1 Repurchase At the Option of the Holder

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(a) If there shall have occurred a Fundamental Change, each Holder shall have the right, at such Holder’s option, to require the Company to purchase for Cash all or any portion of such Holder’s Notes in integral multiples of $1,000 principal amount on a date selected by the Company (the “Fundamental Change Purchase Date”), which Fundamental Change Purchase Date shall be no later than 35 Trading Days after the occurrence of such Fundamental Change, unless such 35 Trading Days would not provide Holders with at least 20 Trading Days’ notice, in which event the Fundamental Change Purchase Date shall be the day that provides the shortest period necessary to provide 20 Trading Days’ notice as required by subsection (b) of this Section 3.01, at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest to, but excluding, the Fundamental Change Purchase Date (the “Fundamental Change Purchase Price”), subject to satisfaction by or on behalf of the Holder of the

requirements set forth in Section 3.01(c); provided that if the Fundamental Change Purchase Date is after a Regular Record Date and on or prior to the Interest Payment Date to which it relates, interest accrued to the Interest Payment Date will be paid to Holders of the Notes as of the preceding Regular Record Date.

A "Fundamental Change" shall be deemed to have occurred at such time as either of the following events shall occur:

(i) any person or group, other than the Company, its Subsidiaries or any employee benefits plan of the Company or its Subsidiaries, files a Schedule 13D or Schedule TO) or any successor schedule, form or report) pursuant to the Exchange Act, disclosing that such person has become the beneficial owner of shares with a majority of the total voting power of the Company's outstanding Voting Securities; unless such beneficial ownership arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act;

(ii) the Company consolidates with or merges with or into another person (other than a Subsidiary of the Company), or sells, conveys, transfers, leases or otherwise disposes of all or substantially all of its properties and assets to any person (other than a Subsidiary of the Company) or any person (other than a Subsidiary of the Company) consolidates with or merges with or into the Company, and the outstanding Voting Securities of the Company are reclassified into, converted for or converted into the right to receive any other property or security, provided that none of these circumstances will be a Fundamental Change if persons that beneficially own the Voting Securities of the Company immediately prior to the transaction own, directly or indirectly, shares with a majority of the total voting power of all outstanding Voting Securities of the surviving or transferee person immediately after the transaction in substantially the same proportion as their

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ownership of the Company's Voting Securities immediately prior to the transaction, and *provided* that for the avoidance of doubt, notwithstanding anything herein to the contrary, non-exclusive licenses by the Company shall not be deemed a sale, conveyance, transfer, lease or other disposition;

(iii) the Company's stockholders or Board of Directors adopts a plan for the liquidation or dissolution of the Company; or

(iv) upon the occurrence of a Termination of Trading.

For purposes of defining a Fundamental Change:

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

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

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

Notwithstanding the foregoing, it will not constitute a Fundamental Change if both (x) at least 90% of the consideration for the Common Stock (excluding Cash payments for fractional shares and Cash payments made in respect of dissenter's appraisal rights and Cash payments of the Required Cash Amount, if any) in the transaction or transactions otherwise constituting the Fundamental Change consists of common stock, together with any associated

rights, traded on a U.S. national securities exchange or approved for trading on an established U.S. system of automated dissemination of quotations of securities prices, or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change, and (y) as a result of such transaction or transactions the Notes become convertible solely into such common stock and associated rights (subject to settlement upon conversion in the manner contemplated by Section 10.01, using the value of such common stock and associated rights for reference).

(b) As promptly as practicable following the date the Company publicly announces the Fundamental Change transaction, but in no event less than 20 Trading Days prior to the anticipated effective date of a Fundamental Change in the case of a Fundamental Change within the control of the Company or of which the Company has at least 30 Trading Days prior notice, the Company shall mail a written notice of Fundamental Change by first-class mail to the Trustee and to each Holder at their addresses shown in the register of the Registrar (and to beneficial owners as required by applicable law). The notice shall include a form of Fundamental Change Purchase Notice to be completed by the Noteholder and shall state:

(i) briefly, the events causing such Fundamental Change;

(ii) the anticipated effective date of such Fundamental Change;

(iii) the date by which the Fundamental Change Purchase Notice pursuant

to this Section 3.01 must be given;

(iv) the Fundamental Change Purchase Price;

(v) the Fundamental Change Purchase Date;

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

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

(viii) that Notes with respect to which a Fundamental Change Purchase

Notice has been given by the Holder may be converted pursuant to Article 10 hereof only if the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(ix) briefly, the procedures a Holder must follow to exercise rights under this Section 3.01;

(x) that Notes must be surrendered to the Paying Agent to collect payment

of the Fundamental Change Purchase Price;

(xi) that the Fundamental Change Purchase Price for any Note as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn, together with any accrued interest payable with respect thereto, will be paid on or prior to the third Trading Day following the later of the Fundamental Change Purchase Date and the time of surrender of such Note;

(xii) briefly, the conversion rights of the Notes;

(xiii) the procedures for withdrawing a Fundamental Change Purchase

Notice;

(xiv) that, unless the Company defaults in making payment of such Fundamental Change Purchase Price and interest due, if any, interest on Notes surrendered for purchase will cease to accrue on and after the Fundamental Change Purchase Date; and

(xv) the CUSIP number of the Notes.

(c) A Holder may exercise its rights specified in Section 3.01(a) by delivery of a written notice of purchase (a "Fundamental Change Purchase Notice") to the Paying Agent at any time prior to the Close of Business on the Fundamental Change Purchase Date, stating:

(i) the certificate number of the Note which the Holder will deliver to be purchased, if Certificated Notes have been issued, or notice compliant with the relevant DTC procedures if the Notes are not certificated;

(ii) the portion of the principal amount of the Note which the Holder will deliver to be purchased, which portion must be $1,000 or an integral multiple thereof; and

(iii) that such Note shall be purchased pursuant to the terms and conditions specified in this Article 3.

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

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

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.01 shall be consummated by the delivery of the consideration to be received by the Holder (together with accrued and unpaid interest) on or prior to the third Business Day following the later of the Fundamental Change Purchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 3.01.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 3.01(c) shall have the right to withdraw such Fundamental Change Purchase Notice at any time prior to the Close of Business on the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.02.

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

There shall be no purchase of any Notes pursuant to this Section 3.01 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Notes, of the required Fundamental Change Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Fundamental Change Purchase Price). The Paying Agent will promptly return to the respective Holders thereof any Notes (x) with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change

Purchase Price) in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.2 Effect of Fundamental Change Purchase Notice

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(a) Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 3.01(c), the Holder of the Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Purchase Price and any accrued and unpaid interest, with respect to such Note. Such Fundamental Change Purchase Price and interest shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on or prior to the third Business Day following the later of (x) the Fundamental Change Purchase Date, with respect to such Note (provided the conditions in Section 3.01(c) have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01(c). Notes in respect of which a Fundamental Change Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

(b) A Fundamental Change Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Fundamental Change Purchase Notice at any time prior to the Close of Business on the Fundamental Change Purchase Date specifying:

(i) the certificate number of the Note which the Holder will deliver to be purchased, if Certificated Notes have been issued, or notice compliant with the relevant DTC procedures, if the Notes are not certificated,

(ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note which remains subject to the original Fundamental Change Purchase Notice and which has been or will be delivered for purchase by the Company.

A written notice of withdrawal of a Fundamental Change Purchase Notice may be in the form set forth in the preceding paragraph.

Section 3.3 Deposit of Fundamental Change Purchase Price

. Prior to 1:00 p.m. (New York City time) on or prior to the third Business Day following the

Fundamental Change Purchase Date, the Company shall deposit with the Trustee or with the Paying

Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Trading Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof which are to be purchased as of the Fundamental Change Purchase Date.

If the Trustee or the Paying Agent holds money sufficient to pay the Fundamental Change Purchase Price of a Note on the third Business Day following the Fundamental Change Purchase Date in accordance with the terms hereof, then, immediately after the Fundamental Change Purchase Date, interest on such Note will cease to accrue, whether or not the Note is delivered to the Trustee or the Paying Agent, and all other rights of the holder shall terminate, other than the right to receive the Fundamental Change Purchase Price upon delivery of the Note.

Section 3.4

Notes Purchased In Part

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

Section 3.5 Covenant To Comply With Securities Laws Upon Repurchase of Notes

. When complying with the provisions of Section 3.01 (provided, that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions available under applicable law, the Company shall:

(a) comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act, as applicable;

(b) file the related Schedule TO (or any successor schedule, form or report) if required under the Exchange Act, as applicable;

(c) otherwise comply with all federal and state securities laws so as to permit the rights and obligations under Section 3.01 to be exercised in the time and in the manner specified therein.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.01, the Company's compliance with such laws and regulations shall not in and of itself cause a breach of its obligations under Section 3.01.

ARTICLE 4.

COVENANTS

Section 4.1

Payment of Notes

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(a) The Company agrees to pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and the Indenture. Not later than 10:00 a.m. (New York City time) on the due date of any principal of or interest on any Notes, or any purchase price of the Notes, the Company will deposit with the Trustee (or Paying Agent) money in immediately available funds sufficient to pay such amounts, provided that if the Company or any Affiliate of the Company is acting as Paying Agent, it will, on or before each due date, segregate and hold in a separate trust fund for the benefit of the Holders a sum of money sufficient to pay such amounts until paid to such Holders or otherwise disposed of as provided in the Indenture. In each case the Company will promptly notify the Trustee of its compliance with this paragraph.

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

(c) The Company agrees to pay interest on overdue principal, and, to the extent lawful, overdue installments of interest at the rate per annum specified in the Notes plus 2%.

(d) Payments in respect of the Notes represented by the Global Notes are to be made by wire transfer of immediately available funds to the accounts specified by the Holders of the Global Notes. With respect to Certificated Notes, the Company will make all payments by wire transfer of immediately available funds to the accounts specified by the Holders thereof or, if no such account is specified, by mailing a check to each Holder’s registered address.

Section 4.2 Maintenance of Office or Agency

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

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

Section 4.3

Existence

. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and the material rights and franchises of the Company, except in the case of such rights and franchises, where

the failure to do so would not have a material adverse effect on the business of the Company and its subsidiaries, taken as a whole, or the Company has otherwise determined that it is not in the best interest of the Company to do so; and provided further that this Section does not prohibit any transaction otherwise permitted by Section 5.01.

Section 4.4 Rule 144A Information and Annual Reports

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(a) At any time the Company is not subject to Sections 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any Noteholder, beneficial owner or prospective purchaser of Notes or any shares of Common Stock issued upon conversion of any Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A under the Securities Act.

(b) The Company shall deliver to the Trustee, such annual, quarterly and current reports or other information and documents that are required to be filed with the Commission, copies of the Company's annual reports (which shall contain audited financial statements of the Company), and quarterly and current reports and of the other information and documents (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act at the time the Company is required to file such annual, quarterly and current reports and other information and documents; provided that any such annual, quarterly and current reports, other information or documents required to be filed with the Commission shall be deemed delivered to the Trustee at the same time the same is filed with the Commission. The Company shall be deemed to have complied with the previous sentence to the extent that the Company shall have filed or furnished such annual, quarterly and current reports or other information and documents to the SEC via EDGAR (or any successor electronic delivery procedure). In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, the Company shall continue to provide the Trustee and, upon written request, to each Noteholder, annual, quarterly and current reports or other information and documents containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In

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such event, such annual, quarterly and current reports shall be provided at the times the Company would have been required to provide the applicable report had it continued to have been subject to such reporting requirements.

Section 4.5

Reports to Trustee

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(a) The Company will deliver to the Trustee within 120 days after the end of each fiscal year a certificate from the principal executive, financial or accounting officer of the Company stating that the officer has conducted or supervised a review of the activities of the Company and its Subsidiaries and their performance under the Indenture and that, based upon such review, the Company has fulfilled its obligations hereunder or, if there has been a Default, specifying the Default and its nature and status.

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

Section 4.6 Stay, Extension and Usury Laws

. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (in each case, to the extent that it may lawfully do so) hereby covenants that it will not, by resort to any such law to the extent it would hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.7

Payment of Additional Interest

. If Additional Interest is payable by the Company pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable, (ii) the reason why such Additional Interest is payable and (iii) the date on which such Additional Interest is payable. Unless and until a Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

ARTICLE 5.

CONSOLIDATION, MERGER, SALE OR LEASE OF ASSETS

Section 5.1 Consolidation, Merger, Sale or Lease of Assets by the Company

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(a) The Company, without the consent of the Holders of any of the outstanding Notes, may

(i) consolidate with or merge with or into any Person, or

(ii) sell, convey, transfer, or otherwise dispose of or lease all or substantially all of its assets as an entirety or substantially an entirety, in one transaction or a series of related transactions, to any Person;

provided, that

(A) either (x) the Company is the continuing Person or (y) the resulting, surviving or transferee Person is a corporation, partnership, limited liability company or trust organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly assumes by supplemental indenture all of the obligations of the Company under the Indenture and the Notes and the Registration Rights Agreement;

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

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

provided, however, that in the event of a consolidation or merger of a wholly-owned subsidiary of the Company with and into the Company, the Company shall not be required to deliver such certificate or opinion.

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

ARTICLE 6.
DEFAULT AND REMEDIES

Section 6.1 Events of Default

. An "Event of Default" occurs with respect to the Notes if:

(a) the Company defaults in the payment of the principal of any Note, or any Fundamental Change Purchase Price when the same becomes due and payable on the Maturity Date, on the Fundamental Change Purchase Date, upon acceleration, or otherwise;

(b) the Company fails to provide the notice required by Section 3.01(b) on a timely basis;

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

(d) the Company fails to deliver all cash and any shares of Common Stock when such cash and Common Stock, if any, are required to be delivered upon conversion of a Note, and the Company does not remedy such default within 10 days;

(e) the Company fails to comply with any other covenant or agreement of the Company in the Indenture or the Notes and the default or breach continues for a period of 60 consecutive days after receipt of written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Notes then outstanding; provided, however, that the Company shall have 120 days after receipt of such notice to remedy, or receive a waiver for, any failure to comply with Section 4.04(b) of this Indenture so long as the Company is attempting to cure such failure as promptly as reasonably practicable;

(f) (i) the failure by the Company to make any payment by the end of any applicable grace period after maturity of any principal and/or accrued interest with respect to Debt, where the amount of such unpaid and due principal and/or accrued interest is in an aggregate amount in excess of $100,000,000, or (ii) there is an acceleration of any principal and/or accrued interest with respect to Debt where the amount of such accelerated principal and interest is in an amount in excess of $100,000,000 because of a default with respect to such Debt; in any such case of (i) or (ii), without such Debt having been paid or discharged or such acceleration having been cured, waived, rescinded or annulled within a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding; provided, however, if any such failure or acceleration referred to in (i) or (ii) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred and any acceleration hereunder as a result of the related Event of Default shall be automatically rescinded;

(g) the Company or any Significant Subsidiary, pursuant to or under or within the meaning of any Bankruptcy Law,

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

(h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the Company or any Significant Subsidiary in an involuntary case or proceeding, or adjudicates the Company or any Significant Subsidiary insolvent or bankrupt; (ii) appoints any receiver, trustee, assignee, liquidator, custodian or similar official of the Company or any Significant Subsidiary or for any substantial part of its property; or (iii) orders the winding up or liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 60 days (an event of default specified in clause (g) or (h) a “Bankruptcy Default”).

Section 6.2

Acceleration

.

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

(b) The Holders of a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may waive all past defaults and rescind and annul a declaration of acceleration with respect to such Notes and its consequences if:

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

(ii) the rescission would not conflict with any judgment or decree of a

court of competent jurisdiction.

Section 6.3 Other Remedies

. If an Event of Default occurs and is continuing, the Trustee may pursue, in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

Section 6.4

Waiver of Past Defaults

. Except as otherwise provided in Sections 6.02, 6.07 and 9.02(b), the Holders of a majority in principal amount of the outstanding Notes may, by notice to the Trustee, waive an existing Default and its consequences. Upon such waiver, the Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.5

Control by Majority

. The Holders of a majority in aggregate principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders of Notes not joining in the giving of such direction, and may take any other action it deems proper that is not inconsistent with any such direction received from Holders of Notes.

Section 6.6

Limitation on Suits

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

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

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

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

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

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

Section 6.7 Rights of Holders to Receive Payment

. Notwithstanding anything to the contrary, the right of a Holder of a Note to receive payment of principal of or interest on its Note on or after the Stated Maturities thereof, or to bring suit for the enforcement of any such payment on or after such respective dates, may not be impaired or affected without the consent of that Holder.

Section 6.8

Collection Suit by Trustee

. If an Event of Default in payment of principal or interest specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust for the whole amount

of principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent lawful, overdue installments of interest, in each case at the rate specified in the Notes, and such further amount as is sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee hereunder.

Section 6.9 Trustee May File Proofs of Claim

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

Section 6.10 Priorities

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

First: to the Trustee for all amounts due hereunder;

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

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

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

Section 6.11 Restoration of Rights and Remedies

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

Section 6.12 Undertaking for Costs

. In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good

faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by a Holder to enforce payment of principal of or interest on any Note on the respective due dates, or a suit by Holders of more than 10% in principal amount of the outstanding Notes.

Section 6.13 Rights and Remedies Cumulative

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

Section 6.14 Delay or Omission Not Waiver

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

ARTICLE 7.

THE TRUSTEE

Section 7.1

General

.

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

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

(c) No provision of the Indenture shall be construed to relieve the Trustee from

liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

Section 7.2

Certain Rights of Trustee

. Subject to Trust Indenture Act Sections 315(a) through (d):

(a) In the absence of bad faith on its part, the Trustee may rely, and will be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but, in the case of any document which is specifically required to be furnished to the Trustee pursuant to any provision hereof, the Trustee shall examine the document to determine whether it conforms to the requirements of the Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). The Trustee, in its discretion, may make further inquiry or investigation into such facts or matters as it sees fit.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel conforming to Section 12.06 and the Trustee will not be liable for any action it takes or omits to take in good faith in reliance on the certificate or opinion.

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

(d) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders, unless such Holders have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

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

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

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

Section 7.3

Individual Rights of Trustee

. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Trust Indenture Act Sections 310(b) and 311. For purposes of Trust Indenture Act Section 311(b)(4) and (6):

(a) "cash transaction" means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(b) "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or

merchandise previously constituting the security, provided the security is received by the Trustee

simultaneously with the creation of the creditor relationship arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 7.4

Trustee's Disclaimer

. The Trustee (i) makes no representation as to the validity or adequacy of the Indenture or the Notes, (ii) is not accountable for the Company's use or application of the proceeds from the Notes and (iii) is not responsible for any statement in the Notes other than its certificate of authentication.

Section 7.5

Notice of Default

. If any Default occurs and is continuing and is known to the Trustee, the Trustee will send notice of the Default to each Holder within 90 days after it occurs, unless the Default has been cured; provided that, except in the case of a default in the payment of the principal of or interest on any Note, the Trustee may withhold the notice if and so long as the board of directors, the executive committee or a trust committee of directors of the Trustee in good faith determines that withholding the notice is in the interest of the Holders. Notice to Holders under this Section will be given in the manner and to the extent provided in Trust Indenture Act Section 313(c).

Section 7.6

Reports by Trustee to Holders

. Within 60 days after each May 15, beginning with May 15, 2007, the Trustee will mail to each Holder, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such May 15, if required by Trust Indenture Act Section 313(a), and file such reports with each stock exchange upon which its Notes are listed and with the Commission as required by Trust Indenture Act Section 313(d).

Section 7.7

Compensation and Indemnity

.

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

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

connection with the exercise or performance of any of its powers or duties under the Indenture and the Notes.

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

Section 7.8

Replacement of Trustee

.

(a) The Trustee may resign at any time by written notice to the Company.

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

(ii) If the Trustee is no longer eligible under Section 7.10 or in the circumstances described in Trust Indenture Act Section 310(b), any Holder that satisfies the requirements of Trust Indenture Act Section 310(b) may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

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

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

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

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

(d) Notwithstanding replacement of the Trustee pursuant to this Section, the

Company's obligations under Section 7.07 will continue for the benefit of the retiring Trustee.

(e) The Trustee agrees to give the notices provided for in, and otherwise comply

with, Trust Indenture Act Section 310(b).

Section 7.9 Successor Trustee by Merger

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

Section 7.10 Eligibility

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

Section 7.11 Money Held in Trust

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

ARTICLE 8.

DISCHARGE

Section 8.1 Satisfaction and Discharge of the Indenture

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(a) This Indenture shall cease to be of further effect if either: (i) all outstanding Notes (other than Notes replaced pursuant to Section 2.07) have been delivered to the Trustee for cancellation or (ii) all outstanding Notes have become due and payable on the Maturity Date or upon repurchase pursuant to Article 3, and the Company irrevocably deposits, prior to the applicable date on which such payment is due and payable, with the Trustee or the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) Cash, and, if applicable as herein provided and in accordance herewith, such other consideration, sufficient to pay all amounts due and owing on all outstanding Notes (other than Notes replaced pursuant to Section 2.07) on the Maturity Date or the Fundamental Change Purchase Date, as the case may be; provided that, in either case, the Company pays to the Trustee all other sums payable hereunder by the Company.

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

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

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.07 shall survive and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the provisions of Section 2.03, Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.12, Section 3.01, Article 5, Article 10 and this Article 8, shall survive and the Company shall be required to make all payments and deliveries required by such Sections or Articles, as the case may be, irrespective of any prior satisfaction and discharge until the Notes have been paid in full.

Section 8.2

Application of Trust Money

. Subject to the provisions of Section 8.03, the Trustee or a Paying Agent shall hold in trust, for the benefit of the Holders, all money deposited with it pursuant to Section 8.01 and shall apply the deposited money in accordance with this Indenture and the Notes to the payment of the principal amount of and interest on the Notes.

Section 8.3

Repayment to Company

. The Trustee and each Paying Agent shall promptly pay to the Company upon request any excess money (x) deposited with them pursuant to Section 8.01 and (y) held by them at any time.

The Trustee and each Paying Agent shall also pay to the Company upon request any money held by them for the payment of the principal amount of Notes or interest thereon that remains unclaimed for two years after a right to such money has matured (which maturity shall occur, for the avoidance of doubt, on the Maturity Date or the Fundamental Change Purchase Date (with respect to any Notes repurchased pursuant to Article 3)). After payment to the Company, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

Section 8.4

Reinstatement

. If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 8.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 8.02; provided, however, that if the Company has made any payment of the principal amount of or interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive any such payment from the money held by the Trustee or such Paying Agent.

ARTICLE 9.

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 9.1 Amendments Without Consent of Holders

. The Company and the Trustee may amend or supplement the Indenture or the Notes without notice to or the consent of any Noteholder:

(a) to cure any ambiguity, omission, defect or inconsistency in the Indenture or the Notes;

(b) to comply with Article 5 or Section 10.12;

(c) to comply with the Trust Indenture Act or any amendment thereto, or to comply with any requirements of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;

(d) to evidence and provide for the acceptance of an appointment hereunder by a successor Trustee;

(e) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(f) to secure the Notes;

(g) to add guarantees with respect to the Notes;

(h) 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;

(i) to add any additional Events of Default;

(j) to comply with the rules of any applicable securities depositary; or

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(k) to make any other change that does not materially adversely affect the rights of any Holder.

Section 9.2 Amendments With Consent of Holders

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(a) Except as otherwise provided in Section 6.07 or paragraph (b), the Company and the Trustee may amend the Indenture and the Notes with the written consent of the Holders of a majority in principal amount of the outstanding Notes, and the Holders of a majority in principal amount of the outstanding Notes by written notice to the Trustee may waive future compliance by the Company with any provision of the Indenture or the Notes.

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

(i) reduce the principal amount of, Fundamental Change Purchase Price with respect to, or any premium or interest payment on any Note,

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

in the Note,

(iii) change the Stated Maturities of any installment of principal of any Note,

(iv) make any change that adversely affects the Holders' right to convert any Note,

(v) make any change that adversely affects the Holders' right to require the Company to purchase the Notes in accordance with the terms thereof and this Indenture,

(vi) impair the right to convert or receive any principal or interest payment with respect to, a Note, or right to institute suit for the enforcement of any payment with respect to, or conversion of, the Notes, or

(vii) make any change in the percentage of the principal amount of the Notes required for amendments or waivers.

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

(d) An amendment, supplement or waiver under this Section will become effective on receipt by the Trustee of written consents from the Holders of the requisite percentage in principal amount of the outstanding Notes. After an amendment, supplement or waiver under this Section becomes effective, the Company will send to the Holders affected thereby a notice

briefly describing the amendment, supplement or waiver. The Company will send supplemental indentures to Holders upon request. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

(e) With respect to the amendments set forth in Section 9.01 and this Section 9.02, no such amendment to cure any ambiguity, defect or inconsistency made solely to conform the Indenture to the provisions of the description of the Notes as set forth in any final offering memorandum will be deemed to adversely affect the interests of the Noteholders.

Section 9.3

Effect of Consent

.

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

(b) If an amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder to deliver it to the Trustee so that the Trustee may place an appropriate notation of the changed terms on the Note and return it to the Holder, or exchange it for a new Note that reflects the changed terms. The Trustee may also place an appropriate notation on any Note thereafter authenticated. However, the effectiveness of the amendment, supplement or waiver is not affected by any failure to annotate or exchange Notes in this fashion.

Section 9.4 Trustee's Rights and Obligations

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

Section 9.5 Conformity With Trust Indenture Act

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

Section 9.6

Payments for Consents

. Neither the Company nor any of its Subsidiaries or Affiliates may, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or agreed to be paid to all Holders of the Notes that consent, waive or agree to amend such term or provision within the time period set forth in the solicitation documents relating to the consent, waiver or amendment.

ARTICLE 10.

CONVERSION

Section 10.1 Conversion Privilege

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(a) A Holder of a Note may convert such Note at any time on or prior to the Close of Business on the Business Day immediately preceding the Maturity Date upon the occurrence of any of the events set forth in paragraph 7(a), paragraph 7(b), paragraph 7(c), paragraph 7(d) or paragraph 7(e) of the Notes, subject to the provisions of this Article 10. Except as set forth below under Section 10.01(c) and in Section 10.11 and Section 10.12, if a Holder surrenders its Notes for conversion, such Holder will receive, in respect of each $1,000 of principal amount of Notes to be converted:

(i) Cash in an amount equal to the lesser of (A) $1,000 and (B) the Conversion Value (the "Required Cash Amount"), and

(ii) if the Conversion Value is greater than $1,000, a number of shares of Common Stock (the "Remaining Shares"), equal to the sum of the Daily Share Amounts for each of the twenty consecutive Trading Days in the Conversion Reference Period, subject to the right of the Company to deliver Cash in lieu of all or a portion of such Remaining Shares as described below.

(b) By the Close of Business on the Business Day prior to the first scheduled Trading Day of the applicable Conversion Reference Period, the Company may specify a percentage of the Daily Share Amount that will be settled in Cash (the "Cash Percentage") and will notify the Noteholder of such Cash Percentage through written notice to the

Trustee (the "Cash Percentage Notice"). If the Company elects to specify a Cash Percentage, (x) the amount of Cash that the Company will deliver pursuant to clause (b) of this Section 10.01 in respect of each Trading Day in the applicable Conversion Reference Period will equal the product of: (i) the Cash Percentage, (ii) the Daily Share Amount for such Trading Day, and (iii) the Volume Weighted Average Price of the Common Stock for such Trading Day and (y) the number of shares of Common Stock deliverable in respect of each Business Day in the applicable Conversion Reference Period (in lieu of the full Daily Share Amount for such Trading Day pursuant to clause (b) above) will be a percentage of the Daily Share Amount equal to 100% minus the Cash Percentage. If the Company does not specify a Cash Percentage by the Close of Business on the Trading Day prior to the first

scheduled Trading Day of the applicable Conversion Reference Period, the Company shall settle 100% of the Daily Share Amount for each Trading Day in the applicable Conversion Reference Period with shares of Common Stock; provided, however, that the Company will pay Cash in lieu of fractional shares otherwise issuable upon conversion of such Note, pursuant to Section 10.03 hereof. The Company may, at its option, revoke any Cash Percentage Notice through written notice to the Trustee by the Close of Business on the Business Day prior to the scheduled first Trading Day of the applicable Conversion Reference Period.

(c) Notwithstanding anything herein to the contrary, the Company shall not be obligated to deliver shares in connection with any conversion of Notes if to do so would constitute a violation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, any foreign antitrust requirements or any similar laws ("Antitrust Laws") and, to the extent the Company has elected to settle the Conversion Value in excess of the Required Cash Amount in shares (or is required to do so because it has not made any election to the contrary), the Company may defer delivery of the Remaining Shares until permitted under such laws (although such shares will be delivered promptly to the maximum extent permitted) and for avoidance of doubt, in no such event shall the Company be required to deliver cash in lieu of the Remaining Shares. In this regard, in the event of any conversion by any Initial Purchaser or any Sponsor Purchaser while there is an Affiliate or representative of any Initial Purchaser or any Sponsor Purchaser on the Board of Directors or, in any event, prior to the Designee Termination Date (as defined in the Note Purchase Agreement), in connection with and prior to such conversion, such Person will either (i) certify to the Company that no filings or clearances are required under Antitrust Laws and delivery of shares issued upon such conversion would not violate any Antitrust Laws (and, if requested, provide reasonably detailed information supporting such determination), or (ii) certify that such filings or clearances are required, in which case such Person and the Company will provide reasonable cooperation with one another in connection with the making of such filings and obtaining of such clearances and such Person shall acknowledge that the Remaining Shares (or such portion of the Remaining Shares as to which restrictions under Antitrust Laws are applicable) shall not be required to be delivered until such time as all such filings have been made and such clearances obtained (including the expiration of any applicable waiting periods) or are no longer required. For purposes of the foregoing certifications, it will be assumed that the maximum number of Remaining Shares of Common Stock deliverable upon conversion of the Notes would be delivered. In connection with a certification pursuant to clause (i), such certification may be based on an irrevocable commitment to sell immediately upon receipt (which will be deemed satisfied if same day) a sufficient number of shares of Common Stock such that no filings or clearances are required under applicable Antitrust Laws in connection with the conversion of such Notes, *provided*, that if such commitment is the basis for such certification, such Person shall furnish reasonable evidence of such commitment in connection with such conversion and certification.

(d) A Holder may convert a portion of the principal amount of a Note if the portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of a Note.

(e) In the event of a stock split, combination, dividend or any other event resulting in an adjustment to the Conversion Rate pursuant to Section 10.06, 10.07, 10.08, 10.09 or 10.10, during the applicable Conversion Reference

Period, appropriate adjustment to the equation for calculating Conversion Value and Remaining Shares shall be made, as determined by the Board of Directors.

(f) Notes with respect to which a Fundamental Change Purchase Notice has been given by the Holder may be converted pursuant to this Article 10 only if the Fundamental Change Purchase Notice has been withdrawn in accordance with Section 3.02.

(g) Whenever any event described in paragraph 7(a), paragraph 7(b), paragraph 7(c), paragraph 7(d) or paragraph 7 (e) of the Notes shall occur such that the Notes become convertible as provided in this Article 10, the Company shall (x) issue a press release and use its reasonable efforts to post such information on its website or otherwise publicly disclose this information or (y) promptly deliver, in accordance with Section 12.03, written notice of the convertibility of the Notes to the Trustee and each Noteholder and to the Conversion Agent for the benefit of the Noteholders, which press release, website posting, public disclosure or written notice, as the case may be, shall include:

(i) a description of such event;

(ii) a description of the periods during which the Notes shall be convertible as provided in paragraph 7(a), paragraph 7(b), paragraph 7(c), paragraph 7(d) or paragraph 7(e) of the Notes as a result of such event;

(iii) a statement of whether an adjustment to the Conversion Rate shall take

effect in respect of such event pursuant to Section 10.13; and

(iv) the procedures Noteholders must follow to convert their Notes in

accordance with this Article 10, including the name and address of the Conversion Agent. Section 10.2 Conversion Procedure .

(a) To convert a Note represented by a Global Note, a Noteholder must convert by book-entry transfer to the Conversion Agent through the facilities of the DTC. To convert a Note that is represented by a Certificated Note, a Noteholder must (1) complete and manually sign a Conversion Notice, a form of which is on the back of the Note, and deliver such Conversion Notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) if required by the Conversion Agent, furnish appropriate endorsement and transfer documents, and (4) if required, pay all transfer or similar taxes. The Conversion Agent shall, within one (1) Business Day of any Conversion Date, provide notice to the Company, as set forth in Section 12.03, of the occurrence of such Conversion Date.

(b) As promptly as practicable following the end of the Conversion Reference Period applicable to the Notes being converted, the Company shall deliver to the Holder, through the Conversion Agent, the Required Cash Amount and Remaining Shares, if any (including Cash in lieu of Remaining Shares pursuant to Section 10.01 hereof and Cash in lieu of fractional shares pursuant to Section 10.03 hereof). The person in whose name the certificate representing any shares is registered shall be treated as a stockholder of record on and after the last Trading Day of the Conversion Reference Period; provided, however, that no surrender of a Note on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the Remaining Shares upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the Close of Business on the next succeeding day on which such stock transfer books are open. Upon conversion of a Note, such person shall no longer be a Holder of such Note.

(c) No payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 10. Upon conversion of a Note, a Noteholder will not receive, except as described below, any Cash payment representing accrued interest. Instead, accrued interest will be deemed paid by the

Cash and/or shares of common stock, if any, received by the Noteholder upon conversion. Delivery to the Noteholder of such Cash and/or shares of Common Stock will thus be deemed (1) to satisfy the Company's obligation to pay the principal amount of a Note, and (2) to satisfy the Company's obligation to pay accrued and unpaid interest on the Note. As a result, upon conversion of a Note, accrued and unpaid interest on such Note is deemed paid in full rather than cancelled, extinguished or forfeited.

(d) Holders of Notes surrendered for conversion during the period from the Close of Business on any Regular Record Date next preceding any Interest Payment Date to the opening of business of such Interest Payment Date will receive the semiannual interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion, and such Notes upon surrender must be accompanied by funds equal to the amount of such payment; provided that no such payment need be made (x) in connection with any conversion following the Regular Record Date immediately preceding the Maturity Date, (y) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date or (z) to the extent of any Defaulted Interest, if any Defaulted Interest exists at the time of conversion with respect to such Note. The Company shall not be required to convert any Notes that are surrendered for conversion without payment of interest as required by this paragraph.

(e) If the Holder converts more than one Note at the same time, the Required Cash Amount and the Remaining Shares, if any (together with the Cash payment, if any, in lieu of fractional shares) shall be based on the total principal amount of the Notes converted.

(f) If the last day on which a Note may be converted is a Legal Holiday, the Note may be surrendered on the next succeeding day that is not a Legal Holiday.

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

Section 10.3 Fractional Shares

. The Company will not issue a fractional share of Common Stock upon conversion of a Note. Instead, the Company will deliver Cash in lieu of a fractional share based on arithmetic average of the Volume Weighted Average Price of Common Stock for each of the twenty consecutive Trading Days of the Conversion Reference Period, rounded to the nearest whole cent (the "Average Price").

Section 10.4 Taxes On Conversion

. If a Holder converts a Note, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the Common Stock is to be delivered in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

Section 10.5 Company To Provide Common Stock

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The Company shall at all times have authorized and reserved and keep available for issuance a sufficient number of shares of Common Stock to permit the delivery in respect of all outstanding Notes of the number of Remaining Shares

due upon conversion, including as may be adjusted for share splits, combinations or other similar transactions (assuming, for purposes of this sentence, that the Company elects to deliver solely shares of Common Stock in respect of its obligation to deliver the Remaining Shares).

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

The Company will comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon payment of the Remaining Shares, if applicable, upon conversion of Notes, if any, and will list or cause to have quoted such shares of Common Stock on

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each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

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

Section 10.6 Adjustment for Change In Capital Stock

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(a) If the Company shall, at any time and from time to time while any of the Notes are outstanding, issue a dividend or make a distribution on its Common Stock payable in shares of its Common Stock to all holders of its Common Stock, then the Conversion Rate at the opening of business on the Ex-Dividend Date for such dividend or distribution will be adjusted by multiplying such Conversion Rate by a fraction:

(i) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the Close of Business on the Business Day immediately preceding the Ex-Dividend Date for such dividend or distribution, plus the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the Business Day immediately preceding such Ex-Dividend Date.

If any dividend or distribution of the type described in this Section 10.06(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared. Except as set forth in the preceding sentence, in no event shall the Conversion Rate be decreased pursuant to this Section 10.06(a).

(b) If the Company shall, at any time or from time to time while any of the Notes are outstanding, subdivide or reclassify its outstanding shares of Common Stock into a greater number of shares of Common Stock, then the Conversion Rate in effect at the opening of business on the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, if the Company shall, at any time or from time to time while any of the Notes are outstanding, combine or reclassify its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then the Conversion Rate in effect at the opening of business on the day upon which such combination or reclassification becomes effective shall be proportionately decreased. In each such case, the Conversion Rate shall be adjusted by multiplying such

Conversion Rate by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding

immediately after giving effect to such subdivision, combination or reclassification and the denominator of which shall be the number of shares of Common Stock

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

Section 10.7 Adjustment for Rights Issue

. If the Company shall, at any time or from time to time while the Notes are outstanding, distribute rights or warrants to all holders of its Common Stock entitling them, for a period expiring within 60 days after the record date for such distribution, to purchase shares of Common Stock at less than the average of the Closing Prices for the five consecutive Trading Days immediately preceding the first public announcement of the distribution, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the Ex-Dividend Date for such distribution by a fraction:

(x) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Business Day immediately preceding the Ex-Dividend Date for such distribution, plus the total number of additional shares of Common Stock so offered for purchase; and

(y) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the Business Day immediately preceding the Ex-Dividend Date for such distribution, plus the number of shares of Common Stock that the aggregate offering price of the total number of shares of Common Stock so offered would purchase at the Current Market Price of the Common Stock on the declaration date for such distribution (determined by multiplying such total number of shares of Common Stock so offered by the exercise price of such rights or warrants and dividing the product so obtained by such Current Market Price).

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution.

To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants or upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so distributed, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if the Ex-Dividend Date for such distribution had not occurred. In determining whether any rights or warrants entitle the holders to purchase shares of Common Stock at less than the average of the Closing Prices for the five consecutive Trading Days immediately preceding the first public announcement of the relevant distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights and the value of such consideration if other than Cash, to be determined in good faith by the Board of Directors. Except as set forth in this paragraph, in no event shall the Conversion Rate be decreased pursuant to this Section 10.07.

Section 10.8 Adjustment for Other Distributions

.

(a) If the Company shall, at any time or from time to time while the Notes are outstanding, distribute to all holders of its Common Stock any of its Capital Stock, assets, or debt securities or any rights, warrants or options to purchase securities of the Company (excluding (w) any distribution of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit of the Company referred to in Section 10.08(b) below, (x) any distributions described in Section 10.06(a) above, (y) any rights or warrants described in Section 10.07 above, (z) any all-cash dividends or other cash distributions referred to in Section 10.09 below) (such Capital Stock, assets, debt securities or rights to purchase securities of the Company being distributed hereinafter in this Section 10.08 called the "Distributed Assets"), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect immediately prior to the opening of business on the Ex-Dividend Date with respect to such distribution by a fraction:

(i) the numerator of which will be the Current Market Price of the Common Stock, and

(ii) the denominator of which will be the Current Market Price of the Common Stock minus the fair market value, as determined by the Board of Directors, of the portion of Distributed Assets so distributed applicable to one share of the Common Stock (determined on the basis of the number of shares of Common Stock outstanding on such Ex-Dividend Date).

Such increase shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. In the event that such distribution is not so made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such distribution had not been declared. Except as set forth in the prior sentence, in no event shall the Conversion Rate be decreased pursuant to this Section 10.08(a).

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10.08(a) by reference to the actual or when issued trading market for any Distributed Assets comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price for purposes of clause (i) above, unless the Board of Directors determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holders.

(b) With respect to an adjustment pursuant to this Section 10.08 where there has been a payment of a dividend or other distribution on Common Stock of shares of capital stock of, or similar equity interests in, a subsidiary or other business unit of the Company, the Conversion Rate will be adjusted by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date with respect to such distribution by a fraction:

(i) the numerator of which shall be (a) the average of the closing sale prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the five Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date for such dividend or distribution on the principal national securities exchange or inter-dealer quotation system on which such securities are then listed or traded, plus (b) the average of the Closing Prices over the five Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date for such dividend or distribution (the "Average Sale Price"), and

(ii) the denominator of which shall be the Average Sale Price.

Section 10.9 Adjustment for Cash Dividends

. If the Company shall, at any time or from time to time while any of the Notes are outstanding, by dividend or otherwise, distribute to all or substantially all holders of its shares of Common Stock, Cash (excluding (x) any distributions described in Section 10.10 below or (y) any dividend or distribution in connection with the Company's liquidation, dissolution or winding up), then the Conversion Rate shall be adjusted so that the same shall equal the rate

determined by multiplying the Conversion Rate in effect immediately prior to the opening of business of the Ex-Dividend Date for such distribution by a fraction:

(x) the numerator of which shall be equal to the Current Market Price per share of Common Stock; and

(y) the denominator of which shall be equal to the Current Market Price per share of Common Stock on such date, less the amount of the distribution per share of Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. In the event that such distribution is not so made, the

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

Section 10.10 Adjustment for Certain Tender Offers or Exchange Offers

. In case the Company or any of its Subsidiaries shall, at any time or from time to time, while any of the Notes are outstanding, distribute Cash or other consideration in respect of a tender offer or an exchange offer (that is treated as a "tender offer" under U.S. federal securities laws) made by the Company or any Subsidiary for all or any portion of the Common Stock, where the sum of the aggregate amount of such Cash distributed and the aggregate fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the Expiration Date (as defined below), of such other consideration distributed (such sum, the "Aggregate Amount") expressed as an amount per share of Common Stock validly tendered or exchanged, and not withdrawn, pursuant to such tender offer or exchange offer as of the Expiration Time (as defined below) (such tendered or exchanged shares of Common

Stock, the "Purchased Shares") exceeds the Closing Price per share of the Common Stock on the first Trading Day immediately following the last date (such last date, the "Expiration Date") on which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as the same may be amended through the Expiration Date), then, and in each case, immediately after the close of business on such date, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Trading Day immediately following the Expiration Date by a fraction:

(x) the numerator of which is equal to the sum of (A) the Aggregate Amount and (B) the product of (I) an amount equal to (1) the number of shares of Common Stock outstanding as of the last time (the "Expiration Time") at which tenders or exchanges could have been made pursuant to such tender offer or exchange offer less (2) the Purchased Shares and (II) the Closing Price per share of the Common Stock on the first Trading Day immediately following the Expiration Date; and

(y) the denominator of which shall be equal to the product of (A) the number of shares of Common Stock outstanding as of the Expiration Time (including all Purchased Shares) and (B) the Closing Price per share of the Common Stock on the first Trading Day immediately following the Expiration Date.

An adjustment, if any, to the Conversion Rate pursuant to this Section 10.10 shall become effective immediately prior to the opening of business on the second Trading Day immediately following the Expiration Date. In the event that the Company or a Subsidiary is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such tender offer or exchange offer had not been made. Except as set forth in the preceding sentence, if the application of this Section 10.10 to any tender offer or exchange offer would

result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section 10.10.

Section 10.11 Provisions Governing Adjustment to Conversion Rate

. Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 (and no adjustment to the Conversion Rate under Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under Section 10.08, except as set forth in Section 10.23. If any such right, option or warrant, including any such existing rights, options or warrants distributed

prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof), except as set forth in Section 10.23. In addition, except as set forth in Section 10.23, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 was made (including any adjustment contemplated in Section 10.23), (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a Cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

Section 10.12 Disposition Events

. If any of the following events (any such event, a "Disposition Event") occurs:

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

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

(c) any sale, conveyance, lease, or other disposal of all or substantially all the

properties and assets of the Company to any other Person;

in each case, as a result of which all of the holders of Common Stock shall be entitled to receive Cash, securities or other property for their shares of Common Stock, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in

force at the date of execution of such supplemental indenture, if such supplemental indenture is then required to so comply) providing that notwithstanding the provisions of Section 10.01, and subject to the provisions of paragraph 7 of the Notes, the Conversion Value with respect to each $1,000 principal amount of Notes converted following the effective date of any Disposition Event, shall be calculated based on the kind and amount of Cash, securities or other property (collectively, "Reference Property") received upon the occurrence of such Disposition Event by a holder of Common Stock holding, immediately prior to the transaction, a number of shares of Common Stock equal to the Conversion Rate immediately

prior to such Disposition Event; provided that if the Disposition Event provides the holders of Common Stock with the right to receive more than a single type of consideration determined based in part upon any form of stockholder election, the Reference Property shall be comprised of the weighted average of the types and amounts of consideration received by the holders of the Common Stock.

If the Conversion Value of the Notes shall be based on Reference Property as set forth above, the Company's obligation to deliver the consideration described in Section 10.01 with respect to each $1,000 principal amount of Notes tendered for conversion after the effective date of any such Disposition Event, shall, notwithstanding anything to the contrary set forth in Section 10.01, be settled in Cash and units of Reference Property (if applicable) and the Company shall deliver, as promptly as practicable immediately following the last Trading Day of the Conversion Reference Period:

(1) Cash in an amount equal to the lesser of (A) $1,000 and (B) the Conversion Value, and

(2) if the Conversion Value is greater than $1,000, an amount in Reference Property, determined as set forth in Section 10.01(b), with a fair market value, as determined by the Conversion Agent, equal to the Conversion Value less $1,000; and

(3) an amount in Cash in lieu of any fractional shares of Common Stock, if applicable, calculated based on the Average Price,

provided that, in each case, (x) the Conversion Value and the Daily Share Amounts, shall be determined as if the words "Volume Weighted Average Price per share of Common Stock" in the definition of each such term were replaced by the words "Volume Weighted Average Price per unit of Reference Property composed of the kind and amount of Cash, securities or other property that a holder of one share of Common Stock immediately prior to such Disposition Event would have owned or been entitled to receive," (y) the Volume Weighted Average Price shall be determined with respect to such a unit of Reference Property and (z) references to "Remaining Shares" and "shares of Common Stock" were instead references to "a unit of Reference Property composed of the kind and amount of Cash, securities or other property that a holder of one share of Common Stock immediately prior to such Disposition Event would have owned or been entitled to receive."

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 10. If, in the case of any such Disposition Event, the stock or other securities and assets receivable thereupon by a holder of Common Stock includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Disposition Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Noteholders 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 Noteholder, at the address of such Noteholder as it appears on the register of the Notes 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 10.12 shall similarly apply to successive Disposition

Events.

If this Section 10.12 applies to any event or occurrence, none of Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 shall apply.

Section 10.13 Adjustment to Conversion Rate Upon Change in Control Transactions, Discretionary Adjustment .

(a) If, after the Issue Date, a Change in Control occurs and a Holder elects to convert its Notes in connection with such Change in Control, the Company will increase the Conversion Rate for the Notes surrendered for conversion by a number of additional shares of Common Stock (the "Make-Whole Shares"), as described in this Section 10.13. A conversion of Notes will be deemed for the purposes of this Section 10.13 to be "in connection with" a Change in Control transaction if the notice of conversion of the Notes is received by the Conversion Agent from and including the effective date of the Change in Control transaction up to and including the Trading Day prior to the related Fundamental Change Purchase Date.

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

(c) The Stock Prices set forth in the first row of the table below will be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. In addition, the number of Make-Whole Shares on the table below will be subject to adjustment in the same manner as the Conversion Rate as set forth in Section 10.06 through Section 10.10.

	Effective Date							
Stock Price	January 26, 2007	February 1, 2008	February 1, 2009	February 1, 2010	February 1, 2011	February 1, 2012	February 1, 2013	February 1, 2014
$5.77	34.7	34.7	34.7	34.7	34.7	34.7	34.7	34.7
$6.00	31.9	32.3	32.6	32.6	32.2	31.3	29.5	27.9
$7.00	22.7	22.6	22.3	21.7	20.6	18.7	15.3	4.6
$8.00	16.6	16.3	15.7	14.8	13.5	11.3	7.7	0.0
$9.00	12.4	12.0	11.3	10.4	9.0	7.0	3.8	0.0
$10.00	9.5	9.0	8.4	7.4	6.1	4.4	1.9	0.0
$11.00	7.4	6.9	6.2	5.4	4.3	2.8	1.0	0.0
$12.00	5.8	5.3	4.7	4.0	3.0	1.8	0.5	0.0
$13.00	4.6	4.2	3.6	3.0	2.2	1.2	0.3	0.0

$14.00	3.7	3.3	2.8	2.2	1.6	0.8	0.2	0.0
$15.00	3.0	2.6	2.2	1.7	1.1	0.6	0.1	0.0
$16.00	2.4	2.1	1.7	1.3	0.8	0.4	0.1	0.0
$17.00	1.9	1.7	1.4	1.0	0.6	0.3	0.0	0.0
$18.00	1.6	1.3	1.1	0.8	0.5	0.2	0.0	0.0
$19.00	1.3	1.1	0.8	0.6	0.3	0.1	0.0	0.0
$20.00	1.1	0.9	0.7	0.5	0.2	0.1	0.0	0.0
$25.00	0.4	0.3	0.2	0.1	0.0	0.0	0.0	0.0
$30.00	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0

(d) If the exact Stock Prices and Change in Control Effective Dates are not set forth in the table, then: (i) if the Stock Price is between two Stock Prices in the table or the Change in Control Effective Date is between two Change in Control Effective Dates in the table, the Make-Whole Shares issued upon conversion of the Notes will be determined by a straight-line interpolation between the number of Make-Whole Shares set forth for the higher and lower Stock Prices and the earlier and later Change in Control Effective Dates in the table, based on a 365-day year, (ii) if the Stock Price is in excess of $30.00 per share, subject to adjustment as set forth in Section 10.13(c), no Make-Whole Shares will be issued upon conversion of the Notes; and (iii) if the Stock Price is less than $5.77 per share, subject to adjustment as set forth in Section 10.13(c), no Make-Whole Shares will be issued upon conversion of the Notes.

(e) The Company may make such increases in the Conversion Rate, in addition to those required by Sections 10.06, 10.07, 10.08, 10.09 and 10.10 as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

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

Section 10.14 When Adjustment May Be Deferred

. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. Any adjustments that are less than 1% of the Conversion Rate shall be carried forward and taken into account in determining any subsequent adjustment. In addition, the Company shall make any carry forward adjustments not otherwise effected upon notice of a required purchase of the notes pursuant to Section 3.01, and on January 1, 2014.

Section 10.15 When No Adjustment Required

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(a) No adjustment need be made for a transaction referred to in Section 10.06, Section 10.07, Section 10.08, Section 10.09 or Section 10.10 if Noteholders participate, without conversion, in the transaction or event that would otherwise give rise to an adjustment pursuant to such Section at the same time as holders of the Common Stock participate with respect to such transaction or event and on the same terms as holders of the Common Stock participate with respect to such transaction or event as if Noteholders, at such time, held a number of shares of Common Stock equal to the Conversion Rate at such time.

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

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

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

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

(f) The Conversion Rate shall not exceed 173.3482 shares per $1,000 principal amount of the Notes on account of adjustments to the Conversion Rate pursuant to this Article 10, subject to the adjustments set forth in Sections 10.06, 10.07, 10.08, 10.09 and 10.10 above. Further, notwithstanding anything in this Article 10 (subject only to the provisions of the second succeeding sentence), the conversion rate shall not exceed 1,007.2226 per $1,000 principal amount of the Notes, other than as a result of adjustments to the Conversion Rate in the manner set forth in Sections 10.06, 10.07 and 10.08 (such limitations herein referred to as the “Conversion Rate Cap”). The Company shall not take any action if, as a result of such action, the adjustment to the Conversion Rate that would otherwise be made pursuant to the provisions of 10.09 or 10.10 would be limited by the Conversion Rate Cap, unless such action would not result in a violation of NASD Rule 4350 as such rule or successor to such rule may be then in effect and interpreted by the

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NASD. If such action would not result in a violation of NASD Rule 4350, then the Conversion Rate Cap shall not apply to such action taken by the Company.

Section 10.16 Notice of Adjustment

. Whenever the Conversion Rate is adjusted, the Company shall promptly mail to

Noteholders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company’s independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

Section 10.17 Notice of Certain Transactions

. If (a) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 10.06, 10.07, 10.08, 10.09 or 10.10 (unless no adjustment is to occur pursuant to Section 10.14 or Section 10.15), (b) the Company takes any action that would require a supplemental indenture pursuant to Section 10.12, or (c) there is a liquidation or dissolution of the Company, then the Company shall mail to Noteholders and file with the Trustee and the Conversion Agent a notice stating the proposed Ex-Dividend Date for a dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, binding share exchange, transfer, liquidation or dissolution. The Company shall file and mail the notice at least 15 days before such date; provided that if the Company elects to make a distribution described in Section 10.07, Section 10.08, or Section 10.09, and in the case of Section 10.08 or Section 10.09, that has a per share value equal to more than 10% of the Closing Price per share of Common Stock on the day preceding the declaration date for such distribution, the Company shall give notice to Holders at least 20 Trading Days prior to the Ex-dividend Date for such distribution. Failure to file or mail the notice or any defect in it shall not affect the validity of the transaction.

Section 10.18 Right of Holders to Convert

. Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right to convert its Note in accordance with this Article 10 and paragraph 7 of the Notes and to bring an action for the enforcement of any such right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

Section 10.19 Company Determination Final

. The Company shall be responsible for making all calculations called for hereunder and under the Notes. These calculations include, but are not limited to, Conversion Value, the Conversion Date, the Volume Weighted Average Price, the Conversion Reference Period, the Closing Price, the Conversion Price, the Required Cash Amount, the Applicable Conversion Rate and the number of shares of Common Stock, if any, to be issued upon conversion of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's

calculations will be final and binding on Noteholders. The Company shall provide a schedule of the Company's calculations to the Trustee, and the Trustee is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 10.20 Trustee's Adjustment Disclaimer

. The Trustee has no duty to determine when an adjustment under this Article 10 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under Section 10.12 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Notes. The Trustee shall not be responsible for the Company's failure to comply with this Article 10. Each Conversion Agent shall have the same protection under this Section 10.20 as the Trustee.

Section 10.21 Simultaneous Adjustments

.

(a) For purposes of Section 10.08, Section 10.06(a) and Section 10.07, any dividend or distribution to which Section 10.08 is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the debt securities, assets or shares of Capital Stock other than such shares of Common Stock or rights (and any Conversion Rate adjustment required by Section 10.08 with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights (and any further Conversion Rate adjustment required by Section 10.06(a) and Section 10.07 with respect to such dividend or distribution shall then be made), except any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the Business Day immediately preceding such Ex-Dividend Date" within the meaning of Section 10.06(a).

(b) The reclassification of the Common Stock into securities including securities other than Common Stock (other than any reclassification upon an event to which Section 10.12 applies) shall be deemed to involve (a) a distribution of such securities other than the Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be the "Ex-Dividend Date" within the meaning of this Section 10.08), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common Stock outstanding immediately thereafter (and the effective date of such reclassification shall be deemed to be "the day upon which such subdivision becomes effective" or "the day upon which such combination becomes effective," as the case may be, and "the day upon which such subdivision or combination becomes effective" within the meaning of Section 10.06(b)).

Section 10.22 Successive Adjustments

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

Section 10.23 Rights Issued in Respect of Common Stock Issued Upon Conversion.

In the event the Company adopts or implements a shareholder rights agreement (a "Shareholder Rights Plan") pursuant to which rights ("Rights") are distributed to the holders of Common Stock of the Company and such Shareholder Rights Plan provides that each share of Common Stock issued upon conversion of the Notes at any time prior to the distribution of separate certificates representing such Rights will be entitled to receive such Rights, then there shall not be any adjustment to the conversion privilege or Conversion Rate at any time prior to the distribution of separate certificates representing such Rights. If, however, prior to any conversion, the Rights have separated from the Common Stock, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all holders of the Common Stock, its assets, debt securities or rights as described in Section 10.08 above, subject to readjustment in the event of the expiration, termination or redemption of such Rights.

Section 10.24 Withholding Taxes for Adjustments in Conversion Rate

. The Company may, at its option, set-off withholding taxes due with respect to Notes against payments of Cash and Common Stock on the Notes to the extent required by law. In the case of any such set-off against Common Stock delivered upon conversion of the Notes, such Common Stock shall be valued based on the arithmetic average of the Volume Weighted Average Price for each Trading Day in the relevant Conversion Reference Period.

ARTICLE 11.

PAYMENT OF INTEREST

Section 11.1 Interest Payments

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

Section 11.2 Defaulted Interest

. Except as otherwise specified with respect to the Note, any interest on any Note that is payable, but is not punctually paid or duly provided for, within 30 days following any applicable payment date (herein called "Defaulted Interest," which term shall include any accrued and unpaid interest that has accrued on such defaulted amount in

accordance with paragraph 1 of the Notes), shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below.

(a) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Notes are registered at the Close of Business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment (the “Special Record Date”). The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Notes at his address as it appears on the list of Noteholders maintained pursuant to Section 2.05 not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Notes are registered at the Close of Business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

Section 11.3 Interest Rights Preserved

. Subject to the foregoing provisions of this Article 11 and Section 2.06, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Notes.

ARTICLE 12.

MISCELLANEOUS

Section 12.1 Trust Indenture Act of 1939

. The Indenture shall incorporate and be governed by the provisions of the Trust Indenture

Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

Section 12.2 Noteholder Communications; Noteholder Actions

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(a) The rights of Holders to communicate with other Holders with respect to the Indenture or the Notes are as provided by the Trust Indenture Act, and the Company and the Trustee shall comply with the requirements of Trust

Indenture Act Sections 312(a) and 312(b). Neither the Company nor the Trustee will be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

(b) Any request, demand, authorization, direction, notice, consent to amendment, supplement or waiver or other action provided by this Indenture to be given or taken by a Holder (an "act") may be evidenced by an instrument signed by the Holder delivered to the Trustee. The fact and date of the execution of the instrument, or the authority of the person executing it, may be proved in any manner that the Trustee deems sufficient.

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

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

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

Section 12.3 Notices

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

if to the Company:
Sun Microsystems, Inc.
4150 Network Circle
Santa Clara, CA 95054
Attention: Michael Dillon
Tel: (650) 960-1300
Fax: (650) 786-2368

if to the Trustee:

U.S. Bank National Association 633 West Fifth Street, 24th Floor Los Angeles, CA 90071

Attention: Corporate Trust Services (Sun Microsystems, Inc. 0.750% Convertible Senior Notes due 2014) Tel: (213) 615-6043 Fax: (213) 615-6197

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

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

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

Section 12.4 Communication by Holders with Other Holders

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

Section 12.5 Certificate and Opinion as to Conditions Precedent

. Upon any request or application by the Company to the Trustee to take any action under the Indenture, the Company will furnish to the Trustee:

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

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

Section 12.6 Statements Required in Certificate or Opinion

. Each certificate or opinion with respect to compliance with a condition or covenant provided for in the Indenture must include:

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

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

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

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

Section 12.7 Legal Holiday

. A “Legal Holiday” is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Notes, interest shall accrue for the intervening period.

Section 12.8 Rules by Trustee, Paying Agent, Conversion Agent and Registrar

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. The Trustee may make reasonable rules for action by or a meeting of Noteholders. The

Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 12.9 Governing Law

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

Section 12.10 No Adverse Interpretation of Other Agreements

. The Indenture may not be used to interpret another indenture or loan or debt agreement of the Company or any Subsidiary of the Company, and no such indenture or loan or debt agreement may be used to interpret the Indenture.

Section 12.11 Successors

. All agreements of the Company in the Indenture and the Notes will bind its successors. All agreements of the Trustee in the Indenture will bind its successor.

Section 12.12 Duplicate Originals

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

Section 12.13 Separability

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

Section 12.14 Table of Contents and Headings

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

Section 12.15 No Liability of Directors, Officers, Employees, Incorporators, Members and Stockholders

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

SIGNATURES

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

SUN MICROSYSTEMS, INC.
as Issuer

By:

Name:
Title:

U.S. BANK NATIONAL ASSOCIATION
as Trustee

By:

Name: Paula M. Oswald
Title: Vice President

EXHIBIT A

[FACE OF NOTE]

[Global Notes Legend]

[The following legend shall appear on the face of each Global Note:

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE

DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.]

[The following legend shall appear on the face of each Global Security for which The Depository Trust Company is to be the Depositary:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK

CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS

REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS

REQUESTED BY THE AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO

CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN

AUTHORIZED REPRESENTATIVE OR DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR REGISTERED NOTES IN DEFINITIVE REGISTERED FORM IN THE LIMITED

CIRCUMSTANCES REFERRED TO IN THE INDENTURE, THIS GLOBAL NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OR SUCH SUCCESSOR DEPOSITARY.]

A-1

[IAI Note Legend]

[The following legend shall appear on the face of each IAI Note:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. IN NO EVENT MAY THIS NOTE BE SOLD, ASSIGNED, PLEDGED, LOANED, HEDGED OR OTHERWISE DISPOSED OF OR ENCUMBERED (COLLECTIVELY, A “TRANSFER”) BY A SPONSOR PURCHASER PRIOR TO APRIL 26, 2007; PROVIDED, HOWEVER, THAT A SPONSOR PURCHASER MAY TRANSFER A NOTE PRIOR TO SUCH TIME TO AN AFFILIATED ENTITY, PROVIDED THAT SUCH TRANSFEREE IS A SPONSOR

PURCHASER AND AGREES TO BE BOUND BY THE TRANSFER PROVISIONS OF THE INDENTURE, THE NOTE PURCHASE AGREEMENT AND THE REGISTRATION RIGHTS AGREEMENT AND THE TRANSFERING HOLDER AGREES TO CONTINUE TO BE SO BOUND. ANY SPONSOR PURCHASER HOLDING THIS NOTE AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE OTHER THAN DURING THE TIMES DESCRIBED IN THE NOTE PURCHASE AGREEMENT AND ONLY PURSUANT TO (1) A TRANSFER TO THE COMPANY, (2) A PERMITTED TRANSFER, (3) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF

SPONSOR, PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (4) SOLELY IF NO REGISTRATION STATEMENT UNDER THE SECURITIES ACT IS AVAILABLE FOR SUCH SALE, TO A “QUALIFIED INSTITUTIONAL BUYER” THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, OR (5) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO REGULATION S UNDER THE SECURITIES ACT. NO BANK PURCHASER SHALL TRANSFER THIS NOTE OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT PURSUANT TO A WRITTEN INSTRUCTION BY THE SPONSOR PURCHASERS OR PURSUANT TO A BANK PURCHASER TRANSFER EVENT, IN EACH CASE AS PROVIDED IN THE NOTE PURCHASE AGREEMENT. THIS LEGEND SHALL BE REMOVED, AND REPLACED BY A NEW LEGEND, IN EACH CASE IF APPLICABLE, UPON THE TRANSFER OF THE NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE PURSUANT TO EITHER OF THE TWO IMMEDIATELY PRECEDING SENTENCES. IF THE PROPOSED TRANSFER IS PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY CLAUSE (5) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY OR 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. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS NOTE OR ANY COMMON STOCK

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ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT AS PERMITTED BY THE SECURITIES ACT.

THIS NOTE AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE IS ADDITIONALLY SUBJECT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE NOTE PURCHASE AGREEMENT.

IN CONNECTION WITH ANY TRANSFER OF THIS NOTE OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER

INFORMATION, INCLUDING AN “ASSIGNMENT FORM” IN THE FORM ATTACHED TO THE BACK OF THIS NOTE, AS SUCH REGISTRAR OR TRANSFER AGENT MAY REASONABLY REQUEST TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.]

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[Restricted Note Legend]

[The following legend shall appear on the face of each Restricted Note:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, AGREES THAT IT WILL NOT PRIOR TO THE DATE THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUANCE OF THIS NOTE EVIDENCED HEREBY AND THE LAST DATE ON WHICH THE COMPANY OR ANY “AFFILIATE” (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY WAS THE OWNER OF THE SECURITY (THE “RESTRICTION TERMINATION DATE”) RESELL OR OTHERWISE TRANSFER THIS NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE

SECURITIES ACT OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY

APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF

PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS NOTE OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT AS PERMITTED BY THE SECURITIES ACT.]

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Sun Microsystems, Inc.

0.750 % Convertible Senior Notes Due February 1, 2014

CUSIP No. [_____][1]

$ _____

No. [_____]

Sun Microsystems, Inc., a Delaware corporation (the "Company," which term includes any successor under the Indenture hereinafter referred to), for value received, promises to pay to _____, or its registered assigns, the principal sum of ___ DOLLARS ($ _____) on February 1, 2014[, which principal amount may from time to time be increased or decreased to such other principal amount (which, taken together with the principal amounts of all other outstanding Notes, shall not exceed $350,000,000) by adjustments on the Schedule of Exchanges of Notes on the other side of this Note in accordance with the Indenture.][1]

Initial Interest Rate: 0.750% per annum.

Interest Payment Dates: February 1 and August 1, commencing August 1, 2007.

Regular Record Dates: January 15 and July 15.

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

1 Include only if the Note is a Global Note

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

Date:

SUN MICROSYSTEMS, INC.

By:

Name:
Title:

Attest:

By:

Name:
Title:

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(Form of Trustee's Certificate of Authentication)

This is one of the 0.750% Convertible Senior Notes Due February 1, 2014 described in the Indenture referred to in this Note.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By:

Authorized Signatory

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[REVERSE SIDE OF NOTE]

Sun Microsystems, Inc.

0.750% Convertible Senior Notes Due February 1, 2014

1. Principal and Interest.

The Company promises to pay the principal of this Note on February 1, 2014.

The Company promises to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth on the face of this Note, at the rate of 0.750% per annum (subject to adjustment as provided below).

Interest will be payable semiannually in arrears (to the holders of record of the Notes at the close of business on the January 15 or July 15 immediately preceding the interest payment date) on each interest payment date, commencing

August 1, 2007.

Interest on this Note will accrue from the most recent date to which interest has been paid on this Note or the Note surrendered in exchange for this Note (or, if there is no existing default in the payment of interest and if this Note is authenticated between a regular record date and the next interest payment date, from such interest payment date) or, if no interest has been paid, from the Issue Date. Interest will be computed in the basis of a 360-day year of twelve 30-day months.

The Company will pay interest on overdue principal, premium, if any, and, to the extent lawful, interest at a rate per annum of 0.750%. Interest not paid when due and any interest on principal, premium or interest not paid when due will be paid to the Persons that are Holders on a special record date, which will established as set forth in the Indenture referred to below.

Additional interest will accrue on the Notes at an additional rate per year equal to 0.25% per annum of the principal amount of the Notes under the circumstances set forth in the Registration Rights Agreement (as defined below).

Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day, without additional interest.

2. Registration Rights Agreement.

The Holder of this Note is entitled to the benefits of the Registration Rights Agreement, dated January 26, 2007, between the Company and the Purchasers named therein (the "Registration Rights Agreement"). In the event of a Registration Default, as defined in the Registration Rights Agreement, the Holder is entitled to additional interest for the period from and including the day following the occurrence of the Registration Default to, but excluding, the earlier of the day on which the Registration Default has been cured or the date on which there are no Registrable

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Securities, as defined in the Registration Rights Agreement. Additional interest will accrue at an additional rate per year equal to 0.25% per annum of the principal amount of the Notes.

3. Method of Payment.

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

4. Paying Agent, Conversion Agent and Registrar.

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

5. Indenture.

This is one of the Notes issued under an Indenture dated as of January 26, 2007 (as amended from time to time, the "Indenture"), between the Company and U.S. Bank National Association, as Trustee. Capitalized terms used herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture

and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture will control.

The Notes are general unsecured obligations of the Company.

6. Repurchase at the Option of the Holder upon a Fundamental Change.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase the Notes held by such Holder on the date, at the purchase price and as otherwise provided in the Indenture.

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

If Cash (and/or securities if permitted under the Indenture) sufficient to pay the Fundamental Change Purchase Price of, together with any accrued and unpaid interest with respect to, all Notes or

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portions thereof to be purchased as of the Fundamental Change Purchase Date is deposited with the Paying Agent on or prior to the third Business Day following the Fundamental Change Purchase Date, interest shall cease to accrue on such Notes (or portions thereof) immediately after such Fundamental Change Purchase Date whether or not the Note is delivered to the Paying Agent, and the Holder thereof shall have no other rights as such (other than the right to receive the Fundamental Change Purchase Price and accrued and unpaid interest upon surrender of such Notes).

7. Conversion.

A Holder of a Note may convert such Note into Cash and, to the extent the Conversion Value of such Note is greater than $1,000, Cash, shares of Common Stock or a combination thereof, at the option of the Company, as described in the Indenture before the Close of Business on the Business Day immediately preceding Maturity Date, if at least one of the following conditions is satisfied:

(a) during any calendar quarter commencing at any time after March 31, 2007, and only during such calendar quarter, if the Closing Price of the Common Stock for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of the preceding calendar quarter exceeds 130% of the Conversion Price per share of Common Stock on the last day of such preceding calendar quarter (the “Conversion Trigger Price”);

(b) during the five Business Day period immediately after any five consecutive Trading Day period (the “Measurement Period”) in which the Trading Price per $1,000 principal amount of Notes for each day of such Measurement Period was less than 98% of the product of the Closing Price of the Common Stock on such date and the Conversion Rate on such date;

(c) the Company elects to distribute to all holders of Common Stock (i) rights or warrants entitling all holders of the Common Stock to subscribe for or purchase, for a period expiring within 60 days after the record date for such distribution, Common Stock at less than the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of the distribution, or (ii) Cash, debt securities (or other evidences of Debt) or other assets (excluding dividends or distributions described in Section 10.06 of the Indenture), which distribution, together with all other distributions within the preceding twelve months, has a per share value exceeding 10% of the average of the Closing Prices of the Common Stock for the five consecutive Trading Days ending on the date immediately preceding the first public announcement of the distribution; or

(d) if a Change in Control occurs or if the Company is a party to a consolidation, merger, binding share exchange or transfer or lease of all or substantially all of the Company's assets, pursuant to which the Common Stock would be converted into Cash, securities or other assets; or

(e) at any time on or after January 1, 2014 until the Close of Business on the Business Day immediately preceding the Maturity Date.

The Conversion Agent will determine on the Company's behalf at the beginning of each calendar quarter commencing at any time after March 31, 2007 through the calendar quarter ending

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December 31, 2013 whether the Notes are convertible as a result of the price of the Common Stock pursuant to clause (a) above and will notify the Company and the Trustee if the Notes are so convertible.

The Trustee shall have no obligation to determine the Trading Price of the Notes pursuant to clause (b) above unless the Company has requested such determination; and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than 98% of the product of the Closing Price and the Conversion Rate. At such time, the Company shall instruct the Trustee to determine the Trading Price beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Price and the Conversion Rate.

If the Company makes a distribution described in subsection (c)(i) or (c)(ii), the Company must notify Holders at least 20 Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender their Notes for conversion at any time until the earlier of the Close of Business on the Business Day prior to the Ex-Dividend Date for such distribution or the Company's announcement that such distribution will not take place, even if the Notes are not convertible at that time.

The Company will notify Noteholders and the Trustee as promptly as practicable following the date on which the Company publicly announces any transaction described in clause (d) above, but in no event less than 20 Trading Days' prior to the anticipated effective date of such transaction in the case of a Change in Control within the control of the Company or of which the Company has at least 30 Trading Days prior notice. Noteholders may surrender their Notes for conversion at any time after the date that is 15 Trading Days prior to the anticipated effective date of such transaction until 35 Trading Days after the actual date of such transaction (or, if such transaction also constitutes a Fundamental Change, until the Fundamental Change Purchase Date).

8. Defaults and Remedies.

If an Event of Default, as defined in the Indenture, occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Notes may declare all the Notes to be due and payable, subject to certain limitations set forth in the Indenture. If a bankruptcy or insolvency default with respect to the Company occurs and is continuing, the Notes automatically become due and payable. Holders may not enforce the Indenture or the Notes except as provided in the

Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in principal amount of the Notes then outstanding may direct the Trustee in its exercise of remedies.

9. Amendment and Waiver.

Subject to certain exceptions set forth in the Indenture, the Indenture and the Notes may be amended, or default may be waived, with the consent of the Holders of a majority in principal amount of the outstanding Notes. Without notice

to or the consent of any Holder, the Company and

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the Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, defect or inconsistency or if such amendment or supplement does not adversely affect the interests of the Holders in any material respect.

10. Registered Form; Denominations; Transfer; Exchange.

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

11. Persons Deemed Owners.

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

12. Unclaimed Money or Notes.

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

13. Trustee Dealings with the Company.

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

14. No Recourse Against Others.

A director, officer, incorporator, agent, subsidiary, employee, member or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

15. Authentication.

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

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16. Governing Law.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS NOTE.

17. Abbreviations.

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

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

[FORM OF TRANSFER NOTICE]

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

Insert Taxpayer Identification No.

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

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

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

Date: Your Signature:

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

*Signature guaranteed by:

By:

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

CONVERSION NOTICE

To convert this Note, check the box: [ ]

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

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

the form below:

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

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

and irrevocably appoint

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

Date:

Your Signature:

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

*Signature guaranteed by:

By:

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

SCHEDULE OF EXCHANGES OF NOTES[2]

The following exchanges of a part of this Global Note for an interest in another Global Note or for Notes in certificated form, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of Increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature or authorized signatory of Trustee

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

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to

(Insert assignee's social security or tax I.D. no.)

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

and irrevocably appoint

_____

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

Your Signature:

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

Date:

Medallion Signature Guarantee:

[FOR INCLUSION ONLY IF THIS NOTE BEARS AN IAI NOTE LEGEND —] Other than pursuant to the sale or transfer of a Note to a transferee that is not an Affiliate of the Initial Purchaser pursuant to an effective Shelf Registration Statement filed in connection with the Registration Rights Agreement, dated as of January 26, 2007, between the Company and the purchasers named therein, in connection with any transfer of any of the Notes evidenced by this certificate which are "restricted securities" (as defined in Rule 144 (or any successor thereto) under the Securities Act), the undersigned confirms that the Notes are being transferred to a Person that is not an Affiliate of the Company and:

CHECK ONE BOX BELOW

(1) [ ] To the Company.
(2) [ ] In connection with a Permitted Transfer.

(3) [ ] A transfer to a transferee that is not an Affiliate of any Sponsor Purchaser pursuant to Rule 144 under the Securities Act.

(4) [ ] Solely if no registration statement under the Securities Act is available for such sale, a transfer to a person that is not an "Affiliate" of any Sponsor Purchaser (as described in Rule 144 under the Securities Act) pursuant to Rule 144A under the Securities Act or pursuant to Regulation S under the Securities Act.

Unless one of the boxes is checked, the Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; provided, however, that if box (2) is checked, the Trustee may require, prior to registering any such transfer of the Notes, such certifications and other information, including legal opinions, as the Company has reasonably requested in writing, by delivery to the Trustee of a standing letter of instruction, to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933.

Your Signature:

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

Date:

Medallion Signature Guarantee:

[FOR INCLUSION ONLY IF THIS NOTE BEARS A RESTRICTED NOTE LEGEND —] Other than pursuant to the sale or transfer of the Note under an effective Shelf Registration Statement filed in connection with the Registration Rights Agreement, dated as of January 26, 2007, between the Company and the purchasers named therein, in connection with any transfer of any of the Notes evidenced by this certificate which are “restricted securities” (as defined in Rule 144 (or any successor thereto) under the Securities Act), the undersigned confirms that the Notes are being transferred to a Person that is not an Affiliate of the Company and:

CHECK ONE BOX BELOW

(1) [ ] to the Company; or

(2) [ ] pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or

(3) [ ] pursuant to and in compliance with Regulation S under the Securities Act of 1933; or

(4) [ ] pursuant to an exemption from registration under the Securities Act of 1933 provided by Rule 144 thereunder.

Unless one of the boxes is checked, the Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered holder thereof; provided, however, that if box (3) or (4) is checked, the Trustee may require, prior to registering any such transfer of the Notes, such certifications and other information, and if box (4) is checked such legal opinions, as the Company has reasonably requested in writing, by delivery to the Trustee of a standing letter of instruction, to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933; provided that this paragraph shall not be applicable to any Notes which are not “restricted securities” (as defined in Rule 144 (or any successor thereto) under the Securities Act).

Your Signature:

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

Date:

Medallion Signature Guarantee:

EXHIBIT B

FORM OF RESTRICTED COMMON STOCK LEGEND AND IAI COMMON STOCK LEGEND

[IAI Common Stock Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. IN NO EVENT MAY THIS SECURITY BE SOLD, ASSIGNED, PLEDGED, LOANED HEDGED OR OTHERWISE DISPOSED OF OR ENCUMBERED (COLLECTIVELY, A "TRANSFER") BY A SPONSOR PURCHASER PRIOR TO APRIL 26, 2007; PROVIDED, HOWEVER, THAT A SPONSOR PURCHASER MAY TRANSFER A NOTE PRIOR TO SUCH TIME TO AN

AFFILIATED ENTITY, PROVIDED THAT SUCH TRANSFEREE IS A SPONSOR

PURCHASER AND AGREES TO BE BOUND BY THE TRANSFER PROVISIONS OF THE INDENTURE, THE NOTE PURCHASE AGREEMENT AND THE REGISTRATION RIGHTS AGREEMENT AND THE TRANSFERING HOLDER AGREES TO CONTINUE TO BE SO BOUND. ANY SPONSOR PURCHASER HOLDING THIS NOTE AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS SECURITY EVIDENCED HEREBY OTHER THAN DURING THE TIMES DESCRIBED IN THE NOTE PURCHASE AGREEMENT AND ONLY PURSUANT TO (1) A TRANSFER TO THE COMPANY, (2) A PERMITTED

TRANSFER, (3) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR, PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY

APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (4) SOLELY IF NO REGISTRATION STATEMENT UNDER THE 1933 ACT IS AVAILABLE FOR SUCH SALE, TO A "QUALIFIED INSTITUTIONAL BUYER" THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144A UNDER THE SECURITIES ACT OR (5) A TRANSFER TO A TRANSFEREE THAT IS NOT SPONSOR OR AN AFFILIATE OF SPONSOR PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO REGULATION S UNDER THE SECURITIES ACT. NO BANK PURCHASER SHALL TRANSFER THIS SECURITY EXCEPT PURSUANT TO A WRITTEN INSTRUCTION BY THE SPONSOR PURCHASER OR PURSUANT TO A BANK PURCHASER TRANSFER EVENT, IN EACH CASE AS PROVIDED IN THE NOTE PURCHASE AGREEMENT. THIS LEGEND SHALL BE REMOVED, AND REPLACED BY A NEW LEGEND, IN EACH CASE IF

APPLICABLE, UPON THE TRANSFER OF THE SECURITY EVIDENCED HEREBY

PURSUANT TO EITHER OF THE TWO IMMEDIATELY PRECEDING SENTENCES. IF THE PROPOSED TRANSFER IS PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY CLAUSE (5) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY OR 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. IN ANY CASE THE HOLDER HEREOF WILL

NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTIONS WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

THIS SECURITY IS ADDITIONALLY SUBJECT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE NOTE PURCHASE AGREEMENT.

IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY, THE HOLDER WILL DELIVER TO THE

TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUEST TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[Restricted Common Stock Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES THAT IT WILL NOT PRIOR TO THE DATE THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUANCE OF THIS SECURITY EVIDENCED HEREBY AND THE LAST DATE ON WHICH THE COMPANY OR ANY "AFFILIATE" (AS DEFINED IN RULE 144 UNDER THE

SECURITIES ACT) OF THE COMPANY WAS THE OWNER OF THE SECURITY (THE "RESTRICTION TERMINATION DATE") RESELL OR OTHERWISE TRANSFER THIS SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY OTHER THAN (1) TO THE COMPANY, (2) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A OR (2) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

EX-4.3 4 rrd144599_18203.htm REGISTRATION RIGHTS AGREEMENT, DATED AS OF JANUARY 26, 2007, AMONG SUN MICROSYSTEMS, INC. AND KKR PEI SOLAR HOLDINGS I, LTD., KKR PEI SOLAR HOLDINGS II, LTD. AND CITIBANK, N.A.

EXECUTION COPY

Registration Rights Agreement

Dated as of January 26, 2007

By and among

Sun Microsystems, Inc.

and

KKR PEI Solar Holdings I, Ltd. KKR PEI Solar Holdings II, Ltd.

Citibank, N.A.

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made and entered into this 26th day of January, 2007, among Sun Microsystems, Inc., a Delaware corporation (the "Company"), and the purchasers named on Exhibit A of the Purchase Agreement (as defined below) (collectively, the "Purchasers").

This Agreement is made pursuant to the Note Purchase Agreement, dated January 23, 2007, among the Company, the Purchasers, Sponsor solely for purposes of Articles 1 and 9 and Sections 5.5, 5.6 and 7.1 thereto and KKR PEI Investments, L.P. solely for purposes of Section 4.6 thereto (the "Purchase Agreement"), which provides for the sale by the Company to the Purchasers of (i) $350,000,000 aggregate principal amount of the Company's 0.625% Convertible Senior Notes due 2012 (the "2012 Notes") and (ii) $350,000,000 aggregate principal amount of the Company's 0.750% Convertible Senior Notes due 2014 (the "2014 Notes," and together with the 2012 Notes, the "Notes"). The Notes together with the shares of Common Stock (as defined below) into which the Notes are convertible are referred to herein as the "Securities." In order to induce the Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. Definitions.

As used in this Agreement, the following capitalized defined terms shall have the following meanings:

"1933 Act" shall mean the Securities Act of 1933, as amended.

"1934 Act" shall mean the Securities Exchange Act of l934, as amended. "1939 Act" shall mean the Trust Indenture Act of 1939, as amended. "Additional Interest" shall have the meaning set forth in Section 2.4. "Affiliate" shall have the meaning given to it in the Indentures.

"Automatic Shelf Registration Statement" shall have the meaning set forth in Rule 405 of the 1933 Act.

"Bank Purchaser" means Citibank, N.A.

"Beneficially Own" or "Beneficial Ownership" shall have the meaning set forth in Rule 13d-

3 of the rules and regulations promulgated under the Exchange Act, except that for purposes of this

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Agreement the words "within sixty days" in Rule 13d-3(d)(1)(i) shall not apply, to the effect that a Person shall be deemed to be the beneficial owner of a security if that Person has the right to acquire beneficial ownership of such security at any time, provided that for the avoidance of doubt, a Bank Purchaser shall be deemed to Beneficially Own Securities over which such Bank Purchaser is exercising its rights under Section 7 of the Security Agreement.

"Business Day" shall mean any calendar day on which the New York Stock Exchange, the NASDAQ Stock Market and the Securities and Exchange Commission are open for trading or business, as the case may be.

"Closing Date" shall have the meaning given to it in the Purchase Agreement.

"Common Stock" shall mean any shares of common stock, $0.00067 par value, of the Company and any other shares of common stock as may constitute "Common Stock" for purposes of the Indentures.

"Company" shall have the meaning set forth in the preamble and shall also include the Company's successors.

"Depositary" shall mean The Depository Trust Company and its successors or assigns, or any other depositary appointed by the Company, *provided, however,* that such appointed depositary must have an address in the Borough of Manhattan, in the City of New York, unless no such depositary is available.

"Effectiveness Period" shall have the meaning set forth in Section (b).

"Free Writing Prospectus" shall have the meaning set forth in Rule 405 of the 1933 Act.

"Holder" shall mean any Purchaser, for so long as it owns any Registrable Securities, and each of its successors, assigns and direct and indirect transferees who become registered owners of Registrable Securities under the Indentures.

"Indentures" shall mean, collectively, the Indenture relating to the 2012 Notes, dated as of the date hereof, between the Company and U.S. Bank National Association, as Trustee, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof, and the Indenture relating to the 2014 Notes, dated as of the date hereof, between the Company and U.S. Bank National Association, as Trustee, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof.

"Initial Purchaser" shall mean an initial purchaser or placement agent in connection with the offer or sale of Securities pursuant to a Sponsor Supported Distribution effected under Rule 144A under the Exchange Act.

"Issuer Free Writing Prospectus" shall have the meaning set forth in Rule 433 of the 1933

Act.

"Majority Holders" shall mean Holders holding over 50% of the aggregate principal amount of the outstanding Notes constituting Registrable Securities outstanding; *provided*, that, for the purpose of this definition, a holder of shares of Common Stock into which the Notes were converted shall be deemed to hold an aggregate principal amount of the Notes (in addition to the principal amount of Notes held by such holder) equal to the product of (A) the quotient of (x) the number of such shares of Common Stock held by such holder and (y) the conversion rate (as expressed in the

number of shares of Common Stock issuable per $1,000 principal amount of the Notes) in effect at the time of the conversion of the Notes into such shares of Common Stock as determined in accordance with the Indenture and (B) $1,000, *provided further*, that whenever the consent or approval of the Majority Holders or of a specified percentage of the Holders of Registrable Securities is required hereunder, Notes, or Common Stock into which the Notes were converted, held by the Company or any Affiliate of the Company (other than the Sponsor or its Affiliates to the extent they are deemed to be "Affiliates" of the Company at such time) shall be disregarded in determining whether such consent or approval was given by the Majority Holders or such specified percentage of the Holders of Registrable Securities.

"Permitted Transfer" shall have the meaning given such term in Section 7.1(a) of the Purchase Agreement.

"Person" shall mean an individual, partnership (general or limited), corporation, limited liability company, trust, unincorporated organization or other entity, or a government or agency or political subdivision thereof.

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

"Purchase Agreement" shall have the meaning set forth in the preamble.

"Purchasers" shall have the meaning set forth in the preamble.

"Registrable Securities" shall mean all or any of the Securities; *provided, however,* that such Securities shall cease to be Registrable Securities when (i) a Shelf Registration Statement with respect to such Securities shall have become effective under the 1933 Act and such Securities shall have been sold or transferred pursuant to such Shelf Registration Statement, (ii) such Securities have been transferred in compliance with Rule 144 under the 1933 Act (or any successor provision thereto), or are transferable pursuant to paragraph (k) of such Rule 144 (or any successor provision thereto) or (iii) such Securities shall have ceased to be outstanding.

"Registration Default" shall have the meaning set forth in Section 2.4.

"Registration or Offering Expenses" shall mean any and all expenses incident to performance of or compliance by the Company with this Agreement, including without limitation: (i) all SEC registration and filing fees, (ii) in the case of a Sponsor Supported Distribution for the benefit of the Purchasers, all reasonable fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of counsel for any Underwriters, Initial Purchasers or Holders in connection with blue sky qualification of any of the Registrable Securities), (iii) all expenses of the Company in preparing or assisting in preparing, word processing, printing and distributing any Shelf Registration Statement and any Prospectus, and, in the case of a Sponsor Supported Distribution, any offering or information memorandum, any amendments or supplements thereto, any securities sales agreements and any other documents relating to the performance of and compliance with this Agreement, (iv) all fees and expenses incurred in connection with the listing, if any, of any of the Registrable Securities on any securities exchange or exchanges, (v) all rating agency fees, if any (vi) the fees and disbursements of counsel for the Company and of the independent public accountants of the Company, including, in the case of a Sponsor Supported Distribution, the expenses of any "comfort letters"), (vii) the reasonable fees and expenses of the Trustee, and any escrow agent or custodian, and (viii) the reasonable fees and expenses of a single counsel to the Holders in connection with the Shelf Registration Statement (not to exceed in the aggregate $10,000) and in connection with a Sponsor Supported Distribution (not to exceed in the aggregate $50,000 for each Sponsor Supported Distribution), which counsel shall be selected by the Majority Holders, but excluding any underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder and, except as provided under clause (viii) above, all expenses and fees for all counsel and other professionals representing the Holders.

"Rule 144A" means Rule 144A under the 1933 Act.

"SEC" shall mean the Securities and Exchange Commission or any successor agency or government body performing the functions currently performed by the United States Securities and Exchange Commission.

"Securities" shall have the meaning set forth in the preamble.

"Security Agreement" shall have the meaning given such term in the Purchase Agreement.

"Shelf Effectiveness Deadline" shall have the meaning set forth in Section (a).

"Shelf Registration" shall mean a registration effected pursuant to Section 2.1.

"Shelf Registration Statement" shall mean a "shelf" registration statement of the Company pursuant to the provisions of Section 2.1 of this Agreement which covers all of the Registrable Securities on an appropriate form under Rule 415 under the 1933 Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all materials incorporated by reference therein; *provided, however*, that a

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registration statement shall not be deemed a Shelf Registration Statement until such time as it includes a Prospectus relating to the Securities.

"Sponsor" shall mean Kohlberg Kravis & Roberts & Co. L.P.

"Sponsor Purchasers" shall mean the Purchasers other than the Bank Purchaser and their Affiliates that acquire Beneficial Ownership of Securities in a Permitted Transfer.

"Sponsor Supported Distribution" means a distribution of Notes that are Registrable Securities in connection with which Purchasers have utilized their rights for cooperation from the Company under Section 5 of this Agreement.

"Swap Default" shall have the meaning given such term in the Purchase Agreement.

"Substantial Distribution" shall mean an offer and sale of an aggregate of at least $175 million principal amount of Securities that are Registrable Securities by one or more of the Sponsor Purchasers or Bank Purchaser to purchasers that are not Affiliates of the Company, where such offer and sale is made pursuant to either Rule 144A or pursuant to a bona fide public offering made pursuant to the Shelf Registration Statement.

"Suspension Period" shall have the meaning set forth in Section 2.5.

"Trustee" shall mean the trustee with respect to the Securities under the Indentures.

"Well-Known Seasoned Issuer" shall have the meaning set forth in Rule 405 of the 1933 Act.

"Underwriter" shall mean an underwriter, as defined in the 1933 Act, of the Securities in connection with an offering thereof under a Shelf Registration Statement pursuant to and in accordance with a Sponsor Supported Distribution.

2. Registration Under the 1933 Act.

2.1 Shelf Registration.

(a) The Company shall, at its cost, file with the SEC, and use its

reasonable efforts to cause to become effective, a Shelf Registration Statement relating to the offer and sale of the Registrable Securities by the Holders that have provided the Questionnaire and the other information pursuant to Section (c), no later than 120 days after the Closing Date (the "Shelf Effectiveness Deadline"). If the Company is a Well-Known Seasoned Issuer at the time of filing the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Company as an Automatic Shelf Registration Statement.

(b) The Company shall, at its cost, use its reasonable efforts, subject to Section 2.5, to keep the Shelf Registration Statement continuously effective in order to permit the Prospectus forming part thereof to be usable by Holders until the earlier of (i) such time as all of the

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Securities cease to be Registrable Securities and (ii) the date that is seven years and three months after the date hereof (the "Effectiveness Period").

(c) Notwithstanding any other provision hereof, no Holder of Registrable Securities may include any of its Registrable Securities in the Shelf Registration Statement pursuant to this Agreement unless the Holder furnishes to the Company a fully completed notice and questionnaire in the form attached hereto as Exhibit A (the "Questionnaire") and such other information in writing as the Company may reasonably request in writing for use in connection with the Shelf Registration Statement or Prospectus included therein and in any application to be filed with or under state securities laws. At least 30 days prior to the filing of the Shelf Registration Statement, the Company will provide notice to the Holders of its intention to file the Shelf Registration Statement; *provided, however*, that if the Company elects to register the Registrable Securities pursuant to a Prospectus to a Shelf Registration Statement that has already been declared effective, the Company will provide notice to the Holders of its intention to file the initial Prospectus at least 30 days prior to such filing. In order to be named as a selling securityholder in the Shelf Registration Statement or Prospectus at the time of effectiveness of the Shelf Registration Statement or such Prospectus, as applicable, each Holder must no later than 20 days following notice by the Company of such filing, furnish in writing the completed Questionnaire and such other information that the Company may reasonably request in writing, if any, to the Company and the Company will include the information from the completed Questionnaire and such other information, if any, in the Shelf Registration Statement and the Prospectus, as necessary and in a manner, so that upon effectiveness of the Shelf Registration Statement the Holder will be permitted to deliver the Prospectus to purchasers of the Holder's Registrable Securities. From and after the date that the Shelf Registration Statement becomes effective, upon receipt of a completed Questionnaire and such other information that the Company may reasonably request in writing, if any, the Company will use its reasonable efforts to file any amendments or supplements to the Shelf Registration Statement necessary for such Holder to be named as a selling securityholder in the Prospectus contained therein to permit such Holder to deliver the Prospectus to purchasers of the Holder's Securities (subject to the Company's right to suspend the Shelf Registration Statement as described in Section 2.5 below); *provided, however*, that from and after the beginning of the calendar quarter first commencing after the nine month anniversary of the Closing Date, the Company shall not be required to file an amendment or supplement to add Holders for such purpose except (x) in connection with a Sponsor Supported Distribution and (y) on no more than one other occasion per calendar quarter. Holders that do not deliver a completed written Questionnaire and such other information, as provided for in this Section (c), will not be named as selling securityholders in the Prospectus. Each Holder named as a selling securityholder in the Prospectus agrees to promptly furnish to the Company in writing all information required to be disclosed in order to make information previously furnished to the Company by the Holder not materially misleading and any other information regarding such Holder and the distribution of such Holder's Registrable Securities as the Company may from time to time reasonably request in writing.

(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 Section (c) and subject to Section 2.5. Each Holder agrees not to sell any

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Registrable Securities pursuant to the Shelf Registration Statement without delivering, or causing to be delivered, a Prospectus (excluding those materials incorporated by reference therein) to the purchaser thereof and, following termination of the Effectiveness Period, to notify the Company, within ten days of a written request by the Company, of

the amount of Registrable Securities sold pursuant to the Shelf Registration Statement and, in the absence of a response within such period, the Company may assume that all of such Holder's Registrable Securities have been so sold.

(e) The Company agrees that, in the context of a registered Sponsor Supported Distribution and only for the period of 30 days from the earlier of the public announcement or commencement of marketing efforts with respect to such Sponsor Supported Distribution, unless it obtains the prior consent of the managing Underwriter (which consent shall not be unreasonably withheld or delayed), and each Holder agrees that, unless it obtains the prior written consent of the Company, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a Free Writing Prospectus required to be filed with the SEC. The Company represents that any Issuer Free Writing Prospectus prepared by it or authorized by it in writing for use by such Holder will be delivered to each such Holder and will not include any information that conflicts with the information contained in the Shelf Registration Statement or the Prospectus and, any such Issuer Free Writing Prospectus, when taken together with the information in the Shelf Registration Statement and the Prospectus, will not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

The Company agrees to supplement or amend the Shelf Registration Statement if required by the 1933 Act or the rules and regulations thereunder or by the instructions applicable to the registration form used by the Company, or to the extent the Company does not reasonably object, as reasonably requested by the Purchasers with respect to information relating to such Purchasers or by the Trustee on behalf of the Holders covered by such Shelf Registration Statement with respect to information relating to such Holders, and to furnish to the Holders of Registrable Securities copies of any such supplement or amendment promptly after it is used or filed with the SEC.

2.2 Expenses. The Company shall pay all Registration and Offering Expenses in connection with the registration pursuant to Section 2.1 and, without duplication, in connection with a Sponsor Supported Distribution pursuant to Section 5. Each Holder shall pay all underwriting and placement discounts and commissions, agency and placement fees, brokers commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities.

2.3 Effectiveness. After a Shelf Registration Statement is effective, if the offering of Registrable Securities pursuant to a Shelf Registration Statement is interfered with by any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court, such Shelf Registration Statement will be deemed not to have been effective during the period of such interference, until the offering of Registrable Securities pursuant to such Shelf Registration Statement may legally resume.

2.4 Interest. In the event that (a) a Shelf Registration Statement has not become effective by the Shelf Effectiveness Deadline, (b) after the Shelf Registration Statement has become effective, subject to Section 2.5, the Shelf Registration Statement fails to be effective or usable by the Holders (determined as if there were no trading restrictions which the Sponsor Purchasers and their Affiliates are subject to under Section 7.1 of the Purchase Agreement at such time) without being succeeded within seven business days by a post-effective amendment or a report filed with the SEC pursuant to the 1934 Act that cures the failure to be effective or usable or (c) the Shelf Registration Statement is unusable by the Holders for any reason (determined as if there were no trading restrictions which the Sponsor Purchasers and their Affiliates are subject to under Section 7.1 of the Purchase Agreement at such time), and the number of days for which the Shelf Registration Statement shall not be usable (determined as if there were no trading restrictions which the Sponsor Purchasers and their Affiliates are subject to under Section 7.1 of the Purchase Agreement at such time) exceeds any Suspension Period permitted by Section 2.5 hereunder (each such event being a "Registration Default"), additional interest ("Additional Interest"), will accrue on the Notes that are Registrable Securities at a rate per annum of 0.25% of the principal amount of the Notes that are Registrable Securities, payable periodically on February 1 and August 1 each year; *provided, however,* that, in no event shall Additional Interest accrue at a rate per annum exceeding 0.25% of the principal amount of the Notes that are Registrable Securities; *provided further* that no Additional Interest shall accrue under clauses (b) and (c) above with respect to any Holder that (x) does not deliver to the Company a completed Questionnaire and such other information that the Company may reasonably request, if any, as provided for in Section (c), and (y) is not named as a selling securityholder in the Shelf Registration Statement. Notwithstanding the foregoing, in no event will Additional Interest be payable in connection with a

Registration Default relating to a failure to register the Common Stock into which the Notes are convertible; for the avoidance of doubt, if none of the Securities are registered then Additional Interest only will be payable in connection with the Registration Default relating to the failure to register the Notes. Upon the cure of all Registration Defaults then continuing, the accrual of Additional Interest will automatically cease and the interest rate borne by the Notes will revert to the original interest rate at such time. Additional Interest shall be computed based on the actual number of days elapsed in each six-month period between payment dates in which the Shelf Registration Statement is not effective or is unusable. Holders who have converted Notes into Common Stock will not be entitled to receive any Additional Interest with respect to such Common Stock or the principal amount of the Notes converted.

The Trustee shall be entitled, but shall not be obligated, on behalf of the Holders of Registrable Securities, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Additional Interest. Notwithstanding the foregoing, the parties agree that the sole monetary damages payable for a violation of the terms of this Agreement with respect to which Additional Interest are expressly provided shall be such Additional Interest. Nothing shall preclude a Holder of Registrable Securities from pursuing or obtaining specific performance or equitable relief with regard to this Agreement. Each obligation to pay Additional Interest shall be deemed to accrue from and including the day following the Registration Default to but excluding the day on which the Registration Default is cured.

A Registration Default under clause (a) above shall be cured on the date that the Shelf Registration Statement becomes effective. A Registration Default under clauses (b) or (c) above shall be cured on the date an amended Shelf Registration Statement becomes effective or the Company otherwise declares the Shelf Registration Statement and the Prospectus useable, as applicable.

The parties agree that the Additional Interest provided for in this Section 2.4 constitutes a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities and does not constitute a penalty.

2.5 Suspension. Notwithstanding any other provision hereof, the Company may suspend the use of any Prospectus, without incurring or accruing any obligation to pay Additional Interest pursuant to Section 2.4, for a period not to exceed 90 consecutive calendar days or an aggregate of 120 calendar days in any twelve-month period, as such period may be reduced pursuant to Section 5(b) hereof (each, a "Suspension Period"), if the Company shall have determined in good faith that because of valid business reasons (not including avoidance of the Company's obligations hereunder), including without limitation plans for a registered public offering, an acquisition or other proposed or pending corporate developments and similar events or because of filings with the SEC, it is in the best interests of the Company to suspend such use, and prior to suspending such use the Company provides the Holders with written notice of such suspension, which notice need not specify the nature of the event giving rise to such suspension (and, upon receipt of such notice, each Holder agrees not to sell any Registrable Securities pursuant to the Shelf Registration Statement until such Holder is advised in writing that the Prospectus may be used, which notice the Company agrees to provide promptly following the lapse of the event or circumstances giving rise to such suspension). Each Holder shall keep confidential any communications received by it from the Company regarding the suspension of the use of the Prospectus (including, without limitation, the fact of the suspension), except as required by applicable law.

3. Registration Procedures.

In connection with the obligations of the Company with respect to the Shelf Registration, the Company shall:

(a) at a reasonable time prior to filing the Shelf Registration Statement, any Prospectus forming a part thereof, any amendment to the Shelf Registration Statement or amendment or supplement to such Prospectus (other than amendments and supplements that do nothing more than name Holders and provide information with respect thereto), furnish to the Purchasers or any Underwriter or designee thereof and one special counsel to the Purchasers or any Underwriter or designee thereof copies of all such documents proposed to be filed and use its reasonable efforts to address in each such document when so filed with the SEC such comments as the Purchasers or any Underwriter or designee thereof and such special counsel to the Purchasers or any Underwriter or designee thereof reasonably shall propose within three (3) Business Days of the delivery of such copies to the Purchasers or any Underwriter or designee thereof and counsel to the Purchaser or any Underwriter or designee thereof. In addition, if any Holder that has

provided the Questionnaire and the other information required by Section (c) shall so request in writing, a

reasonable time prior to filing any such documents, the Company shall furnish to such Holder copies of all such documents proposed to be filed and use its reasonable efforts to reflect in each such document when so filed with the SEC such comments as such Holder reasonably shall propose within three (3) Business Days of the delivery of such copies to such Holder;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary under applicable law to keep the Shelf Registration Statement effective for the Effectiveness Period, subject to Section 2.5; and cause each Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed in compliance with Rule 424 (or any similar provision then in force) under the 1933 Act and use reasonable efforts to comply during the Effectiveness Period with the provisions of the 1933 Act, the 1934 Act and the rules and regulations thereunder required to enable the disposition of all Registrable Securities covered by the Shelf Registration Statement in accordance with the intended method or methods of distribution (as provided to the Company in the Questionnaires) by the selling Holders thereof;

(c) (i) notify each Holder of Registrable Securities of the filing of a Shelf Registration Statement or any post-effective amendment to a Shelf Registration Statement and of when any such Shelf Registration Statement or any post-effective amendment to a Shelf Registration Statement has become effective; (ii) during the Effectiveness Period, furnish to each Holder of Registrable Securities that has provided the Questionnaires and the information required by Section (c) and to each Underwriter, if any, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto and such other documents as such Holder or Underwriter may reasonably request in writing, including financial statements and schedules and, if such Holder or Underwriter so requests, all exhibits thereto in connection with the sale or other disposition of the Registrable Securities; and (iii) subject to Section 2.5 and to any notice by the Company in accordance with Section (e) of the existence of any fact of the kind described in Sections (e)(i), (ii), (iii), (iv) and (v), hereby consent to the use of the Prospectus or any amendment or supplement thereto by each of the selling Holders and Underwriters of Registrable Securities that has provided the Questionnaire and the other information required by Section (c) in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein;

(d) use reasonable efforts to register or qualify or cooperate with the Holders and Underwriters in connection with the registration or qualification (or exemption from such registration or qualification) of the Registrable Securities under all applicable state securities or “blue sky” laws of such jurisdictions as any Holder of Registrable Securities covered by a Shelf Registration Statement and each Underwriter shall reasonably request in writing, and do any and all other acts and things which may be reasonably necessary or advisable to enable each such Holder and Underwriter to consummate the disposition in each such jurisdiction of such Registrable Securities owned by such Holder; *provided, however*, that the Company shall 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 Section (d), or (ii) take any action which would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject;

(e) notify as promptly as reasonably practicable each Holder of Registrable Securities under a Shelf Registration that has provided the Questionnaire and the other information required by Section (c) and, if requested by such Holder, confirm such advice in writing promptly (i) of any request, following the effectiveness of the Shelf Registration Statement under the 1933 Act, by the SEC or any state securities authority for post-effective amendments and supplements to a Shelf Registration Statement and Prospectus or for additional information after the Shelf Registration Statement has become effective, (ii) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Shelf Registration Statement or the initiation of any proceedings for that purpose, (iii) of the occurrence (but not the nature of or details concerning) of any event or the discovery of any facts during the period a Shelf Registration Statement is effective which makes any statement made in such Shelf Registration Statement or the related Prospectus untrue in any material respect or which requires the making of any changes in such Shelf Registration Statement or Prospectus in order to make the statements therein not misleading, (*provided*, *however*,

that no notice by the Company shall be required pursuant to this clause (iii) in the event that the Company either promptly files a Prospectus supplement to update the Prospectus or a Form 8-K or other appropriate 1934 Act report that is incorporated by reference into the Shelf Registration Statement, which, in either case, contains the requisite information that results in such Shelf Registration Statement no longer containing any untrue statement of material fact or omitting to state a material fact necessary to make the statements therein not misleading), (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose and (v) of any determination by the Company that a post-effective amendment to such Shelf Registration Statement would be required by applicable law; *provided, however*, that so long as all Registrable Securities are collectively held by the Sponsor Purchasers and/or the Bank Purchaser (in each case together with any Affiliate of such Sponsor Purchaser or Bank Purchaser), then, other than in the context of a Sponsor Supported Distribution, the Company will not be required to notify such holders of any of the matters addressed in clauses (i), (iii) and (v) above during any time that the Sponsor Purchasers and their Affiliates may not transfer any of the Registrable Securities as a result of the restrictions set forth in Section 7.1(c) of the Purchase Agreement;

(f) provided a Holder then holds at least $175 million aggregate principal amount of Registrable Securities, as promptly as reasonably practicable furnish to such Holder and any Underwriter or designee thereof and one special counsel to the Sponsor Purchasers or, if after and during the continuance of a Swap Default, the Bank Purchaser, or any Underwriter or designee thereof on behalf of the Holders (i) copies of any comment letters received from the SEC with respect to a Shelf Registration Statement or any documents incorporated therein and (ii) any other request by the SEC or any state securities authority for amendments or supplements to a Shelf Registration Statement and Prospectus or for additional information with respect to the Shelf Registration Statement and Prospectus;

(g) use reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of a Shelf Registration Statement at the earliest practicable moment or,

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if any such order or suspension is made effective during any Suspension Period, at the earliest practicable moment after the Suspension Period;

(h) upon the occurrence of any event or the discovery of any facts, each as contemplated by Sections (e)(i), (ii), (iii), (iv) and (v), as promptly as practicable after the occurrence of such an event, use reasonable efforts to prepare a supplement or post-effective amendment to the Shelf Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities, such Prospectus will not contain at the time of such delivery any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided, however*, that so long as all Registrable Securities are collectively held by the Sponsor Purchasers and/or the Bank Purchaser (in each case together with any Affiliate of such Sponsor Purchaser or Bank Purchaser), then other than in the context of a Sponsor Supported Distribution, the Company will not be required to prepare or file any of the foregoing during any time that the Sponsor Purchasers and their Affiliates may not transfer any of the Registrable Securities as a result of the restrictions set forth in Section 7.1(c) of the Purchase Agreement. Subject to the immediately preceding proviso, at such time as such public disclosure is otherwise made or the Company determines that such disclosure is not necessary, in each case to correct any misstatement of a material fact or to include any omitted material fact, the Company agrees promptly to notify each Holder that has provided the Questionnaire and the other information required by Section (c) of such determination and to furnish each Holder such number of copies of the Prospectus as amended or supplemented, as such Holder may reasonably request;

(i) (i) use reasonable efforts to cause the Indentures to be qualified under the 1939 Act in connection with the registration of the Registrable Securities, (ii) cooperate with the Trustee and the Holders to effect such changes to the Indentures as may be required for the Indentures to be so qualified in accordance with the terms of the 1939 Act, and (iii) execute, and use reasonable efforts to cause the Trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the SEC to enable the Indentures to be so qualified in a timely manner;

(j) use its commercially reasonable efforts to cause all Registrable Securities to be listed on any securities exchange or inter-dealer quotation system on which similar securities issued by the Company are then listed;

(k) make generally available to its security holders, as soon as reasonably practicable, earning statements covering at least 12 months (which need not be audited) satisfying the provisions of Section 11(a) of the 1933 Act and Rule 158 thereunder; and

(l) make a reasonable effort to provide such information as is required for any filings required to be made with the National Association of Securities Dealers, Inc.

Without limiting the provisions of Section (c), the Company may (as a condition to such Holder's participation in the Shelf Registration) require each Holder of Registrable Securities to

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furnish to the Company such information regarding the Holder and the proposed distribution by such Holder of such Registrable Securities as the Company may from time to time reasonably request in writing. Each Holder agrees promptly to furnish to the Company in writing all information required to be disclosed in order to make the information previously furnished to the Company by such Holder not misleading, any other information regarding such Holder and the distribution of such Registrable Securities as may be required to be disclosed in the Prospectus or Shelf Registration Statement under applicable law or pursuant to SEC comments and any information otherwise reasonably required by the Company to comply with applicable law or regulations.

Each Holder agrees that, upon receipt of any notice from the Company of the happening of any event or the discovery of any facts, each of the kind described in Section (e)(i), (ii), (iii), (iv) and (v), such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Prospectus included in the Shelf Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section (h) or written notice from the Company that the Shelf Registration Statement is again effective and no amendment or supplement is needed, and, if so directed by the Company, such Holder will deliver to the Company (at the Company's expense) all copies in such Holder's possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities at the time of receipt of such notice.

Notwithstanding anything in this Section 3 to the contrary, any and all obligations (including to provide documents, notices or cooperation) on the part of the Company for the benefit of any Underwriter or Initial Purchaser, or any of their agents or counsel, shall apply only in the context of a Sponsor Supported Distribution.

4. Indemnification; Contribution.

(a) *Indemnification by the Company*. The Company agrees to indemnify

and hold harmless each Purchaser, each Holder who provided the Questionnaire and the other information to the Company in accordance with Section (c), and each of their respective directors, officers and employees and agents and each Person, if any, who controls such Purchaser or Holder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act (each of the foregoing is referred to herein as an "indemnified party") (i) against any loss, claim, damage, liability or expense, as incurred, to which such indemnified party may become subject, insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon (x) any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact, in each case, necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (y) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact, in each case, necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading

or (z) any untrue statement or alleged untrue statement of a material fact contained in any Issuer Free Writing Prospectus prepared by it or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact, in each case, necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; *provided*, that (subject to Section (d) below) any such settlement is effected with the written consent of the Company; and (iii) against any and all reasonable out-of-pocket expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above; and to reimburse each indemnified party for any and all expenses (including the fees and disbursements of counsel chosen by the indemnified parties) as such expenses are reasonably incurred by such indemnified party in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; *provided, however*, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by any indemnified party expressly for use in the Shelf Registration Statement (or any amendment or supplement thereto), any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus (or any amendment or supplement thereto). The indemnity agreement set forth in this Section (a) shall be in addition to any liabilities that the Company may otherwise have.

(b) *Indemnification by the Holders*. Each Holder who has provided the Questionnaire and the other information to the Company in accordance with Section (c), severally, but not jointly, agrees to indemnify and hold harmless the Company, each Purchaser and the other selling Holders who have provided the Questionnaire and the other information to the Company in accordance with Section (c), and each of their respective directors, officers, employees and agents and each Person, if any, who controls the Company, any Purchaser or any other selling Holder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section (a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Shelf Registration Statement (or any amendment thereto), any preliminary prospectus or the Prospectus included therein (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information with respect to such Holder furnished to the Company by or on behalf of such Holder expressly for use in the Shelf Registration Statement (or any amendment thereto), such preliminary prospectus or the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus (or any amendment or supplement thereto).

(c) *Notifications and Other Indemnification Procedures*. Promptly after receipt by an indemnified party under this Section 4 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 4, notify the indemnifying party in writing of the commencement thereof, but the failure to so notify the indemnifying party (1) will not relieve it from liability under paragraph (a), (b) or (c) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (2) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a), (b) or (c) above. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; *provided, however*, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified

party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 4 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel), reasonably approved by the indemnifying party, representing the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) *Settlements*. The indemnifying party under this Section 4 shall not be liable for any settlement of any proceeding effected without its written consent, which shall not be withheld unreasonably, but if settled with such consent or if there is a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. 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 Section (c) hereof, 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 30 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have

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received notice of the terms of such settlement at least 45 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (x) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (y) 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.

(e) If the indemnification provided for in this Section 4 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and the Holders on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative fault of the indemnifying parties on the one hand and the indemnified parties and the Purchasers on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, or by the Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 4. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 4 shall be deemed to include any

reasonable out-of-pocket legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 4, no Holder shall be required to indemnify or contribute any amount in excess of the amount by which the total price at which the Securities sold by such Holder exceeds the amount of any damages which such Holder 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 1933 Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 4, each director, officer, employee and agent of Holder, or each Person, if any, who controls any Holder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as such Holder, and each director, officer, employee or agent of the Company, and each Person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company.

5. Distributions by Purchasers

(a) Each Purchaser hereby acknowledges the restrictions on the transfer of the Securities as set forth in Section 7 of the Purchase Agreement and expressly acknowledges that such provisions apply to the terms of the Registration Rights Agreement with respect to such Purchaser and its Affiliates.

(b) If the Company shall at any time receive a written request from Purchasers then able to participate in a Substantial Distribution that in the aggregate have Beneficial Ownership of at least $175 million principal amount of Registrable Securities (i) that the Company assist in a Substantial Distribution, (ii) stating that such Purchasers have a current bona fide intent to effectuate a Substantial Distribution and (iii) providing verification that such Purchasers Beneficially Own an aggregate of at least $175 million principal amount of Registrable Securities, the Company will provide such Purchasers with its reasonable cooperation, as requested by such Purchasers, to facilitate such Substantial Distribution; *provided*, *however*, that the Company shall only be required to assist the Purchasers with an aggregate of two such Substantial Distributions; *provided further*, that the Company shall not be required to assist any Purchasers with a Substantial Distribution more than once in any 270 day period and; *provided further*, that the Company will only be required to provide Purchasers with such cooperation until the earlier of consummation of the Sponsor Supported Distribution or 30 days following the earlier of the public announcement or commencement of marketing efforts with respect to such distribution. Under any circumstances and for such periods as the Company would be permitted to initiate a Suspension Period pursuant to Section 2.5, the Company shall have the right to delay the commencement (e.g., the taking of any external activity, but not including internal, non-public preparatory work) of a Sponsor Supported Distribution (a “Delay Period”) for a period of days which, when aggregated with any pending or prior Suspension Periods and Delay Periods, would not exceed the 90 and 120 day limits set forth in Section 2.5 without, in the context of a registered Sponsor Supported Distribution, formally initiating a Suspension Period, provided that any such Delay Periods may not exceed and shall reduce (on a day-for-day basis) the 90 and 120 day limits referred to in Section 2.5 unless otherwise agreed by the Majority Holders that are Sponsor Purchasers. In addition, under no circumstances shall the Company be required to commence a Sponsor Supported Distribution at any time during the three week period immediately preceding the scheduled public disclosure of results for any quarter (the “Pre-Announcement Periods”) and any delay during that time shall not be counted against the Suspension Period. If a request for a Sponsor Supported Distribution has been made before any Delay Period or Pre-Announcement Period, however, the Company will provide reasonable cooperation as is reasonably requested during such Delay Period or Pre-Announcement Period to permit such Sponsor Supported Distribution to be commenced promptly following the expiration of

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such Delay Period or Pre-Announcement Period. For the avoidance of doubt, any Sponsor Supported Distribution shall not require any pre-clearance under any stock trading policies of the Company in effect at such time.

For purposes of the two Substantial Distributions with which the Company is required to provide the Purchasers with assistance, it shall be deemed to be a Substantial Distributions for which the Company has provided assistance if the Purchasers request such assistance and the Substantial Distribution is cancelled, terminated or otherwise not consummated, unless (i) such cancellation, termination or failure to consummate such Substantial Distribution (x) is based upon material adverse information concerning the Company of which the Purchasers initiating such Substantial Distribution were not aware at the time of such request or (y) occurs prior to the time the Company has provided significant assistance or cooperation with respect to such proposed Substantial Distribution or (ii) the Purchasers reimburse the Company for all of its reasonable, related third party costs and expenses.

(c) To the extent the Shelf Registration Statement is effective and available for use at the time of any proposed sale or offer of any Securities by any Purchaser participating in such distribution, each such Purchaser agrees that the sale and offer of such Securities made by it shall be made pursuant to such effective Shelf Registration Statement such that the transferee of such Securities will receive unrestricted Securities*; provided,* that (i) transfers of Securities between the Sponsor Purchasers and the Bank Purchaser pursuant to the terms of any Swap Agreement, and (ii) transfers of Securities by the Bank Purchaser pursuant to its rights under Section 5(b) of a Swap Agreement upon a Swap Default or pursuant to the exercise of the Bank Purchaser's rights under Section 7 of the Security Agreement in a transaction exempt from the registration requirements of the Securities Act and in accordance with the provisions of the applicable Indenture shall not be subject to this requirement.

(d) In furtherance of the Company's undertakings, and subject to the limitations, in Section 5(b), the Company agrees to use its reasonable efforts to enter into such customary agreements (on terms reasonably acceptable to the Company) and take all other customary and appropriate actions in order to expedite or facilitate the disposition of the Registrable Securities being offered and sold in a Substantial Distribution by the Purchasers in which the Company provides cooperation, including, but not limited to:

(i) obtaining opinions of counsel to the Company and updates thereof addressed to each selling Purchaser and the Underwriters or Initial Purchasers, if any, covering matters as are customarily requested in opinions covering secondary resale offerings of companies of comparable size, maturities and lines of business as the Company;

(ii) obtaining "comfort" letters and updates thereof from the Company's independent certified public accountants (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements are, or are required to be, included in the Shelf Registration Statement or offering memorandum, as the case may be) addressed to the Underwriters or Initial Purchasers, if any, and use reasonable efforts to have such letter

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addressed to the selling Purchasers (to the extent consistent with AU 722, Interim Financial Information, of the Public Company Accounting Oversight Board (United States), such letters covering matters as are customarily requested in comfort letters covering secondary resale offerings of companies of comparable size, maturities and lines of business as the Company;

(iii) making reasonably available for inspection by each Purchaser and the Underwriters or Initial Purchasers, if any, participating in any Substantial Distribution, and any attorney, accountant or other agent retained by any such Purchaser or Underwriter or Initial Purchaser, all relevant financial and other records and pertinent corporate documents of the Company as are customarily made available in secondary resale offerings of companies of comparable size, maturities and lines of business as the Company;

(iv) causing the Company's officers, directors, employees, accountants and auditors to supply all relevant information, and causing appropriate persons to be reasonably available for discussions concerning such documents, as reasonably requested by any such Purchaser, Underwriter, Initial Purchaser, attorney, accountant or agent in connection with any such Substantial Distribution as is customary for similar due diligence examinations;

(v) delivering such documents and certificates (including an offering or information memorandum in the context of a Substantial Distribution effected pursuant to Rule 144A) to the Purchasers and the Underwriters or Initial Purchasers, if any, as may be reasonably requested by such Purchasers, Underwriters or Initial Purchasers and as are customarily delivered in secondary resale offerings of companies of comparable size, maturities and lines of business as the Company;

(vi) making appropriate members of senior management reasonably available to participate in conference calls with potential investors and make presentations to ratings agencies as is reasonably necessary and customary in secondary resale offerings of companies of comparable size, maturities and lines of business as the Company; and

(vii) if an underwriting or purchase, sale or agency agreement is entered into, causing the same to set forth indemnification provisions and procedures substantially equivalent to the indemnification provisions and procedures set forth in Section 4 with respect to the Underwriters or Initial Purchasers and all other parties to be indemnified pursuant to said Section or, at the request of any Underwriters or Initial Purchasers, in the form customarily provided to such Underwriters or Initial Purchasers in similar types of transactions.

Other than as provided in this Section 5 (and in the context of a registered Substantial Distribution, the other applicable provisions of this Agreement), the Company shall not be obligated to cooperate to facilitate any underwritten offering to facilitate a Substantial Distribution or otherwise.

In connection with any Substantial Distribution in which the Company provides assistance to the Purchasers or the Underwriters or the Initial Purchasers thereto, if any, the Company may require each Purchaser or Underwriter or Initial Purchaser, and their attorneys, accountants or agents retained by them, to maintain in confidence and not to disclose to any other person any information or records provided as part of such assistance and reasonably designated by the Company as being confidential, until such time as (A) such information becomes a matter of public record (whether by virtue of its inclusion in such registration statement or otherwise), or (B) such person shall be required so to disclose such information pursuant to a subpoena or order of any court or other governmental agency or body having jurisdiction over the matter (subject to the requirements of such order, and only after such person shall have given the Company prompt prior written notice of such requirement), or (C) such information is required to be set forth in the Shelf Registration Statement or the prospectus or offering or information memorandum included therein or in an amendment to such Shelf Registration Statement or an amendment or supplement to such prospectus in order that such Shelf Registration Statement, prospectus, amendment or supplement, complies with applicable requirements of the federal securities laws and the rules and regulations of the Commission and does not contain an untrue statement of a material fact or omit to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing or (D) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement or other confidentiality obligations or duties, as the case may be.

If any of the Registrable Securities to be sold in a Substantial Distribution are to be sold in an underwritten offering, the Underwriter or Underwriters and Initial Purchaser or Initial Purchasers that will manage such offering will be selected by the Majority Holders of such Registrable Securities included in such offering and shall be reasonably acceptable to the Company.

(f) Notwithstanding anything herein to the contrary, any Bank Purchaser shall only be able to utilize the provisions under this Section 5 (i) in connection with the sale of Registrable Securities by such Bank Purchaser pursuant to instructions from the Sponsor Purchasers with respect to sales of Registrable Securities pursuant to the Swap Agreements where one or more Sponsor Purchasers is the beneficiary of the proceeds of such Substantial Distribution or (ii) in connection with a transfer pursuant to a Bank Purchaser Transfer Event (as that term is defined in the Purchase Agreement).

(g) This Section 5 shall terminate, and the Purchasers shall have no rights pursuant to this Section 5, upon the earlier to occur of (i) the date on which the Purchasers collectively Beneficially Own less than $175,000,000 in aggregate principal amount of Registrable Securities, based on principal amount in the case of Notes that are Registrable Securities and based on the product of (x) the effective Conversion Price and (y) the number of shares of Common

Stock held by the Purchasers that are Registrable Securities in the case of Common Stock, and (ii) the termination of the Effectiveness Period.

(h) The rights granted to the Purchasers pursuant to this Section 5 shall only be for the benefit of the Purchasers, and may not be transferred, assigned or otherwise granted to any subsequent Holder.

6. Miscellaneous.

6.1 No Inconsistent Agreements. The Company has not entered into and the

Company will not after the date of this Agreement enter into any agreement with respect to its securities which conflicts with the rights granted to the Holders of Registrable Securities in this Agreement. The rights granted to the Holders hereunder do not for the term of this Agreement conflict with the rights granted to the holders of the Company's other issued and outstanding securities under any such agreements.

6.2 Amendments and Waivers. The provisions of this Agreement may not be amended, qualified, 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 the Majority Holders; *provided*, *however*, that no amendment, qualification, supplement, waiver or consent with respect to Sections 2.4 and 4 hereof shall be effective as against any Holder of Registered Securities unless consented to in writing by such Holder; and *provided, further*, that the provisions of this Section 6.2 may not be amended, qualified, 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 each Holder, except that any provision of this Section 6.2 which provides that an amendment to this Agreement may be made upon the written consent of the Majority Holders may itself be amended, qualified, modified or supplemented, and waivers or consents to departures from any such provision may be given if the Company obtains the written consent of the Majority Holders. Notwithstanding the foregoing (except the foregoing provisos), (i) a waiver or consent to departure from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose Registrable Securities are being sold pursuant to a Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by the Majority Holders, determined on the basis of the Registrable Securities being sold rather than registered under such Shelf Registration Statement and (ii) this Agreement may be amended by a written agreement between the Company and the Purchasers, without the consent of the Holders of the Registrable Securities, in order to cure any ambiguity or to correct or supplement any provision contained herein, provided that no such amendment shall adversely affect the interest of the Holders of Registrable Securities. Each Holder of Registrable Securities outstanding at the time of any amendment, modification, waiver or consent pursuant to this Section 6.2, shall be bound by such amendment, modification, waiver or consent, whether or not any notice or writing indicating such amendment, modification, waiver or consent is delivered to such Holder. Notwithstanding the foregoing, Section 5 may only be amended, qualified or supplemented if approved by the Majority Holders that are Sponsor Purchasers or, if after and during the continuance of a Swap Default, the Bank Purchaser.

6.3 Notices. All notices, consents and other communications provided for or permitted hereunder shall be made in writing by hand delivery, registered first-class mail, facsimile,

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or any courier guaranteeing overnight delivery (a) if to a Holder, in the manner set forth in Section 12.03(b) of the applicable Indenture; and (b) if to the Company, initially at the Company's address set forth in the Purchase Agreement, and thereafter at such other address of which notice is given in accordance with the provisions of this Section 6.3

All such notices and communications shall be deemed to have been duly given when delivered in person or by private courier with receipt, if telefaxed when verbal or email confirmation from the recipient is received, or three (3) days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid.

Copies of all such notices, demands, or other communications to any Holder shall be deemed to have been duly given, if such notice has been duly given to the Trustee under the Indentures, at the address specified in such Indentures.

6.4 Successor and Assigns. Except with respect to Section 5 hereof, which is only for the benefit of the Purchasers, this Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; *provided, however, 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 or the Indentures. 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, including the restrictions on resale set forth in this Agreement and, if applicable, the Purchase Agreement, and such person shall be entitled to receive the benefits hereof.

6.5 Third Party Beneficiaries. Each Holder of Registrable Securities shall be a third party beneficiary to the agreements made hereunder between the Company, on the one hand, and the Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights hereunder.

6.6 Specific Enforcement. Without limiting the remedies available to the Purchasers and the Holders, the Company acknowledges that any failure by the Company to comply with its obligations under Section 2.1 may result in material irreparable injury to the Purchasers or the Holders for which there is no adequate remedy at law, that it may not be possible to measure damages for such injuries precisely and that, in the event of any such failure, any Purchaser or any Holder may seek such relief as may be required to specifically enforce the Company's obligations under Sections 2.1.

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

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

6.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK.

6.10 Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

6.11 Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

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

SUN MICROSYSTEMS, INC.

By:

Name:
Title:

Confirmed and accepted as of the date first above written:

KKR PEI SOLAR HOLDINGS I, LTD.

By:

Name: Title:

KKR PEI SOLAR HOLDINGS II, LTD.

By:

Name:
Title:

CITIBANK, N.A.

By:

Name:
Title:

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EXHIBIT A

SELLING SECURITYHOLDER QUESTIONNAIRE

The undersigned beneficial owner (the "Selling Securityholder") of the 0.625% Convertible Senior Notes due 2012 and/or the 0.750% Convertible Senior Notes due 2014 (collectively, the "Notes") of Sun Microsystems, Inc. (the "Company") or the shares of the Company's Common Stock, par value $0.00067 per share, issuable upon conversion of the Notes (the "Common Stock" and, together with the Notes, the "Registrable Securities") hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Selling Securityholder Questionnaire, understands that it will be bound by the terms and conditions of this Selling Securityholder Questionnaire and the Registration Rights Agreement, dated as of January 26, 2007, among the Company and the Purchasers thereto.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company's directors, the Company's 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 Securities Exchange Act of 1934, as amended (the "Exchange Act"), from and against certain losses arising in connection with statements concerning the undersigned made in the Shelf Registration Statement or the related prospectus in reliance upon the information provided in this

Selling Securityholder Questionnaire. The undersigned hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons set forth therein.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

(1) (a) Full Legal Name of Selling Securityholder:

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities listed in (3) below are held:

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Securities listed in (3) below are held:

(2) Address for Notices to Selling Securityholder:

Telephone (including area code):

Fax (including area code):

Contact Person:

(3) Beneficial Ownership of Registrable Securities:

(a) Type and Principal Amount/Number of Registrable Securities beneficially owned:

(b) CUSIP No(s). of such Registrable Securities beneficially owned:

(4) Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder:

Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item (3).

(a) Type and Amount of Other Securities beneficially owned by the Selling Securityholder:

(b) CUSIP No(s). of such Other Securities beneficially owned:

(5) Relationship with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

(6) Is the Selling Securityholder a registered broker-dealer?

Yes [ ]

No [ ]

If “Yes”, please answer subsection (a) and subsection (b):

(a) Did the Selling Securityholder acquire the Registrable Securities as compensation for underwriting/broker-dealer activities to the Company?

Yes [ ]

No [ ]

(b) If you answered “No” to question 6(a), please explain your reason for acquiring the Registrable Securities:

(7) Is the Selling Securityholder an affiliate of a registered broker-dealer?

Yes [ ]

No [ ]

If “Yes”, please identify the registered broker-dealer(s), describe the nature of the affiliation(s) and answer subsection (a) and subsection (b):

(a) Did the Selling Securityholder purchase the Registrable Securities in the ordinary course of business (if no, please explain)?

Yes [ ]
No [ ] Explain:

(b) Did the Selling Securityholder have an agreement or understanding, directly or indirectly, with any person to distribute the Registrable Securities at the same time the Registrable Securities were originally purchased (if yes, please explain)?

Yes [ ] Explain:
No [ ]

(8) Is the Selling Securityholder a non-public entity?

Yes [ ]

No [ ]

If “Yes”, please answer subsection (a):

(a) Identify the natural person or persons that have voting or investment control over the Registrable Securities that the non-public entity owns:

(9) Plan of Distribution:

Except as set forth below, the undersigned Selling Securityholder (including its donees and pledgees) intends to distribute the Registrable Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all): Such Registrable Securities may be sold from time to time directly by the undersigned Selling Securityholder or, alternatively, in accordance with the Registration Rights Agreement, through underwriters, broker-dealers or agents. If the Registrable Securities are sold through underwriters or broker-dealers, the Selling Securityholders will be responsible for underwriting discounts or commissions or agent commissions. Such Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve cross or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or

services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the undersigned Selling Securityholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of hedging positions they assume. The undersigned Selling Securityholder may also sell Registrable Securities short and deliver Registrable Securities to close out short positions, or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities.

State any exceptions here:

The undersigned Selling Securityholder acknowledges that it understands its obligations to comply with the provisions of the Securities Exchange Act of 1934, as amended, and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Securities pursuant to the Shelf Registration Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Securityholder against certain liabilities.

In the event the undersigned transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company other than pursuant to the Shelf Registration Statement, the undersigned agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Selling Securityholder Questionnaire and the Registration Rights Agreement.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law or by the staff of the Commission for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at anytime while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing, by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery to the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (9) above and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

Once this Selling Securityholder Questionnaire is executed by the undersigned and received by the Company, the terms of this Selling Securityholder Questionnaire, and the representations, warranties and agreements contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives, and assigns of the Company and the undersigned with respect to the Registrable Securities beneficially owned by the undersigned and listed in Item (3) above. This Selling Securityholder Questionnaire shall be governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Selling Securityholder Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

Beneficial Owner

By:

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Name:

Title:

PLEASE RETURN THE COMPLETED AND EXECUTED

SELLING SECURITYHOLDER QUESTIONNAIRE TO THE COMPANY AT:

SUN MICROSYSTEMS, INC.
4150 Network Circle
Santa Clara, CA 95054
Fax: (650) 786-8608
Attn: Michael Lehman

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EX-10.1 5 rrd144599_18204.htm PURCHASE AGREEMENT, DATED JANUARY 23, 2007, BY AND AMONG SUN MICROSYSTEMS, INC., THE PURCHASERS NAMED IN EXHIBIT A ATTACHED THERETO (THE "PURCHASERS"), KOHLBERG KRAVIS ROBERTS & CO., L.P. AND KKR PEI INVESTMENTS, L.P.

EXECUTION COPY

NOTE PURCHASE AGREEMENT

BY AND BETWEEN

SUN MICROSYSTEMS, INC., THE PURCHASERS NAMED HEREIN, KOHLBERG KRAVIS ROBERTS & CO., L.P.

AND

KKR PEI INVESTMENTS, L.P.

January 23, 2007

EXECUTION COPY

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Exhibits

Exhibit A Purchasers
Exhibits B-1 and B-2 Forms of Indentures (including Forms of Notes)
Exhibit C Form of Registration Rights Agreement
Exhibit D Form of Legal Opinion

This NOTE PURCHASE AGREEMENT (this "**Agreement**") is dated as of January 23, 2007, by and among Sun Microsystems, Inc., a Delaware corporation (the "**Company**"), the purchasers named in Exhibit A attached hereto (each, a "**Purchaser**" and collectively, the "**Purchasers**"), solely for purposes of Article 1, Sections 5.5, 5.6 and 7.1 and Article 9 hereof, Kohlberg Kravis Roberts & Co., L.P. ("**Sponsor**") and solely for purposes of Section 4.6 hereof, KKR PEI Investments, L.P ("**KKR PEI**").

WHEREAS, the Company has authorized the issuance of up to $350 million aggregate principal amount of its 0.625% Convertible Senior Notes due 2012 (the "**2012 Notes**") and up to $350 million aggregate principal amount of its 0.750% Convertible Senior Notes due 2014 (the "**2014 Notes**" and together with the 2012 Notes, the "**Notes**") to be issued in accordance with the terms and conditions of the Indenture for the 2012 Notes and the Indenture for the 2014

Notes, respectively, in the forms attached hereto as Exhibit B-1 and Exhibit B-2 (the "**Indentures**"), respectively, which Notes shall be convertible in part into authorized but unissued shares of common stock, $0.00067 par value per share, of the Company (the "**Common Stock**");

WHEREAS, the Company desires to issue and sell to the Purchasers pursuant to this Agreement, and each Purchaser, severally, desires to purchase from the Company the aggregate principal amount of Notes as is set forth opposite its name in Exhibit A hereto;

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

1. Definitions

. As used in this Agreement, the following terms shall have the following respective meanings:

"**Affiliate**" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such Person, *provided*, that each Affiliated Entity, each Sponsor Purchaser and each Affiliate of an Affiliated Entity or a Sponsor Purchaser shall be deemed (except as specifically provided in Section 5.6(f) and Section 7.1(c) hereof) to be an Affiliate of Sponsor.

"**Affiliated Entity**" shall mean any investment fund or holding company formed for investments purposes that is primarily managed, advised or serviced by Sponsor or by an Affiliate of Sponsor, including but not limited to KKR PEI and its Subsidiaries.

"**Agreement**" has the meaning set forth in the recitals hereof.

"**Bank Purchaser**" means Citibank, N.A

"**Bank Purchaser Transfer Event**" shall mean (i) an exercise of the Bank Purchaser's rights under Section 7 of the Security Agreements, (ii) an exercise of the Bank Purchaser's rights under

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Section 5(b) of a Swap Agreement upon a default under such agreement (a "**Swap Default**") or (iii) the occurrence of the Scheduled Termination Date with respect to a Swap Agreement.

"**Beneficially Own**," "**Beneficially Owned**," or "**Beneficial Ownership**" shall have the meaning set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act, except that for purposes of this Agreement the words "within sixty days" in Rule 13d-3(d)(1)(i) shall not apply, to the effect that a Person shall be deemed to be the beneficial owner of a security if that Person has the right to acquire beneficial ownership of such security at any time.

"**Benefit Plan**" or "**Benefit Plans**" shall mean employee benefit plans as defined in Section 3(3) of ERISA and all other employee benefit practices or arrangements, including, without limitation, any such practices or arrangements providing severance pay, sick leave, vacation pay, salary continuation for disability, retirement benefits, deferred compensation, bonus pay, incentive pay, stock options or other stock-based compensation, hospitalization insurance, medical insurance, life insurance, scholarships or tuition reimbursements, maintained by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is obligated to contribute for employees or former employees.

"**Board Designee**" has the meaning set forth in Section 5.5(a) hereof. "**Board of Directors**" means the Board of Directors of the Company. "**Call Option**" has the meaning set forth in Section 3.2(b) hereof. "**Closing**" has the meaning set forth in Section 2.2 hereof. "**Closing Date**" has the meaning set forth in Section 2.2 hereof. "**Code**" means the Internal Revenue Code of 1986, as amended. "**Common Stock**" has the meaning set forth in the recitals hereof. "**Company**" has the meaning set forth in the recitals hereof.

"**Confidential Information**" has the meaning set forth in Section 9.9 hereof.

"**Control**" (including the terms "**controlling**" "**controlled by**" and "**under common control with**") with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Designee Termination Date**" has the meaning set forth in Section 5.5(c) hereof.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

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

"**Financial Statements**" has the meaning set forth in Section 3.7(b) hereof.

"**GAAP**" has the meaning set forth in Section 3.7(b) hereof.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Indentures**" has the meaning set forth in Section 6.1(e) hereof.

"**Intellectual Property**" means all intellectual property rights and related priority rights, arising from or in respect of the following, whether protected, created or arising under the Laws of the United States or any other jurisdiction or under any international convention, including: (i) all patents and patent applications, including all continuations, divisionals, continuations-in-part and provisionals and patents issuing thereon, and all reissues, reexaminations, substitutions, renewals and extensions thereof (collectively, "**Patents**"); (ii) all trademarks, service marks, trade names, trade dress, logos, corporate names and other source or business identifiers, together with the goodwill associated with any of the foregoing, and all applications, registrations, renewals and extensions thereof; (iii) all copyrights, works of authorship and moral rights, and all registrations, applications, renewals, extensions and reversions thereof; and (iv) all confidential and proprietary information or non-public discoveries, concepts, ideas, research and development, technology, software, know-how, formulae, inventions, trade secrets, compositions, processes, techniques, technical data and information, procedures, designs, drawings, specifications, databases, customer lists, supplier lists, pricing and cost information, and business and marketing plans and proposals, in each case excluding any rights in respect of any of the foregoing that comprise or are protected by Patents.

"**KKR PEI**" has the meaning set forth in the recitals hereof.

"**Material Adverse Effect**" means such facts, circumstances, events or changes that are, individually or in the aggregate, materially adverse to (i) the business, financial condition, assets or continuing operations of the Company and its Subsidiaries taken as a whole or (ii) the Company's ability to perform its obligations under this Agreement, but shall not include facts, circumstances, events or changes (a) generally affecting any of the industries in which the Company, taken together with its Subsidiaries, operates, in the United States or elsewhere in the world or the economy or the financial or securities markets in the United States or elsewhere in the world, in each case, except to the extent such facts, circumstances, events or changes disproportionately affect the Company and its Subsidiaries; (b) resulting from changes in applicable legal requirements, GAAP or accounting standards; (c) resulting from a change in the Company's stock price or the trading volume in the Common Stock in and of itself or (d) resulting from a failure to meet securities analysts' published revenue or earnings predictions for the Company in and of itself.

"**NASD**" means the National Association of Securities Dealers, Inc.

"**Non-Investor Affiliates**" has the meaning set forth in Section 5.6(f) hereof.

"**Notes**", "**2012 Notes**" and "**2014 Notes**" have the meanings set forth in the recitals hereof.

"**Own**" in the context of Notes shall mean (i) the right to solely control the voting or direction of the voting of such Notes and (2) bearing all or substantially all economic risk of loss or appreciation (less a fixed or floating interest rate return) in the value of, and any profit (less a fixed or floating interest rate return) derived from a transaction in, such Notes.

"**Permitted Transfer**" has the meaning set forth in Section 7.1(a) hereof.

"**Person**" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or any other entity or organization.

"**Policy Termination Date**" means the first to occur of:

(a) If a Designee Termination Date occurs after March 31, 2007, as a result of the events described in clause (v) of the definition of Designee Termination Date and if, at the time of such Designee Termination Date, there has never been a Board Designee on the Board of Directors, three months following the Closing Date;

(b) If a Designee Termination Date occurs after March 31, 2007, as a result of the events described in clause (v) of the definition of Designee Termination Date and if, at or prior to the time of such Designee Termination Date, there has at any time been a Board Designee on the Board of Directors, three months following the occurrence of such Designee Termination Date;

(c) If a Designee Termination Date occurs on or prior to March 31, 2007, as a result of the events described in clause (v) of the definition of Designee Termination Date, three months following the occurrence of such Designee Termination Date;

(d) If a Designee Termination Date occurs as a result of anything other than the events described in clause (v) of the definition of Designee Termination Date, the later of (i) the date that is three months following such Designee Termination Date or (ii) the date of the resignation (other than the conditional resignation required pursuant to Section 5.5(a) hereof), retirement or removal of the Board Designee from the Board of Directors.

"**Preferred Stock**" has the meaning set forth in Section 3.2(a) hereof.

"**Purchaser**" and "**Purchasers**" have the meanings set forth in the recitals hereof. "**Purchaser Adverse Effect**" has the meaning set forth in Section 4.3 hereof. "**Representatives**" has the meaning set forth in Section 9.9 hereof.

"**Restricted Period**" has the meaning set forth in Section 7.1(a) hereof. "**Rights Agreement**" has the meaning set forth in Section 6.1(f) hereof. "**SEC**" shall mean the Securities and Exchange Commission.

"**SEC Reports**" means the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2006, the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended October 1, 2006, the Company's Proxy Statement on Schedule 14A, filed on September 20, 2006, for its 2006 Annual Meeting of Stockholders, and any Current Reports on Form 8-K filed by the Company on or after September 8, 2006, together in each case with any documents incorporated by reference therein or exhibits thereto.

"**Securities**" shall mean the Notes and the Common Stock or other securities issuable upon conversion of the Notes.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

"**Security Agreements**" means those two certain Security Agreements contemplated to be entered into by and between KKR PEI Solar Holdings I, Ltd., a Cayman Islands limited company, and the Bank Purchaser and KKR PEI Solar Holdings II, Ltd., a Cayman Islands limited company, and the Bank Purchaser in connection with the transactions contemplated hereby in the form provided by Sponsor to the Company concurrently with the execution of this Agreement (without giving effect to any subsequent amendment thereof unless consented to by the Company).

"**Significant Subsidiary**" means, in respect of any Person, a Subsidiary of such Person that would constitute a "significant subsidiary" as such term is defined under Rule 1-02(w) of Regulation S-X under the Securities Act and the Exchange Act.

"**Sponsor**" shall have the meaning set forth in the recitals hereof.

"**Sponsor Purchasers**" shall mean the Purchasers (other than the Bank Purchaser) and their Affiliates that acquire Beneficial Ownership of Securities in a Permitted Transfer.

"**Standstill Termination Date**" means the first to occur of:

(a) If a Designee Termination Date occurs after March 31, 2007, as a result of the events described in clause (v) of the definition of Designee Termination Date and if, at the time of such Designee Termination Date, there has never been a Board Designee on the Board of Directors, the date that is six months following the Closing Date;

(b) If a Designee Termination Date occurs after March 31, 2007, as a result of the events described in clause (v) of the definition of Designee Termination Date and if, at or prior to the time of such Designee Termination Date, there has at any time been a Board Designee

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on the Board of Directors, the later of (i) the date that is six months following such Designee Termination Date and (ii) the date that is the first anniversary of the Closing Date;

(c) If a Designee Termination Date occurs on or prior to March 31, 2007, as a result of the events described in clause (v) of the definition of Designee Termination Date, the date that is the first anniversary of the Closing Date; and

(d) If a Designee Termination Date occurs as a result of anything other than the events described in clause (v) of the definition of Designee Termination Date, the latest of (i) the date that is six months following such Designee Termination Date, (ii) the date of the resignation (other than the conditional resignation required pursuant to Section 5.5(a) hereof), retirement or removal of the Board Designee from the Board of Directors and (iii) the date that is the first anniversary of the Closing Date.

"**Subsidiary**" when used with respect to any party means any corporation or other organization, whether incorporated or unincorporated, at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

"**Swap Agreements**" means those two letter agreements referencing "Convertible Note Total Return Swap Transaction" contemplated to be entered into by and between KKR PEI Solar Holdings I, Ltd., a Cayman Islands limited company, and the Bank Purchaser and KKR PEI Solar Holdings II, Ltd., a Cayman Islands limited company, and the Bank Purchaser in connection with the transactions contemplated hereby in the form provided by Sponsor to the Company concurrently with the execution of this Agreement (without giving effect to any subsequent amendment thereof unless consented to by the Company).

"**Tax Returns**" shall mean returns, reports, information statements and other documentation (including any additional or supporting material) filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and shall include any amended returns required as a result of examination adjustments made by the Internal Revenue Service or other Tax authority.

"**Taxes**" shall mean any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto), whether or not imposed on the Company, including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs duties.

"**Third Party**" has the meaning set forth in Section 5.6(b)(i) hereof.

"**Transaction Agreements**" shall mean this Agreement, the Rights Agreement, the Indentures and the Notes.

"**Transfer**" has the meaning set forth in Section 7.1(a) hereof.

"**Transfer Instruction**" has the meaning set forth in Section 7.1(e) hereof.

"**Trustee**" shall mean U.S. Bank National Association.

"**Voting Stock**" means securities of any class or kind ordinarily having the power to vote generally for the election of directors, managers or other voting members of the governing body of the Company or any successor thereto.

2. Authorization, Purchase and Sale of Notes

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2.1 Authorization, Purchase and Sale

. The Company has authorized (i) the initial sale and issuance to the Purchasers of the Notes and (ii) the issuance of up to 121,343,740 shares of Common Stock to be issued upon the conversion of the Notes. Subject to and upon the terms and conditions set forth in this Agreement, at the Closing, the Company shall issue and sell to each Purchaser, and each Purchaser, severally, shall purchase from the Company the aggregate principal amount of 2012 Notes and the aggregate principal amount of 2014 Notes set forth opposite the name of such Purchaser under the headings "Principal Amount of 2012 Notes to be Purchased" and "Principal Amount of 2014 Notes to be Purchased," respectively, on Exhibit A hereto, at a purchase price equal to the principal amount of Notes purchased.

2.2 Closing

. Subject to the satisfaction or waiver of the conditions set forth in Section 6 of this Agreement, the closing of the purchase and sale of the Notes (the "**Closing**") shall take place at the offices of Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA on January 26, 2007 (the "**Closing Date**"). At the Closing, the aggregate principal amount of the Notes shall be reflected in one or more global notes representing the Notes and held by the Depositary Trust Corporation or its nominee (or a custodian on its behalf) or if such global notes are not available as of the Closing, the Company shall deliver to each Purchaser one or more Note(s) in the aggregate principal amount as set forth opposite such Purchaser's name on Exhibit A, in each case against payment to the Company of the purchase price therefor by wire transfer to the Company of immediately available funds to an account to be designated by the

Company.

3. Representations and Warranties of the Company

. Except as set forth in the SEC Reports, the Company hereby represents and warrants to each of the Purchasers as follows:

3.1 Organization and Power

. The Company and each of its Subsidiaries is a corporation or other organization duly organized, validly existing and in good standing (where relevant) under the laws of its jurisdiction of organization, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted and is qualified to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification, except where such failures of such Subsidiaries to be so organized or existing, or of the Company or its Subsidiaries to be in good standing or to have such power and authority or to so qualify would not reasonably be expected to have a Material Adverse Effect.

3.2 Capitalization

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(a) As of the date of this Agreement, the authorized shares of capital stock of the Company consist of 7,200,000,000 shares of Common Stock and 10,000,000 shares of preferred stock, par value $0.001 per share ("**Preferred Stock**"). As of December 31, 2006, (i) the total number of outstanding shares of Common Stock was 3,541,409,821, the total number of shares of Common Stock issuable pursuant to outstanding options and other rights to acquire Common Stock was 519,757,507 and the total number of shares of Common Stock maintained for future issuance under the Company's Benefit Plans (exclusive of outstanding options and other rights to acquire Common Stock) was 362,898,046 and (ii) no shares of Preferred Stock or options or rights to acquire Preferred Stock were outstanding. Since December 31, 2006 through the date hereof, (i) the Company has only issued options or other rights to acquire Common Stock in the ordinary course of business consistent with past practice or pursuant to the Call Option and (ii) the only shares of capital stock issued by the Company were pursuant to outstanding options and other rights to purchase Common Stock. All such issued and outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid and nonassessable. No dividends have been declared or paid with respect to the shares of Common Stock since October 1, 2006.

(b) As of the date of this Agreement, except as set forth in Section 3.2(a), except for certain option arrangements being entered into in connection with the transactions contemplated hereby (the "**Call Option**"), and except for pursuant to the Company's Benefit Plans, there are no existing options, warrants, calls, preemptive (or similar) rights, subscriptions or other rights, agreements or commitments obligating the Company to issue, transfer or sell, or cause to be issued, transferred or sold, any capital stock of the Company or any securities convertible into or exchangeable for such capital stock, and there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any of its shares of capital stock.

(c) Except as set forth in the Transaction Agreements and the Call Option, the Company has not granted to any Person the right to require the Company to register Common Stock on or after the date of this Agreement.

3.3 Authorization

. The Company has all requisite corporate power to enter into the Transaction Agreements and to carry out and perform its obligations under the terms of the Transaction Agreements. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization of the Securities, the authorization, execution, delivery and performance of the Transaction Agreements and the consummation of the transactions contemplated herein has been taken. The execution, delivery and performance of the Transaction Agreements by the Company, the issuance of the Common Stock upon conversion of the Notes in accordance with their terms and the consummation of the other transactions contemplated herein do not require any approval of the Company's stockholders (other than such approval as has already been obtained). Assuming this Agreement constitutes the legal and binding agreement of the Purchasers, this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). Upon their respective execution by the Company and the other parties thereto and assuming that they constitute legal and binding agreements of the other parties thereto, each of the Rights Agreement and the Indentures will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.4 Valid Issuance

. The Notes being purchased by the Purchasers hereunder will, upon issuance pursuant to the terms hereof and the terms of the Indentures and upon payment therefor, be valid and legally binding obligations of the Company, enforceable in accordance with their terms and the terms of the Indentures, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). At or prior to the Closing, the Company will have available for issuance the Common Stock issuable upon conversion of the Notes. The Common Stock to be issued upon conversion of the Notes has been duly authorized, and upon conversion of the Notes all such Common Stock will be validly issued, fully paid and nonassessable. Subject to the accuracy of the representations made by the Purchasers in Section 4 hereof, the Notes will be issued to the Purchasers in compliance with applicable exemptions from (i) the registration and prospectus delivery requirements of the Securities Act and (ii) the registration and qualification requirements of all applicable securities laws of the states of the United States. The Company is a Well-Known Seasoned Issuer (as defined in the

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Rights Agreement) and is eligible to file as of the date hereof a registration statement on Form S-3 under the Securities Act.

3.5 No Conflict

. The execution, delivery and performance of the Transaction Agreements by the Company, the issuance of the Common Stock upon conversion of the Notes in accordance with their terms and the consummation of the other transactions contemplated hereby will not (i) violate any provision of the Certificate of Incorporation or Bylaws of the Company or (ii) conflict with or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation, a change of control right or to a loss of a benefit under any agreement or instrument, credit facility, permit, franchise, license, judgment, order, statute, law, ordinance, rule or regulations, applicable to the Company or its Subsidiaries or their respective properties or assets, except, in the case of clause (ii), as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

3.6 Consents

. All consents, approvals, orders and authorizations required on the part of the Company or its Subsidiaries in connection with the execution, delivery or performance of this Agreement and the Notes and the issuance of the Common Stock upon conversion of the Notes in accordance with their terms have been obtained or made, other than (i) the expiration or termination of any applicable waiting periods under the HSR Act or any foreign antitrust requirements in connection with the issuance of Common Stock upon conversion of the Notes and (ii) such consents, approvals, orders and authorizations the failure of which to make or obtain would not reasonably be expected to have a Material Adverse Effect.

3.7 SEC Reports; Financial Statements.

(a) The Company has filed all required registration statements,

prospectuses, reports, schedules, forms, statements and other documents required to be filed by it with the SEC since January 1, 2005. The information contained or incorporated by reference in the SEC Reports was true and correct in all material respects as of the respective dates of the filing thereof with the SEC (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing); and, as of such respective dates, the SEC Reports did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All of the SEC Reports, as of their respective dates, complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder.

(b) The financial statements of the Company included in the SEC Reports (collectively, the "**Financial Statements**") fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the dates indicated, and the results of its operations and cash flows for the periods therein specified, all in accordance with United States

generally accepted accounting principles applied on a consistent basis ("**GAAP**") throughout the periods therein specified (except as otherwise noted therein, and in the case of quarterly financial statements except for the absence of footnote disclosure and subject, in the case of interim periods, to normal year-end adjustments).

(c) Except as disclosed in the SEC Reports, the Company and its Subsidiaries have not incurred any liabilities that are of a nature that would be required to be disclosed on a balance sheet of the Company and its Subsidiaries or the footnotes thereto prepared in conformity with GAAP, other than (i) liabilities incurred in the ordinary course of business since October 1, 2006, and (ii) liabilities that would not reasonably be expected to have a Material Adverse Effect.

3.8 Absence of Certain Changes

. Since June 30, 2006, there have not been any changes, circumstances, conditions or events which, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

3.9 Absence of Litigation

. There is no action, suit, proceeding, arbitration, claim, investigation or inquiry pending or, to the Company's knowledge, threatened by or before any governmental body against the Company which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, nor are there any orders, writs, injunctions, judgments or decrees outstanding of any court or government agency or instrumentality and binding upon the Company or its Subsidiaries that would reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, the Company is not currently subject to any investigation by any governmental body with respect to any allegation of "backdating" options granted to any employees or directors that would reasonably be expected to have a Material

Adverse Effect.

3.10 Compliance with Law

. Neither the Company nor its Subsidiaries is in violation of, and the Company and its

Subsidiaries have not received any notices of violations with respect to, any laws, statutes, ordinances, rules or regulations of any governmental body, court or government agency or instrumentality, except for violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

3.11 Intellectual Property

. Except as would not reasonably be expected to have a Material Adverse Effect: (a) the

Company and each of its Subsidiaries owns, or possesses sufficient rights to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (b) to the Company's knowledge, the use by the Company and its Subsidiaries of any Intellectual Property used in the conduct of the Company's and its Subsidiaries' business as currently conducted does not infringe on

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or otherwise violate the rights of any Person; (c) the use of any licensed Intellectual Property by the Company or its Subsidiaries is in accordance with applicable licenses pursuant to which the Company or such Subsidiary acquired the right to use such Intellectual Property and (d) to the knowledge of the Company, no Person is challenging, infringing on or otherwise violating any right of the Company or any of its Subsidiaries with respect to any Intellectual Property owned by and/or exclusively licensed to the Company or its Subsidiaries.

3.12 Employee Benefits

. Except as would not be reasonably likely to result in a Material Adverse Effect, each

Benefit Plan has been established and administered in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations. The Company and its Subsidiaries are in compliance with all federal, state, local and foreign requirements regarding employment, except for any failures to comply that are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect. As of the date hereof, there is no material labor dispute, strike or work stoppage against the Company or any of its Subsidiaries pending or, to the knowledge of the Company, threatened which may interfere with the business activities of the Company or any of its Subsidiaries, except where such dispute, strike or work stoppage is not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect.

3.13 Taxes

. The Company and each of its Subsidiaries have filed all Tax Returns required to have been filed (or extensions have been duly obtained) and have paid all Taxes (as defined below) required to have been paid by it, except where failure to file such Tax Returns or pay such Taxes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.14 Nasdaq Stock Market

. Shares of the Common Stock are registered pursuant to Section 12(b) of the Exchange Act and are listed on the Nasdaq Stock Market, and the Company has no action pending to terminate the registration of the Common Stock under the Exchange Act or delist the Common Stock from Nasdaq Stock Market, nor has the Company received any

notification that the SEC or the Nasdaq Stock Market is currently contemplating terminating such registration or listing.

3.15 Company Not an "Investment Company."

The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended. The Company is not, and immediately after receipt of payment for the Notes will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.16 General Solicitation; No Integration

. Neither the Company nor any other person or entity authorized by the Company to act on its behalf has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of the Notes. The Company has not, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which, to its knowledge, is or will be integrated with the Notes sold pursuant to this Agreement.

4. Representations and Warranties of Each Purchaser

. Each Purchaser, severally for itself and not jointly with the other Purchasers, represents and warrants to the Company as follows (*provided*, that the representations and warranties in Section 4.6 hereof are also made by KKR PEI with regard to each Sponsor Purchaser):

4.1 Organization

. Such Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

4.2 Authorization

. Such Purchaser has all requisite corporate or similar power to enter into this Agreement and the other Transaction Agreements to which it will be a party and to carry out and perform its obligations hereunder and thereunder. All corporate, member or partnership action on the part of such Purchaser or its stockholders, members or partners necessary for the authorization, execution, delivery and performance of this Agreement and the other Transaction Agreements to which it will be a party and the consummation of the other transactions contemplated herein has been taken. Assuming this Agreement constitutes the legal and binding agreement of the Company, this Agreement constitutes a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). Upon their respective execution by such Purchaser and the other parties thereto and assuming that they constitute legal and binding agreements of the Company, each of the other Transaction Agreements to which such Purchaser will be a party will constitute a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3 No Conflict

. The execution, delivery and performance of the Transaction Agreements by such

Purchaser, the issuance of the Common Stock upon conversion of the Notes in accordance with their

terms and the consummation of the other transactions contemplated hereby will not conflict with or result in any violation of or default by such Purchaser (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation, a change of control right or to a loss of a material benefit under (i) any provision of the organizational documents of such Purchaser or (ii) any agreement or instrument, credit facility, permit, franchise, license, judgment, order, statute, law, ordinance, rule or regulations, applicable to such Purchaser or its respective properties or assets, except, in the case of clause (ii), as would not, individually or in the aggregate, be reasonably expected to materially delay or hinder the ability of such Purchaser to perform its obligations under the Transaction Agreements (a "**Purchaser Adverse Effect**").

4.4 Consents

. All consents, approvals, orders and authorizations required on the part of such Purchaser in connection with the execution, delivery or performance of this Agreement and the Notes, the issuance of the Common Stock upon conversion of the Notes in accordance with their terms and the consummation of the other transactions contemplated herein have been obtained or made, other than (i) the expiration or termination of the applicable waiting period under the HSR Act or any foreign antitrust requirements in connection with the issuance of Common Stock upon conversion of the Notes and (ii) such consents, approvals, orders and authorizations the failure of which to make or obtain, individually or in the aggregate, would not reasonably be expected to have a Purchaser Adverse Effect.

4.5 Absence of Litigation

. There is no action, suit, proceeding, arbitration, claim, investigation or inquiry pending or, to such Purchaser's knowledge, threatened by or before any governmental body against such Purchaser which, individually or in the aggregate, would reasonably be expected to have a Purchaser Adverse Effect, nor are there any orders, writs, injunctions, judgments or decrees outstanding of any court or government agency or instrumentality and binding upon such Purchaser that would reasonably be expected to have a Purchaser Adverse Effect.

4.6 Purchasers' Financing

. At the Closing, such Purchaser will have all funds necessary to pay to the Company the purchase price for the Notes being purchased by such Purchaser hereby in immediately available funds.

4.7 Brokers

. Such Purchaser has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Company would be required to pay (other than pursuant to the reimbursement of expenses provisions of Section 9.7 hereof).

4.8 Purchase Entirely for Own Account

. Such Purchaser is acquiring the Securities for its own account, except as contemplated by the Swap Agreements and the Security Agreements, and not with a view to, or for sale in connection with, any distribution of the Securities in violation of the Securities Act. Except as contemplated by the Swap Agreements and the Security Agreements, such Purchaser has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition

of the Securities.

4.9 Investor Status

. Such Purchaser certifies and represents to the Company that such Purchaser is an

"accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act. Such Purchaser's financial condition is such that it is able to bear the risk of holding the Notes for an indefinite period of time and the risk of loss of its entire investment. Such Purchaser has been afforded the opportunity to ask questions of and receive answers from the management of the Company concerning this investment (except in the case of Bank Purchaser who is purchasing the Notes to be purchased by it hereunder for the account of and at the request of the Sponsor Purchasers and for the purpose of entering into the transactions contemplated by the Swap Agreements and the Security Agreements) and has sufficient knowledge and experience in investing in companies similar to the Company so as to be able to evaluate the risks and merits of its investment in the Company.

4.10 Securities Not Registered

. Such Purchaser understands that the Securities have not been registered under the

Securities Act, by reason of their issuance by the Company in a transaction exempt from the registration requirements of the Securities Act, and that the Securities must continue to be held by such Purchaser unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration. Such Purchaser understands that the exemptions from registration afforded by Rule 144 (the provisions of which are known to it) promulgated under the Securities Act depend on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

5. Covenants

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5.1 HSR Approval

. The Company and the Sponsor Purchasers acknowledge that one or more filings under the

HSR Act may be necessary in connection with the issuance of shares of Common Stock upon conversion of the Notes. The Sponsor Purchasers shall be solely responsible for determining whether any filings under the HSR Act or any foreign antitrust requirements may be necessary in connection with any conversion of Notes held by them and will promptly notify the Company if any such filing is required. To the extent required, the Company will cooperate with the Sponsor Purchasers in making any required filings under the HSR Act or any foreign antitrust requirements in connection with the issuance of shares of Common Stock upon conversion of Notes held by Sponsor Purchasers and the Company and the applicable Sponsor Purchaser(s) shall share equally in the payment of the

filing fees associated with any such filings. For the avoidance of doubt, any delivery of shares of Common Stock upon conversion of the Notes shall be subject to the terms and conditions of the Indentures, including all such terms relating to compliance with the HSR Act or any foreign antitrust requirements.

5.2 Shares Issuable Upon Conversion

. The Company will at all times have and keep available for issuance such number of shares of Common Stock as

shall be sufficient to permit the conversion of the Notes into Common Stock as provided for in the Notes and Indentures, including as may be adjusted for share splits, combinations or other similar transactions. The Company will cause any Common Stock issued upon conversion of the Notes to be listed with The Nasdaq Stock Market or such other stock exchange or quotation system on which the Common Stock may then be listed by the Company.

5.3 PORTAL and CUSIPs

. The Company will use its reasonable best efforts to (a) permit the Notes to be designated

PORTAL securities in accordance with the rules and regulations adopted by the NASD relating to the PORTAL Market as of the Closing or as promptly as practicable thereafter and (b) obtain all necessary Committee on Uniform Securities Identification Procedures numbers (CUSIP numbers) for the Notes required for creating a market in Notes traded pursuant to Rule 144A under the Securities Act or which are not "restricted securities" for purposes of Rule 144 under the Securities Act. Each Purchaser will provide all reasonable assistance and cooperation as may be requested by the Company to effectuate the intent and purposes of this Section 5.3. The Company will use its reasonable best efforts to cause all Notes Beneficially Owned by the Purchasers to be issued (at the Closing and, failing that, as promptly as practicable thereafter) as an interest in the IAI Global Note (as defined in the applicable Indenture). Any interest in the IAI Global Note (as defined in the applicable Indenture) will be held through a brokerage account established and maintained with the Bank Purchaser; *provided*, *however*, that three months following the later of the Designee Termination Date or such time as Sponsor ceases to have an Affiliate or designee on the Board of Directors, the requirement set forth in this sentence shall terminate and, to the extent permitted by the Depositary Trust Corporation and the registrar for the Notes, such ownership interest may be transferred into the Restricted Global Note (as defined in the applicable Indenture).

5.4 Further Assurances

. Each party agrees to cooperate with each other and their respective officers, employees, attorneys, accountants and other agents, and, generally, do such other reasonable acts and things in good faith as may be necessary to effectuate the intents and purposes of this Agreement, subject to the terms and conditions hereof and compliance with applicable law, including taking reasonable action to facilitate the filing of any document or the taking of reasonable action to assist the other parties hereto in complying with the terms hereof.

5.5 Board Designee

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(a) Sponsor shall have the right to nominate pursuant to the terms and subject to the conditions of this Section 5.5 one nominee to the Company's Board of Directors (the "**Board Designee**"). At the meeting of the Board of Directors scheduled for January 31, 2007, or within two months thereafter, the Company shall appoint the Board Designee to the Board of Directors and shall, if necessary, expand its Board of Directors by one member to create a vacancy for such purpose; provided, however, that no such appointment shall be required unless such nominee shall (i) be qualified and suitable to serve as a member of the Board of Directors under all applicable corporate governance policies or guidelines of the Company and the Board of Directors and applicable legal, regulatory and stock market requirements, (ii) meet the independence requirements with respect to the Company of Section 4200(a)(15) of the Rules of the Nasdaq Stock Market or any successor thereto, and (iii) be acceptable to the Board of Directors (including the Corporate Governance and Nominating Committee of the Board of Directors) in its good faith discretion. As of the date hereof, the Sponsor has designated Michael Marks as a nominee for Board Designee. The Sponsor will take all necessary action to cause any nominee for Board Designee to make himself or herself reasonably available for interviews, to consent to such reference and background checks or other investigations and to provide such information (including information necessary to determine the nominee's independence status under various requirements and institutional investor guidelines as well as information necessary to determine any disclosure obligations of the Company) as the Board of

Directors or its Corporate Governance and Nominating Committee may reasonably request. Provided that the Board Designee then meets the requirements set forth in the second sentence of this Section 5.5(a) and the Sponsor Purchasers, collectively, then Own at least $350 million principal amount of the Notes, the Company shall nominate the Board Designee for re-election as a director at the end of each term of such Board Designee as part of the slate proposed by the Company that is included in the proxy statement (or consent solicitation or similar document) of the Company relating to the election of the Board of Directors. In the event that the Board Designee ceases to be a member of the Board of Directors, so long as the Sponsor Purchasers, collectively, Own at least $350 million principal amount of the Notes, Sponsor may select another person as a nominee for Board Designee to fill the vacancy created thereby and, if the Board of Directors determines that such nominee meets the criteria set forth in the second sentence of this Section 5.5(a), such nominee shall become the Board Designee and shall be appointed to fill such vacancy. It shall be a condition to the appointment or nomination for election or re-election of any Board Designee that such Board Designee tender a conditional resignation letter prior to his or her appointment or nomination for election or re-election to the Board of Directors providing such Board Designee's irrevocable offer of resignation from the Board of Directors effective upon the Designee Termination Date or upon such other circumstances as may be provided for under the corporate governance policies or guidelines of the Company or the Board of Directors; *provided*, that the Board Designee shall not be required to submit his or her conditional resignation from the Board of Directors under circumstances provided for under any such guideline added after the date hereof which would in its practical application discriminatorily affect only the Sponsor Purchasers and their Affiliates and which is not reasonably supported by a rational legal or business purpose unrelated to the Sponsor Purchasers' investment in the Securities (except as may be required by legal

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or regulatory requirements) other than discriminatory treatment of the Sponsor Purchasers and their Affiliates.

(b) The Board Designee shall be subject to the policies and requirements of the Company and its Board of Directors, including the Corporate Governance Guidelines of the Board of Directors and the Company's Standards of Business Conduct, in a manner consistent with the application of such policies and requirements to other members of the Board of Directors. The Company shall indemnify the Board Designee and provide the Board Designee with director and officer insurance to the same extent it indemnifies and provides insurance for the members of the Board of Directors pursuant to its organizational documents, applicable law or otherwise.

(c) All obligations of the Company pursuant to this Section 5.5 shall terminate upon the first to occur of: (i) such time as the Sponsor Purchasers, collectively, do not Own at least $350 million principal amount of the Notes, (ii) the Company sells all or substantially all of its assets, (iii) any Person or "group" (as such term is used in Section 13 of the Exchange Act), directly or indirectly, obtains Beneficial Ownership of 50% or more of the total outstanding voting power of the Voting Stock, (iv) the Company participates in any merger, consolidation or similar transaction unless immediately following the consummation of such transaction the stockholders of the Company immediately prior to the consummation of such transaction continue to hold (in substantially the same proportion as their ownership of the Company's voting stock immediately prior to the transaction) more than 50% of all of the outstanding common stock or other securities entitled to vote for the election of directors of the surviving or resulting entity in such transaction, (v) the Sponsor irrevocably waives and terminates all of its rights under this Section 5.5, (vi) the Board Designee is removed from the Board of Directors for cause by the stockholders of the Company or (vii) the Company delivers written notice that Sponsor or any Sponsor Purchaser has breached the terms of this Agreement in any material respect and the Sponsor Purchaser does not cure any such breach within 10 days of such notice, provided that no cure period shall apply if such breach is of a nature which cannot be cured. The date of termination pursuant to this clause (c) of the obligations of the Company pursuant to this Section 5.5 is sometimes referred to herein as the "**Designee Termination Date**").

5.6 Standstill

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(a) Sponsor agrees that, until the Standstill Termination Date, without the

prior consent of the Board of Directors (excluding any Board Designee), Sponsor shall not and Sponsor shall cause

each of its Affiliates not to, directly or indirectly:

(i) acquire or Beneficially Own Voting Stock or authorize or make any offer to acquire Voting Stock, if the effect of such acquisition or offer (if consummated) would be to increase the percentage of the Voting Stock represented by all shares of Voting Stock Beneficially Owned by Sponsor and its Affiliates to more than 5% of the Voting Stock outstanding (not including any Common Stock received by a Purchaser upon conversion of any Note);

(ii) authorize, commence, encourage, support or endorse any tender offer or exchange offer for shares of Voting Stock;

(iii) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" to vote (as such terms are used in the rules of the SEC), or seek to advise or influence any Person with respect to the voting of any Voting Stock;

(iv) publicly announce or submit to the Company a proposal or offer concerning (with or without conditions) any extraordinary transaction involving the Company or any successor thereto, any Subsidiary or division thereof, or any of their securities or assets;

(v) form, join or in any way participate in a "group" as defined in Section 13(d)(3) of the Exchange Act, for the purpose of acquiring, holding, voting or disposing of any securities of the Company;

(vi) take any action that could reasonably be expected to require the Company or any successor thereto to make a public announcement regarding the possibility of any of the events described in clauses (i) through (v) above;

(vii) enter into any arrangements with any third party concerning any of the foregoing; or

(viii) request the Company or any of its Representatives, directly or indirectly, to amend or waive any provision of this Section 5.6.

(b) The restrictions set forth in Section 5.6(a) will not apply if any of the following occurs (*provided*, that if any event described in this Section 5.6(b) occurs and, during the twelve month period following such event, none of the transactions described in clauses (ii), (iii) or (iv) of the definition of Designee Termination Date has occurred, then the restrictions set forth in Section 5.6(a) will thereafter resume and continue to apply if a Board Designee is then serving as a member of the Board of Directors, *provided, further*, at the time of any such resumption of the restrictions set forth in Section 5.6(a), if the number of shares of Voting Stock then owned by Sponsor and its Affiliates then exceeds 5% of the Voting Stock outstanding (not including any Common Stock received by a Purchaser upon conversion of any Notes), neither Sponsor nor any of its Affiliates shall be required to dispose of any shares of Voting Stock Beneficially Owned by them but, in such event, neither Sponsor nor any of its Affiliates may then acquire Beneficial Ownership of additional Voting Stock (other than Common Stock received by a Purchaser upon conversion of any Notes) unless the Beneficial Ownership percentage of Sponsor and its Affiliates would, following such acquisition, be an amount below 5% of the Voting Stock then outstanding (not including any Common Stock received by a Purchaser upon conversion of any Notes)):

(i) a third party who is not an Affiliate of Sponsor (a "**Third Party**") commences (within the meaning of Rule 14d-2 under the Exchange Act) a bona fide tender or exchange offer for more than 50% of the outstanding Voting Stock and the Board of Directors

does not recommend against the tender or exchange offer within ten (10) business days after the commencement thereof or such longer period as shall then be permitted under SEC rules; or

(ii) a Third Party acquires beneficial ownership of 50% of the outstanding Voting Stock;

(iii) the Company enters into an agreement pursuant to which a Third Party would acquire all or substantially all of the stock or assets of the Company or the Company would be merged or consolidated with another Person, unless immediately following the consummation of such transaction the stockholders of the Company immediately prior to the consummation of such transaction would continue to hold (in substantially the same proportion as their ownership of the Company's voting stock immediately prior to the transaction) more than 50% of all of the outstanding common stock or other securities entitled to vote for the election of directors of the surviving or resulting entity in such transaction or any direct or indirect parent thereof; or

(iv) the Company publicly announces that it is exploring strategic alternatives, or makes any similar public announcement indicating that it is actively seeking a "sale" of the Company and, in any such event, such announcement is made with the approval of the Board of Directors.

(c) Nothing in clause (ii) or clause (v) of Section 5.6(a) shall be construed to prohibit the Board Designee from confidentially, in good faith and in the performance of his or her duties as a member of the Board of Directors, discussing a proposal made by the Company or a Third Party concerning any extraordinary transaction involving the Company or any successor thereto, any Subsidiary or division thereof, or any of their securities or assets, with the Board of Directors and representatives of the Company and its advisors who are involved in the evaluation or execution of any such proposal on behalf of the Company.

(d) Upon an increase in the Beneficial Ownership percentage of Sponsor and its Affiliates to an amount in excess of 5% of the Voting Stock outstanding (not including any Common Stock received by a Purchaser upon conversion of any Notes) resulting solely from a repurchase or redemption of Voting Stock by the Company or any similar transaction that reduces the number of outstanding shares of Voting Stock of the Company, neither Sponsor nor any of its Affiliates shall be required to dispose of any Securities Beneficially Owned by them; *provided*, *however*, that in such event, neither Sponsor nor any of their Affiliates may acquire Beneficial Ownership of additional Voting Stock (other than Common Stock received by a Purchaser upon conversion of any Notes) unless the Beneficial Ownership percentage of Sponsor and its Affiliates would, following such acquisition, be an amount below 5% of the Voting Stock then outstanding (not including any Common Stock received by a Purchaser upon conversion of any Notes).

(e) Sponsor and each Sponsor Purchaser agree that, until the Standstill Termination Date, they shall promptly notify the Company of any new acquisition or disposition, or entry into any agreement or arrangement which could reasonably result in any new acquisition or disposition, of Beneficial Ownership of Voting Stock or Securities by Sponsor or any of its Affiliates, including the material details thereof.

(f) Notwithstanding anything to the contrary provided elsewhere herein, Affiliates of the Sponsor not engaged in the private equity business ("**Non-Investor Affiliates**") shall not be considered "Affiliates" for purposes of this Section 5.6 if any actions taken by them are not taken under the direction of Sponsor or any of its Affiliates (other than Non-Investor Affiliates) or any officer or general partner of Sponsor or any of its Affiliates (other than Non-Investor Affiliates) and if Confidential Information is not made available to such Non-Investor Affiliates or their Representatives.

6. Conditions Precedent

.

6.1 Conditions to the Obligation of the Purchasers to Consummate the Closing

. The several obligations of each Purchaser to consummate the transactions to be consummated at the Closing, and to purchase and pay for the Notes being purchased by it at the Closing pursuant to this Agreement, are subject to the satisfaction of the following conditions precedent (provided that if the Sponsor Purchasers do not consummate the transactions contemplated by the Swap Agreements as of the Closing, they shall be deemed to have assumed all of the obligations of the Bank Purchaser hereunder and the Bank Purchaser shall be deemed to have assigned all of its rights hereunder to the Sponsor Purchasers and shall be released from all obligations hereunder without payment of penalty to the Company):

(a) The representations and warranties of the Company contained herein shall be true and correct on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (it being understood and agreed by each Purchaser that for purposes of this Section 6.1(a), in the case of any representation and warranty of the Company contained herein (i) which is not hereinabove qualified by application thereto of a materiality standard, such representation and warranty need be true and correct only in all material respects or (ii) which is made as of a specific date, such representation and warranty need be true and correct only as of such specific date).

(b) The Company shall have performed in all material respects all obligations and conditions herein required to be performed or observed by the Company on or prior to the Closing Date.

(c) Each Purchaser shall have received a certificate, dated the Closing Date, signed by the Chief Executive Officer or the Chief Financial Officer of the Company, certifying on behalf of the Company that the conditions specified in the foregoing Sections 6.1(a) and (b) have been fulfilled.

(d) The purchase of and payment for the Notes by each Purchaser shall not be prohibited or enjoined by any law or governmental or court order or regulation.

(e) The Company and the Trustee shall have executed and delivered the Indentures.

(f) The Company shall have executed and delivered the Registration

Rights Agreement in the form attached hereto as Exhibit C (the "**Rights Agreement**").

(g) The Purchasers shall have received from counsel to the Company, an opinion substantially in the form attached hereto as Exhibit D.

6.2 Conditions to the Obligation of the Company to Consummate the Closing

. The obligation of the Company to consummate the transactions to be consummated at the

Closing, and to issue and sell to each Purchaser the Notes to be purchased by it at the Closing pursuant to this Agreement, is subject to the satisfaction of the following conditions precedent:

(a) The representations and warranties contained herein of each Purchaser shall be true and correct on and as of the Closing Date, with the same force and effect as though made on and as of the Closing Date (it being understood and agreed by the Company that, in the case of any representation and warranty of a Purchaser contained herein which is not hereinabove qualified by application thereto of a materiality standard, such representation and warranty need be true and correct only in all material respects).

(b) Each Purchaser shall have performed in all material respects all obligations and conditions herein required to be performed or observed by such Purchaser on or prior to the Closing Date.

(c) The Company shall have received a certificate, dated the Closing Date, on behalf of each Purchaser, signed by an officer thereof, certifying on behalf of each Purchaser that the conditions specified in the foregoing Sections 6.2(a) and (b) have been fulfilled.

(d) The purchase of and payment for the Notes by each Purchaser shall not be prohibited or enjoined by any law or governmental or court order or regulation.

(e) The Trustee shall have executed and delivered the Indentures.

(f) Each Purchaser shall have executed and delivered the Rights

Agreement.

7. Transfer of the Securities

.

7.1 Transfer Restrictions

.

(a) No Sponsor Purchaser shall sell, assign, pledge, loan, hedge, transfer or otherwise dispose or encumber (collectively, "**Transfer**") any of the Securities during the period commencing on the Closing Date and ending three months following the Closing Date (such three month period, the "**Restricted Period**"), except for Transfers to an Affiliated Entity, in each case that delivers a written instrument to the Company in form and substance reasonably satisfactory to the Company confirming that the transferee is subject to the obligations of this Agreement (including the obligations contained in this Section 7) and is a Sponsor Purchaser hereunder (it being acknowledged and understood that no such Transfer by a Sponsor Purchaser shall relieve such Sponsor Purchaser from its obligations or liabilities pursuant to this Agreement) (a "**Permitted Transfer**") and except for the pledge of the Notes pursuant to the Security Agreements.

(b) Following the Restricted Period, no Sponsor Purchaser may Transfer any of the Securities except (1) pursuant to and in compliance with a Sponsor Supported Distribution (as defined in the Rights Agreement), (2) at a time when trades in the Company's securities are permitted pursuant to Section 7.1(c) below and in any event only pursuant to (i) a Transfer to the Company, (ii) a Permitted Transfer, (iii) a Transfer to a transferee that is not Sponsor or an Affiliate of Sponsor, pursuant to an effective registration statement under the Securities Act, (iv) solely if no registration statement under the Securities Act is available for such sale, a Transfer to a "qualified institutional buyer" that is not Sponsor or an Affiliate of Sponsor pursuant to Rule 144A under the Securities Act or (v) a Transfer to a transferee that is not Sponsor or an Affiliate of Sponsor pursuant to Rule 144 under the Securities Act or pursuant to Regulation S under the Securities Act and (in the case of (v) only), if requested by the Company, upon delivery by such Sponsor Purchaser of an opinion of counsel reasonably satisfactory to the Company to the effect that the proposed transfer is exempt from registration under the Securities Act and applicable state securities laws. The Company shall not register any Transfer of the Securities in violation of this Section 7.1. The Company may, and may instruct any transfer agent for the Company to, place such stop transfer orders as may be required on the transfer books of the Company in order to ensure compliance with the provisions of this Section 7.1.

(c) Sponsor and each Sponsor Purchaser agree that, until the Policy Termination Date and except as otherwise permitted pursuant to a Sponsor Supported Distribution (as defined in the Rights Agreement) pursuant to the Rights Agreement, Sponsor and any Affiliate of Sponsor will be subject to all trading and hedging restrictions to which any

Board Designee is or would be subject, including the requirements of Section 16(c) of the Exchange Act and the Company's Market Communications and Stock Trading Policy; *provided*, that Sponsor and its Affiliates shall not be required to comply with any restriction on trading of securities of the Company which is added to any policy of the Company by amendment or adoption after the date hereof which would in its practical application discriminatorily affect only Sponsor and its Affiliates and which is not reasonably supported by a rational legal or business purpose unrelated to the Sponsor Purchasers' investment in the Securities (except as may be required by legal or regulatory requirements) other than discriminatory treatment of Sponsor and its Affiliates. Sponsor shall cause each of its Affiliates to comply with the restrictions set forth in this Section 7.1(c) and shall be responsible for any action or inaction by any of its Affiliates that is contrary to the terms of this Section 7.1(c). Sponsor agrees that it and its Affiliates shall obtain pre-approval of Transfers to the

extent required under such policies. The Company will use commercially reasonable efforts to respond as promptly as reasonably practicable to any request for pre-approval of Transfers by Sponsor and its Affiliates. Notwithstanding anything to the contrary provided herein, Non-Investor Affiliates shall not be considered "Affiliates" for purposes of this Section 7.1(c) if any actions taken by them that would otherwise be prohibited by this Section 7.1(c) are not taken under the direction of Sponsor or any Affiliate (other than Non-Investor Affiliates) of Sponsor or any officer or general partner of Sponsor or any Affiliate (other than Non-Investor Affiliates) of Sponsor and if Confidential Information is not made available to such Non-Investor Affiliates or their Representatives.

(d) The restrictions set forth in this Section 7.1 shall be in addition to the applicable transfer restrictions or other requirements set forth in the Indentures and the Purchasers acknowledge and agree to be bound thereby.

(e) No Bank Purchaser shall Transfer any of the Securities except pursuant to a written instruction by the Sponsor Purchasers (which shall include settlement elections under the Swap Agreements (including in connection with a Swap Default where no such election is made)) (a "**Transfer Instruction**") or pursuant to a Bank Purchaser Transfer Event. The Sponsor shall not issue or deliver a Transfer Instruction to a Bank Purchaser with respect to any Transfer that would, as to timing, manner of sale or otherwise, not be permitted to be made by a Sponsor Purchaser at such time pursuant to this Section 7.1 and will promptly notify the Company of any delivery of a Transfer Instruction to a Bank Purchaser and the terms thereof; provided that nothing in this Section 7.1 shall be deemed to prohibit or restrict the delivery of Notes by the Bank Purchaser to an Affiliated Entity at any time in accordance with Section 7.1(a) hereof and the terms of the Swap Agreements.

(f) The Bank Purchaser shall not knowingly permit any Transfer of ownership of interests in any Securities held in or through a brokerage account with the Bank Purchaser in violation of the restrictions set forth in this Section 7.1 or the Indentures; *provided, however*, that the Bank Purchaser may rely on written assurances from the Sponsor Purchasers that any such Transfer is in compliance with this Section 7.1 and the Indentures. Each of the Purchasers acknowledges and agrees that the Bank Purchaser shall promptly provide to the Company all information known to it concerning the ownership of interests in the IAI Global Note (as defined in the Indenture) held in or through any such account by the Sponsor Purchasers (or held by the Bank Purchaser pursuant to the terms of any of the Swap Agreements or the Security Agreements) as the Company may reasonably request and shall promptly provide all material information known to it concerning any transfers thereof promptly following the occurrence of any such transfer (including providing copies of any written assurances referred to in the first sentence of this Section 7.1(f)). Each of the Purchasers agrees that it will provide the Company with all information known to it concerning Beneficial Ownership in Securities of such Purchaser for its account as the Company may reasonably request and will provide the Company with all material information known to it concerning any Transfers thereof promptly following the occurrence of any such Transfer.

8. Termination

.

8.1 Conditions of Termination

. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time before the Closing (a) by mutual consent of the Company and the Sponsor Purchasers, or (b) by either party hereto if the Closing shall not have occurred on or prior to 1:00

p. m., California time, on the seventh day following the date hereof. 8.2 Effect of Termination

. In the event of any termination pursuant to Section 8.1 hereof, this Agreement shall become null and void and have no effect, with no liability on the part of the Company or the Purchasers, or their directors, officers, agents or stockholders, with respect to this Agreement, except for liability for any willful breach of this Agreement.

9. Miscellaneous Provisions

.

9.1 Public Statements or Releases

. Neither the Company nor any Purchaser shall make any public announcement with respect to the existence or terms of this Agreement or the transactions provided for herein without the prior approval of the other parties, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, nothing in this Section 9.1 shall prevent any party from making any public announcement it considers necessary in order to satisfy its obligations under the law or under the rules of any national securities exchange.

9.2 Interpretation

. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and subsection references are to this Agreement unless otherwise specified. The headings in this Agreement are included for convenience of reference only and will not limit or otherwise affect the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The phrases “the date of this Agreement,” “the date hereof” and terms of similar import, unless the context otherwise requires, will be deemed to refer to the date set forth in the first paragraph of this Agreement. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. All matters to be agreed to by any party hereto must be agreed to in writing by such party unless otherwise indicated herein.

References to agreements, policies, standards, guidelines or instruments, or to statutes or regulations, are to such agreements, policies, standards, guidelines or instruments, or statutes or regulations, as amended or supplemented from time to time (or to successors thereto).

9.3 Notices

. Any notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to be given when delivered in person or by private courier with receipt, if telefaxed when verbal or email confirmation from the recipient is received, or three (3) days after being deposited in the United States mail, first-class,

registered or certified, return receipt requested, with postage paid and,

if to the Company, addressed as follows:

Sun Microsystems, Inc.
4150 Network Circle
Santa Clara, CA 95054
Attention: Michael Lehman
Facsimile: (650) 786-8608

with copies to:

Sun Microsystems, Inc.
4150 Network Circle
Santa Clara, CA 95054
Attention: Michael Dillon
Facsimile: (650) 786-2368

and

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attention: John A. Fore, Esq.
Facsimile: 415-493-6811

if to any Purchaser, addressed as set forth in Exhibit A for such Purchaser with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Ave.
New York, NY 10017
Attention: William R. Dougherty, Esq.
Facsimile: (212) 455-2502

if to Sponsor, addressed as follows:

Kohlberg Kravis Roberts & Co., L.P.
9 West 57th Street
New York, NY 10019

Attention: Christopher Lee
Facsimile: (212) 750-0003

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Ave.

New York, NY 10017
Attention: William R. Dougherty, Esq.
Facsimile: (212) 455-2502

Any Person may change the address to which notices and communications to it are to be addressed by notification as provided for herein.

9.4 Severability

. If any part or provision of this Agreement is held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provisions shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the parties hereto.

9.5 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware.

(b) The Company and each of the Purchasers hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or

proceeding relating solely to this Agreement or the transactions contemplated hereby, to the general jurisdiction of the Chancery Court of the State of Delaware, and appellate courts thereof;

(ii) consents that any such action or proceeding may be brought in such courts, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same to the extent permitted by applicable law;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the party, as the case may be, at its address set forth in Section 9.3 or at such other address of which the other party shall have been notified pursuant thereto;

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction for recognition and enforcement of any judgment or if jurisdiction in the courts referenced in the foregoing clause (i) are not available despite the intentions of the parties hereto;

(v) agrees that final judgment in any such suit, action or proceeding brought in such a court may be enforced in the courts of any jurisdiction to which such party is subject by a suit upon such judgment, provided that service of process is effected upon such party in the manner specified herein or as otherwise permitted by law;

(vi) agrees that to the extent that such party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process with respect to itself or its property, such party hereby irrevocably waives such immunity in respect of its obligations under this Agreement, to the extent permitted by law; and

(vii) irrevocably and unconditionally waives trial by jury in any legal action or proceeding in relation to this Agreement.

9.6 Waiver

. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

9.7 Expenses; Transaction Fee

. The Company shall pay the reasonable and documented out-of-pocket fees and expenses incurred by the Purchasers in connection with the proposed investment by Sponsor and its Affiliates in the Company. On the Closing Date, the Company shall pay such fees and expenses upon receipt from Sponsor of written notice detailing such fees and expenses, together with appropriate supporting documentation evidencing the calculation of the amount of such fees and expenses. In addition, on the Closing Date, the Company shall pay an Affiliate of Sponsor designated by Sponsor a transaction fee equal to one percent (1%) of the principal amount of the Notes sold at the Closing. For the avoidance of doubt, such payments do not reflect compensation for any accounting, consulting, legal, investment banking, advisory or other services rendered by Sponsor.

9.8 Assignment

. Except for the assumption of obligations of a transferee pursuant to a Permitted Transfer, none of the parties may assign its rights or obligations under this Agreement or designate another person (i) to perform all or part of its obligations under this Agreement or (ii) to have all or part of its rights and benefits under this Agreement, in each case without the prior written consent of the (x) Company and (y) Sponsor. In the event of any assignment in accordance with the terms of this Agreement, the assignee shall specifically assume and be bound by the provisions of the Agreement

---

by executing a writing agreeing to be bound by and subject to the provisions of this Agreement and shall deliver an executed counterpart signature page to this Agreement and, notwithstanding such assumption or agreement to be bound hereby by an assignee, no such assignment shall relieve any party assigning any interest hereunder from its obligations or liability pursuant to this Agreement.

9.9 Confidential Information

. The Purchasers acknowledge that from time to time, Purchasers may be given access to non-public, proprietary information with respect to the Company ("**Confidential Information**"). For purposes hereof, for any Purchaser, Confidential Information does not include, however, (i) information which is or becomes generally available to the public in accordance with law other than as a result of a disclosure by the Purchaser or its directors, managing members, officers, employees, agents, legal counsel, financial advisors, accounting representatives or potential funding sources

("**Representatives**") or its Affiliates, subsidiaries or franchisees in violation of this Section 9.9 or any other confidentiality agreement to which the Company is a party or beneficiary, (ii) is, or becomes, available to the Purchasers on a non-confidential basis from a source other than the Company or any of its Affiliates or any of its Representatives, provided, that such source was not known to you (after reasonable investigation) to be bound by a confidentiality agreement with, or any other contractual, fiduciary or other legal obligation of confidentiality to, us or any of our subsidiaries or any of our representatives, (iii) is already in the Purchasers' possession (other than information furnished by or on behalf of the Company or directors, officers, employees, representatives and/or agents of the Company), or (iv) is independently developed by the Purchasers without violating any of the confidentiality terms herein. Each Purchaser agrees (i) except as required by law or legal process, to keep all Confidential Information confidential and not to disclose or reveal any such Confidential Information to any person other than those of its

Representatives who need to know the Confidential Information for the purpose of evaluating, monitoring or taking any other action with respect to the investment by the Purchaser in the Notes (or the Common Stock into which the Notes are convertible) and to cause those Representatives to observe the terms of this Section 9.9 and (ii) not to use Confidential Information for any purpose other than in connection with evaluating, monitoring or taking any other action with respect to the investment by the Purchaser in the Notes (or the Common Stock into which the Notes are convertible).

9.10 Third Parties

. This Agreement does not create any rights, claims or benefits inuring to any person that is not a party hereto nor create or establish any third party beneficiary hereto.

9.11 Counterparts

. This Agreement may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

9.12 Entire Agreement; Amendments

. This Agreement, the Rights Agreement, the Confidential Disclosure Agreement dated

October 2, 2006, and that certain letter agreement of even date herewith between the Company and Sponsor concerning reimbursement of expenses constitute the entire agreement between the parties hereto respecting the subject matter hereof and supersedes all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof, whether written or oral. No modification, alteration, waiver or change in any of the terms of this Agreement shall be valid or binding upon the parties hereto unless made in writing and duly executed by the Company and the Sponsor or holders of 50% or more of the principal amount of the Notes issued pursuant to this Agreement (and/or the equivalent shares of Common Stock to the extent some or all of the Notes have been converted to Common Stock, with shares of Common Stock being attributed a principal amount for such purpose equal to the principal amount of the Notes converted in the issuance of such Common Stock); provided, that, notwithstanding the foregoing, this Agreement may be amended from time to time without the consent of any other party to include a transferee in a Permitted Transfer as a party and a signatory hereto pursuant to Article 7 of this Agreement.

9.13 Survival

. The representations and warranties contained in this Agreement shall terminate upon the first to occur of the Closing or the termination of this Agreement pursuant to Section 8.1 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:

SUN MICROSYSTEMS, INC.

By:

Name:

Title:

[Signature Page to Note Purchase Agreement]

SPONSOR:

KOHLBERG KRAVIS ROBERTS & CO., L.P. By: Name: Title:

PURCHASERS:

KKR PEI SOLAR HOLDINGS I, LTD. By: Name: Title:

KKR PEI SOLAR HOLDINGS II, LTD. By: Name: Title:

CITIBANK, N.A.

By:

Name:

Title:

[Signature Page to Note Purchase Agreement]

KKR PEI INVESTMENTS, L.P. By: Name: Title:

[Signature Page to Note Purchase Agreement]

EXHIBIT A

PURCHASERS

Purchaser Name and Address	**Principal Amount of 2012 Notes to be Purchased**	**Principal Amount of 2014 Notes to be Purchased**
KKR PEI Solar Holdings I, Ltd. c/o KKR PEI Investments, L.P. c/o Kohlberg Kravis Roberts & Co., L.P. 9 West 57 th Street New York, NY 10019 Fax: (212) 750-0003 Attn: Christopher Lee	$175,000,000	-
KKR PEI Solar Holdings II, Ltd.	-	$175,000,000

c/o KKR PEI Investments, L.P.
c/o Kohlberg Kravis Roberts & Co., L.P.
9 West 57 th Street
New York, NY 10019
Fax: (212) 750-0003
Attn: Christopher Lee

Citibank, N.A. 333 West 34 th Street, 2 nd Floor New York, NY 10001 Fax: (212) 615-8985 Attn: Confirmations Unit	$175,000,000	$175,000,000
TOTAL	$ 350,000,000.00	$ 350,000,000.00

EX-10.1 3 dex101.htm 2007 OMNIBUS INCENTIVE PLAN

Exhibit 10.1

SUN MICROSYSTEMS, INC.

2007 OMNIBUS INCENTIVE PLAN

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SUN MICROSYSTEMS, INC

2007 OMNIBUS INCENTIVE PLAN

Sun Microsystems, Inc., a Delaware corporation (the "Company"), sets forth herein the terms of its 2007 Omnibus Incentive Plan (the "Plan"), as follows:

1. PURPOSE

The Plan is intended to enhance the Company's and its Affiliates' (as defined herein) ability to attract and retain highly qualified officers, directors, key employees, and other persons, and to motivate such persons to serve the Company and its Affiliates and to expend maximum effort to improve the business results and earnings of the Company, by providing to such persons an opportunity to acquire or increase a direct proprietary interest in the operations and future success of the Company. To this end, the Plan provides for the grant of stock options, stock appreciation rights, restricted stock, restricted stock units (or RSUs), unrestricted stock, dividend equivalent rights, and cash awards. Any of these awards may, but need not, be made as performance incentives to reward attainment of annual or long-term performance goals in accordance with the terms hereof. Stock options granted under the Plan may be non-qualified stock options or incentive stock options, as provided herein, except that stock options granted to outside directors and any consultants or advisers providing services to the Company or an Affiliate shall in all cases be non-qualified stock options.

2. DEFINITIONS

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

2.1 **"Administrator"** means the Board or, where pursuant to Section 3.2 the Board has delegated its authority to the Committee or one or more directors of the Company, the Committee or such directors.

2.2 **"Affiliate"** means, with respect to the Company, any company or other trade or business that controls, is controlled by or is under common control with the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including, without limitation, any Subsidiary. For purposes of granting stock options or stock appreciation rights, an entity may not be considered an Affiliate if it results in noncompliance with Code Section 409A.

2.3 **"Annual Incentive Award"** means an Award made subject to attainment of performance goals (as described in **Section 14**) over a performance period of up to one year (the Company's fiscal year, unless otherwise specified by the Committee).

2.4 **"Award"** means a grant of an Option, Stock Appreciation Right, Restricted Stock, Unrestricted Stock, Restricted Stock Unit, Dividend Equivalent Right, Performance Share, Performance Unit or cash award under the Plan.

2.5 **"Award Agreement"** means the agreement between the Company and a Grantee that evidences and sets out the terms and conditions of an Award.

2.6 **"Benefit Arrangement"** shall have the meaning set forth in **Section 15** hereof.

2.7 **"Board"** means the Board of Directors of the Company.

2.8 **"Cause"** means, as determined by the Administrator and unless otherwise provided in an applicable agreement with the Company or an Affiliate, that a termination of Service shall have taken place as a result of (i) any act of personal dishonesty by a Grantee in connection with his or her responsibilities as a Service Provider and intended to result in substantial personal enrichment to the Grantee, (ii) the Grantee's willful act constituting Gross Misconduct and which is injurious to the Company, or (iii) a Grantee's conviction or plea of a felony which the Administrator reasonably believes had or will have a material detrimental effect on the Company's reputation or business.

2.9 **"Code"** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended.

2.10 **"Committee"** means a committee of, and designated from time to time by resolution of, the Board, which shall be constituted as provided in **Section 3.2**.

2.11 **"Company"** means Sun Microsystems, Inc.

2.12 **"Corporate Transaction"** means the occurrence of any of the following: (i) any person or group of persons (as defined in Section 13(d) and 14(d) of the Exchange Act) together with its affiliates, excluding employee benefit plans of the Company, is or becomes, directly or indirectly, the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act) of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities; or (ii) a merger or consolidation of the Company with any other corporation or entity is consummated regardless of which entity is the survivor, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or its parent) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the Company is completely liquidated or all or substantially all of the Company's assets are sold.

2.13 **"Covered Employee"** means a Grantee who is a covered employee within the meaning of Section 162(m)(3) of the Code.

2.14 **"Disability"** means the Grantee is unable to perform each of the essential duties of such Grantee's position by reason of a medically determinable physical or mental impairment which is potentially permanent in character or which can be expected to last for a continuous period of not less than 12 months; provided, however, that, with respect to rules regarding expiration of an Incentive Stock Option following termination of the Grantee's Service, Disability shall mean the Grantee is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

2.15 **"Dividend Equivalent Right"** means a right, granted to a Grantee under **Section 13** hereof, to receive cash, Stock, other Awards or other property equal in value to dividends paid with respect to a specified number of shares of Stock, or other periodic payments.

2.16 **"Effective Date"** means November 8, 2007, the date the Plan was approved by the stockholders.

2.17 **"Exchange Act"** means the Securities Exchange Act of 1934, as now in effect or as hereafter amended.

2.18 **"Fair Market Value"** means the value of a share of Stock, determined as follows: if on the Grant Date or other determination date the Stock is listed on an established national or regional stock exchange, or is publicly traded on an established securities market, the Fair Market Value of a share of Stock shall be the closing price of the Stock on such exchange or in such market (if there is more than one such exchange or market the Administrator shall determine the appropriate exchange or market) on the Grant Date or such other determination date (or if there is no such reported closing price, the Fair Market Value shall be the mean between the highest bid and lowest asked prices or between the high and low sale prices on such trading day) or, if no sale of Stock is reported for such trading day, on the next preceding day on which any sale shall have been reported. If the Stock is not listed on such an exchange, quoted on such system or traded on such a market, Fair Market Value shall be the value of the Stock as determined by the Administrator in good faith in a manner consistent with Code Section 409A.

2.19 **"Family Member"** means a person who is a spouse, former spouse, child, stepchild, grandchild, parent, stepparent, grandparent, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, or sister-in-law, including adoptive relationships, of the Grantee, any person sharing the Grantee's household (other than a tenant or employee), a trust in which any one or more of these persons have more than fifty percent of the beneficial interest, a foundation in which any one or more of these persons (or the Grantee) control the management of assets, and any other entity in which one or more of these persons (or the Grantee) own more than fifty percent of the voting interests.

2.20 **"Grant Date"** means, as determined by the Administrator, the latest to occur of (i) the date as of which the Administrator approves an Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under **Section 6** hereof, or (iii) such other date as may be specified by the Administrator.

2.21 **"Grantee"** means a person who receives or holds an Award under the Plan.

2.22 **"Gross Misconduct"** means (i) theft or damage of Company property, (ii) use, possession, sale or distribution of illegal drugs, (iii) being under the influence of alcohol or drugs (except to the extent medically prescribed) while on duty or on Company premises, (iv) involvement in activities representing conflicts of interest; (v) improper disclosure of confidential information; (vi) conduct endangering, or likely to endanger, the health or safety of another Service Provider, or (vii) falsifying or misrepresenting information on Company records.

2.23 **"Incentive Stock Option"** means an "incentive stock option" within the meaning of Section 422 of the Code, or the corresponding provision of any subsequently enacted tax statute, as amended from time to time.

2.24 **"Non-qualified Stock Option"** means an Option that is not an Incentive Stock Option.

2.25 **"Option"** means an option to purchase one or more shares of Stock pursuant to the Plan.

2.26 **"Option Price"** means the exercise price for each share of Stock subject to an Option.

2.27 **"Other Agreement"** shall have the meaning set forth in **Section 15** hereof.

2.28 **"Outside Director"** means a member of the Board who is not an officer or employee of the Company.

2.29 **"Performance Award"** means an Award made subject to the attainment of performance goals (as described in **Section 14**) over a performance period of up to five (5) years.

2.30 **"Performance-Based Compensation"** means compensation under an Award that is intended to satisfy the requirements of Code Section 162(m) for certain performance-based compensation paid to Covered Employees. Notwithstanding the foregoing, nothing in this Plan shall be construed to mean that an Award which does not satisfy the requirements for performance-based compensation under Code Section 162(m) does not constitute performance-based compensation for other purposes, including Code Section 409A.

2.31 **"Performance Measures"** means measures as described in **Section 14** on which the performance goals are based and which are approved by the Company's shareholders pursuant to this Plan in order to qualify Awards as Performance-Based Compensation.

2.32 **"Performance Period"** means the period of time during which the performance goals must be met in order to determine the degree of payout and/or vesting with respect to an Award.

2.33 **"Performance Share"** means an Award under **Section 14** herein and subject to the terms of this Plan, denominated in Shares, the value of which at the time it is payable is determined as a function of the extent to which corresponding performance criteria have been achieved.

2.34 **"Performance Unit"** means an Award under **Section 14** herein and subject to the terms of this Plan, denominated in units, the value of which at the time it is payable is determined as a function of the extent to which corresponding performance criteria have been achieved. Unless otherwise stated as payable in shares of Stock, each Performance Unit is valued at one dollar.

2.35 **"Plan"** means this Sun Microsystems, Inc. 2007 Omnibus Incentive Plan.

2.36 **"Prior Plans"** means the Sun Microsystems, Inc. 1990 Long-Term Equity Incentive Plan, the Sun Microsystems, Inc. 1988 Directors' Stock Option Plan, and the Sun Microsystems, Inc. Equity Compensation Acquisition Plan.

2.37 **"Purchase Price"** means the purchase price for each share of Stock pursuant to a grant of Restricted Stock or Unrestricted Stock.

2.38 **"Reporting Person"** means a person who is required to file reports under Section 16(a) of the Exchange Act.

2.39 **"Restricted Stock"** means shares of Stock, awarded to a Grantee pursuant to **Section 10** hereof.

2.40 **"Restricted Stock Unit"** or **"RSU"** means a bookkeeping entry representing the equivalent of one share of Stock awarded to a Grantee pursuant to **Section 10** hereof.

2.41 **"SAR Exercise Price"** means the per share exercise price of a SAR granted to a Grantee under **Section 9** hereof.

2.42 **"Securities Act"** means the Securities Act of 1933, as now in effect or as hereafter amended.

2.43 **"Service"** means service as a Service Provider to the Company or an Affiliate. Unless otherwise stated in the applicable Award Agreement, a Grantee's change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be a Service Provider to the Company or an Affiliate. Subject to the preceding sentence, whether a termination of Service shall have occurred for purposes of the Plan shall be determined by the Administrator, which determination shall be final, binding and conclusive.

2.44 **"Service Provider"** means an employee, officer or director of the Company or an Affiliate, or a consultant or adviser (who is a natural person) currently providing services to the Company or an Affiliate.

2.45 **"Stock"** means the common stock, par value $.00067 per share, of the Company.

2.46 **"Stock Appreciation Right"** or **"SAR"** means a right granted to a Grantee under **Section 9** hereof.

2.47 **"Subsidiary"** means any "subsidiary corporation" of the Company within the meaning of Section 424(f) of the Code.

2.48 **"Substitute Awards"** means Awards granted upon assumption of, or in substitution for, outstanding awards previously granted by a company or other entity acquired by the Company or any Affiliate or with which the Company or any Affiliate combines.

2.49 **"Ten Percent Stockholder"** means an individual who owns more than ten percent (10%) of the total combined voting power of all classes of outstanding stock of the Company, its parent or any of its Subsidiaries. In determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

2.50 **"Unrestricted Stock"** means an Award pursuant to **Section 11** hereof.

3. ADMINISTRATION OF THE PLAN

3.1. Board

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company's certificate of incorporation and by-laws and applicable law. The Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award or any Award Agreement, and shall have full power and authority to take all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan, any Award or any Award Agreement. All such actions and determinations shall be by the affirmative vote of a majority of the members of the Board present at a meeting or by unanimous consent of the Board executed in writing in accordance with the Company's certificate of incorporation and by-laws and applicable law. The interpretation and construction by the Board of any provision of the Plan, any Award or any Award Agreement shall be final, binding and conclusive.

3.2. Committee.

The Board from time to time may delegate to the Committee such powers and authorities related to the administration and implementation of the Plan, as set forth in **Section 3.1** above and other applicable provisions, as the Board shall determine, consistent with the certificate of incorporation and by-laws of the Company and applicable law.

(i) Except as provided in Subsection (ii) and except as the Board may otherwise determine, the Committee, if any, appointed by the Board to administer the Plan shall consist of two or more Outside Directors of the Company who: (a) qualify as "outside directors" within the meaning of Section 162(m) of the Code and who (b) meet such other requirements as may be established from time to time by the Securities and Exchange Commission for plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act and who (c) comply with the independence requirements of the stock exchange on which the Common Stock is listed.

(ii) The Board may also appoint one or more separate committees of the Board, each composed of one or more directors of the Company who need not be Outside Directors, but one of whom must be the Chief Executive Officer (or functional equivalent), who may administer the Plan with respect to employees or other Service Providers who are not officers or directors of the Company, may grant Awards under the Plan to such employees or other Service Providers, and may determine all terms of such Awards.

In the event that the Plan, any Award or any Award Agreement entered into hereunder provides for any action to be taken by or determination to be made by the Board, such action may be taken or such determination may be made by an Administrator if the power and authority to do so has been delegated to such Administrator by the Board as provided for in this Section. Unless otherwise expressly determined by the Board, any such action or determination by the Administrator shall be final, binding and conclusive. To the extent permitted by law, the Committee may delegate its authority under the Plan to a member of the Board.

3.3. Terms of Awards.

Subject to the other terms and conditions of the Plan, the Administrator shall have full and final authority to:

(i) designate Grantees,

(ii) determine the type or types of Awards to be made to a Grantee,

(iii) determine the number of shares of Stock to be subject to an Award,

(iv) establish the terms and conditions of each Award (including, but not limited to, the exercise price of any Option, the nature and duration of any restriction or condition (or provision for lapse thereof) relating to the vesting, exercise, transfer, or forfeiture of an Award or the shares of Stock subject thereto, the treatment of an Award in the event of a change of control, and any terms or conditions that may be necessary to qualify Options as Incentive Stock Options),

(v) prescribe the form of each Award Agreement evidencing an Award, and

(vi) amend, modify, or supplement the terms of any outstanding Award. Such authority specifically includes the authority, in order to effectuate the purposes of the Plan but without amending the Plan, to modify Awards to eligible individuals who are foreign nationals or are individuals who are employed outside the United States to recognize differences in local law, tax policy, or custom. Notwithstanding the foregoing, no amendment, modification or supplement of any Award shall, without the consent of the Grantee, impair the Grantee's rights under such Award.

The Company may retain the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee on account of actions taken by the Grantee in violation or breach of or in conflict with any employment agreement, non-competition agreement, any agreement prohibiting solicitation of employees or clients of the Company or any Affiliate thereof or any confidentiality obligation with respect to the Company or any Affiliate thereof or otherwise in competition with the Company or any Affiliate thereof, to the extent specified in such Award Agreement applicable to the Grantee. In addition, the Company may annul an Award if the Grantee is an employee of the Company or an Affiliate thereof and is terminated for Cause as defined in the applicable Award Agreement or the Plan, as applicable.

Furthermore, if the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002 and any Grantee who knowingly engaged in the misconduct, was grossly negligent in engaging in the misconduct, knowingly failed to prevent the misconduct or was grossly negligent in failing to prevent the misconduct, shall reimburse the Company the amount of any payment in settlement of an Award earned or accrued during the twelve-(12)month period following the first public issuance or filing with the United States Securities and Exchange Commission (whichever first occurred) of the financial document embodying such financial reporting requirement.

3.4. No Repricing

Notwithstanding anything in this Plan to the contrary, no amendment or modification may be made to an outstanding Option or SAR, including, without limitation, by reducing the exercise price of an Option or replacing an Option or SAR with cash or another award type, that would be treated as a repricing under the rules of the stock exchange on which the Stock is listed, in each case, without the approval of the stockholders of the Company, provided, that, appropriate adjustments may be made to outstanding Options and SARs pursuant to **Section 17** or **Section 5.3** and may be made to make changes to achieve compliance with applicable law, including Internal Revenue Code Section 409A.

3.5. Deferral Arrangement.

The Administrator may permit or require the deferral of any award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish, which may include provisions for the payment or crediting of interest or dividend equivalents, including converting such credits into deferred Stock equivalents. Any such deferrals shall be made in a manner that complies with Code Section 409A.

3.6. No Liability.

No Administrator shall be liable for any action or determination made in good faith with respect to the Plan or any Award or Award Agreement.

3.7. Share Issuance/Book-Entry

Notwithstanding any provision of this Plan to the contrary, the issuance of the Stock under the Plan may be evidenced in such a manner as the Administrator, in its discretion, deems appropriate, including, without limitation, book-entry registration or issuance of one or more Stock certificates.

4. STOCK SUBJECT TO THE PLAN

4.1. Number of Shares Available for Awards

Subject to adjustment as provided in **Section 17** hereof, the number of shares of Stock available for issuance under the Plan shall be equal to four hundred and thirty million (430,000,000), all of which may be granted as Incentive Stock Options, increased by shares of Stock covered by awards granted under a Prior Plan that become available for grant pursuant section 4.3 and decreased by the number of shares of Stock made subject to awards granted under the Prior Plans between the date the Plan is approved by the Administrator and the Effective Date. Stock issued or to be issued under the Plan shall be authorized but unissued shares; or, to the extent permitted by applicable law, issued shares that have been reacquired by the Company.

4.2. Adjustments in Authorized Shares

The Administrator shall have the right to substitute or assume Awards in connection with mergers, reorganizations, separations, or other transactions to which Section 424(a) of the Code applies. The number of shares of Stock reserved pursuant to **Section 4** shall be increased by the corresponding number of Awards assumed and, in the case of a substitution, by the net increase in the number of shares of Stock subject to Awards before and after the substitution.

4.3. Share Usage

Shares covered by an Award shall be counted as used as of the Grant Date. Any shares of Stock that are subject to Awards of Options shall be counted against the limit set forth in Section 4.1 as one (1) share for every one (1) share subject to an Award of Options. With respect to SARs, the number of shares subject to an award of SARs will be counted against the aggregate number of shares available for issuance under the Plan regardless of the number of shares actually issued to settle the SAR upon exercise. Any shares that are subject to Awards other than Options or Stock Appreciation Rights shall be counted against

the limit set forth in **Section 4.1** as 2.0 shares for every one (1) share granted. If any shares covered by an Award granted under the Plan or a Prior Plan are not purchased or are forfeited or expire, or if an Award otherwise terminates without delivery of any Stock subject thereto or is settled in cash in lieu of shares, then the number of shares of Stock counted against the aggregate number of shares available under the Plan with respect to such Award shall, to the extent of any such forfeiture, termination or expiration, again be available for making Awards under the Plan in the same amount as such shares were counted against the limit set forth in **Section 4.1**, provided that any shares covered by an Award granted under a Prior Plan will again be available for making Awards under the Plan in the same amount as such shares were counted against the limits set forth in the applicable Prior Plan. The number of shares of Stock available for issuance under the Plan shall not be increased by (i) any shares of Stock tendered or withheld or Award surrendered in connection with the purchase of shares of Stock upon exercise of an Option as described in **Section 12.2**, or (ii) any shares of Stock deducted or delivered from an Award payment in connection with the Company's tax withholding obligations as described in **Section 18.3**.

5. EFFECTIVE DATE, DURATION AND AMENDMENTS

5.1. Effective Date.

The Plan shall be effective as of the Effective Date. Following the Effective Date, no awards will be made under the Prior Plans.

5.2. Term.

The Plan shall terminate automatically ten (10) years after the Effective Date and may be terminated on any earlier date as provided in **Section 5.3**.

5.3. Amendment and Termination of the Plan

The Board may, at any time and from time to time, amend, suspend, or terminate the Plan as to any shares of Stock as to which Awards have not been made. An amendment shall be contingent on approval of the Company's stockholders to the extent stated by the Board, required by applicable law or required by applicable stock exchange listing requirements. In addition, an amendment will be contingent on approval of the Company's stockholders if the amendment would: (i) materially increase the benefits accruing to participants under the Plan, (ii) materially increase the aggregate number of shares of Stock that may be issued under the Plan, or (iii) materially modify the requirements as to eligibility for participation in the Plan. No Awards shall be made after termination of the Plan. No amendment, suspension, or termination of the Plan shall, without the consent of the Grantee, impair rights or obligations under any Award theretofore awarded under the Plan.

6. AWARD ELIGIBILITY AND LIMITATIONS

6.1. Service Providers and Other Persons

Subject to this **Section 6**, Awards may be made under the Plan to: (i) any Service Provider to the Company or of any Affiliate, including any Service Provider who is an officer or director of the Company, or of any Affiliate, as the Administrator shall determine and designate from time to time and (ii) any other individual whose participation in the Plan is determined to be in the best interests of the Company by the Administrator.

6.2. Successive Awards and Substitute Awards.

An eligible person may receive more than one Award, subject to such restrictions as are provided herein. Notwithstanding **Sections 8.1** and **9.1**, the Option Price of an Option or the grant price of a SAR that is a Substitute Award may be less than 100% of the Fair Market Value of a share of Common Stock on the original date of grant; provided, that, the Option Price or grant price is determined in accordance with the principles of Code Section 424 and the regulations thereunder.

6.3. Limitation on Shares of Stock Subject to Awards and Cash Awards.

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act:

(i) the maximum number of shares of Stock subject to Options or SARs that can be awarded under the Plan to any person eligible for an Award under **Section 6** hereof is twenty million (20,000,000) per twelve-month period; provided, however, the maximum number of shares of Stock subject to Options or SARs that can be awarded under the Plan to any person eligible for an Award under **Section 6** in the year that the person is first employed by the Company is forty million (40,000,000);

(ii) the maximum number of shares that can be awarded under the Plan, other than pursuant to an Option or SARs, to any person eligible for an Award under **Section 6** hereof is ten million (10,000,000) per twelve-month period; provided, however, the maximum number of shares of Stock subject to Awards other than Options or SARs that can be awarded under the Plan to any person eligible for an Award under Section 6 in the year that the person is first employed by the Company is twenty million (20,000,000); and

(iii) the maximum amount that may be earned as an Annual Incentive Award or other cash Award in any 12 month period by any person eligible for an Award shall be fifty million dollars ($50,000,000) and the maximum amount that may be earned as a Performance Award or other cash Award in respect of a performance period by any person eligible for an Award shall be one hundred million dollars ($100,000,000).

The preceding limitations in this **Section 6.3** are subject to adjustment as provided in **Section 17** hereof.

7. AWARD AGREEMENT

Each Award granted pursuant to the Plan shall be evidenced by an Award Agreement, in such form or forms as the Administrator shall from time to time determine. Award Agreements granted from time to time or at the same time need not contain similar provisions but shall be consistent with the terms of the Plan. Each Award Agreement evidencing an Award of Options shall specify whether such Options are intended to be Non-qualified Stock Options or Incentive Stock Options, and in the absence of such specification such options shall be deemed Non-qualified Stock Options.

8. TERMS AND CONDITIONS OF OPTIONS

8.1. Option Price

The Option Price of each Option shall be fixed by the Administrator and stated in the Award Agreement evidencing such Option. Except in the case of Substitute Awards, the Option Price of each Option shall be at least the Fair Market Value on the Grant Date of a share of Stock; provided, however, that in the event that a Grantee is a Ten Percent Stockholder, the Option Price of an Option granted to such Grantee that is intended to be an Incentive Stock Option shall be not less than 110 percent of the Fair Market Value of a share of Stock on the Grant Date. In no case shall the Option Price of any Option be less than the par value of a share of Stock.

8.2. Vesting.

Subject to **Sections 8.3 and 17.3** hereof, each Option granted under the Plan shall become exercisable at such times and under such conditions as shall be determined by the Administrator and stated in the Award Agreement. For purposes of this **Section 8.2**, fractional numbers of shares of Stock subject to an Option shall be rounded down to the next nearest whole number.

8.3. Term.

Each Option granted under the Plan shall terminate, and all rights to purchase shares of Stock thereunder shall cease, upon the expiration of ten years from the date such Option is granted, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Administrator and stated in the Award Agreement relating to such Option; provided, however, that in the event that the Grantee is a Ten Percent Stockholder, an Option granted to such Grantee that is intended to be an Incentive Stock Option shall not be exercisable after the expiration of five years from its Grant Date. If on the day preceding the date on which a Grantee's Options would otherwise terminate, the Fair Market Value of shares of Stock underlying a Grantee's Options is greater than the Option Price of such Options, the Company shall, prior to the termination of such Options and without any action being taken on the part of the Grantee, consider such Options to have been exercised by the Grantee. The Company shall deduct from the shares of Stock deliverable to the Grantee upon such exercise the number of shares of Stock necessary to satisfy payment of the Option Price and all withholding obligations.

8.4. Termination of Service.

Each Award Agreement shall set forth the extent to which the Grantee shall have the right to exercise the Option following termination of the Grantee's Service. Such provisions shall be determined in the sole discretion of the Administrator, need not be uniform among all Options issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination of Service.

8.5. Limitations on Exercise of Option.

Notwithstanding any other provision of the Plan, in no event may any Option be exercised, in whole or in part, prior to the date the Plan is approved by the stockholders of the Company as provided herein or after the occurrence of an event referred to in **Section 17** hereof which results in termination of the Option.

8.6. Method of Exercise.

Subject to the terms of **Article 12** and **Section 18.3**, an Option that is exercisable may be exercised by the Grantee's delivery to the Company of notice of exercise on any business day, at the Company's principal office, on the form specified by the Company. Such notice shall specify the number of shares of Stock with respect to which the Option is being exercised and shall be accompanied by payment in full of the Option Price of the shares for which the Option is being exercised plus the amount (if any) of federal and/or other taxes which the Company may, in its judgment, be required to withhold with respect to an Award.

8.7. Rights of Holders of Options

Unless otherwise stated in the applicable Award Agreement, an individual holding or exercising an Option shall have none of the rights of a stockholder (for example, the right to receive cash or dividend payments or distributions attributable to the subject shares of Stock or to direct the voting of the subject shares of Stock) until the shares of Stock covered thereby are fully paid and issued to him. Except as provided in **Section 17** hereof, no adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date of such issuance.

8.8. Delivery of Stock Certificates.

Promptly after the exercise of an Option by a Grantee and the payment in full of the Option Price, such Grantee shall be entitled to the issuance of a stock certificate or certificates or, as provided in **Section 3.7**, a book entry registration evidencing his or her ownership of the shares of Stock subject to the Option.

8.9. Transferability of Options

Except as provided in **Section 8.10**, during the lifetime of a Grantee, only the Grantee (or, in the event of legal incapacity or incompetency, the Grantee's guardian or legal representative) may exercise an Option. Except as provided in **Section 8.10**, no Option shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution.

8.10. Family Transfers.

If authorized in the applicable Award Agreement, a Grantee may transfer, not for value, all or part of an Option which is not an Incentive Stock Option to any Family Member. For the purpose of this **Section 8.10**, a "not for value" transfer is a transfer which is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights; or (iii) a transfer to an entity in which more than fifty percent of the voting interests are owned by Family Members (or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 8.10**, any such Option shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer. Subsequent transfers of transferred Options are prohibited except to Family Members of the original Grantee in accordance with this **Section 8.10** or by will or the laws of descent and distribution. The events of termination of Service of **Section 8.4** hereof shall continue to be applied with respect to the original Grantee, following which the Option shall be exercisable by the transferee only to the extent, and for the periods specified, in **Section 8.4**.

8.11. Limitations on Incentive Stock Options.

An Option shall constitute an Incentive Stock Option only (i) if the Grantee of such Option is an employee of the Company or any Subsidiary of the Company; (ii) to the extent specifically provided in the related Award Agreement; and (iii) to the extent that the aggregate Fair Market Value (determined at the time the Option is granted) of the shares of Stock with respect to which all Incentive Stock Options held by such Grantee become exercisable for the first time during any calendar year (under the Plan and all other plans of the Grantee's employer and its Affiliates) does not exceed $100,000. This limitation shall be applied by taking Options into account in the order in which they were granted.

8.12. Notice of Disqualifying Disposition

If any Grantee shall make any disposition of shares of Stock issued pursuant to the exercise of an Incentive Stock Option under the circumstances described in Code Section 421(b) (relating to certain disqualifying dispositions), such Grantee shall notify the Company of such disposition within ten (10) days thereof.

9. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS

9.1. Right to Payment and Grant Price.

A SAR shall confer on the Grantee to whom it is granted a right to receive, upon exercise thereof, the excess of (A) the Fair Market Value of one share of Stock on the date of exercise over (B) the grant price of the SAR as determined by the Administrator. The Award Agreement for a SAR shall specify the grant price of the SAR, which shall be at least the Fair Market Value of a share of Stock on the date of grant. SARs may be granted in conjunction with all or part of an Option granted under the Plan or at any subsequent time during the term of such Option, in conjunction with all or part of any other Award or without regard to any Option or other Award; provided that a SAR that is granted subsequent to the Grant Date of a related Option must have a SAR Price that is no less than the Fair Market Value of one share of Stock on the SAR Grant Date.

9.2. Other Terms.

The Administrator shall determine at the date of grant or thereafter, the time or times at which and the circumstances under which a SAR may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which SARs shall cease to be or become exercisable following termination of Service or upon other conditions, the method of exercise, method of settlement, form of consideration payable in settlement, method by or forms in which Stock will be delivered or deemed to be delivered to Grantees, whether or not a SAR shall be in tandem or in combination with any other Award, and any other terms and conditions of any SAR.

9.3. Term.

Each SAR granted under the Plan shall terminate, and all rights thereunder shall cease, upon the expiration of ten years from the date such SAR is granted, or under such circumstances and on such date prior thereto as is set forth in the Plan or as may be fixed by the Administrator and stated in the Award Agreement relating to such SAR.

9.4. Transferability of SARS

Except as provided in **Section 9.5**, during the lifetime of a Grantee, only the Grantee (or, in the event of legal incapacity or incompetency, the Grantee's guardian or legal representative) may exercise a SAR. Except as provided in **Section 9.5**, no SAR shall be assignable or transferable by the Grantee to whom it is granted, other than by will or the laws of descent and distribution.

9.5. Family Transfers.

If authorized in the applicable Award Agreement, a Grantee may transfer, not for value, all or part of a SAR to any Family Member. For the purpose of this **Section 9.5**, a "not for value" transfer is a transfer which is (i) a gift, (ii) a transfer under a domestic relations order in settlement of marital property rights; or (iii) a transfer to an entity in which more than fifty percent of the voting interests are owned by Family Members (or the Grantee) in exchange for an interest in that entity. Following a transfer under this **Section 9.5**, any such SAR shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer. Subsequent transfers of transferred SARs are prohibited except to Family Members of the original Grantee in accordance with this **Section 9.5** or by will or the laws of descent and distribution.

10. TERMS AND CONDITIONS OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS

10.1. Grant of Restricted Stock or Restricted Stock Units.

Awards of Restricted Stock or Restricted Stock Units may be made for no consideration (other than par value of the shares which is deemed paid by Services already rendered).

10.2. Restrictions.

At the time a grant of Restricted Stock or Restricted Stock Units is made, the Administrator may, in its sole discretion, establish a period of time (a "restricted period") applicable to such Restricted Stock or Restricted Stock Units. Each Award of Restricted Stock or Restricted Stock Units may be subject to a different restricted period. The Administrator may, in its sole discretion, at the time a grant of Restricted Stock or Restricted Stock Units is made, prescribe restrictions in addition to or other than the expiration of the restricted period, including the satisfaction of corporate or individual performance objectives, which may be applicable to all or any portion of the Restricted Stock or Restricted Stock Units as described in **Article 14**. Neither Restricted Stock nor Restricted Stock Units may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the restricted period or prior to the satisfaction of any other restrictions prescribed by the Administrator with respect to such Restricted Stock or Restricted Stock Units.

10.3. Restricted Stock Certificates.

The Company shall issue, in the name of each Grantee to whom Restricted Stock has been granted, stock certificates representing the total number of shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date. The Administrator may provide in an Award Agreement that either (i) the Secretary of the Company shall hold such certificates for the Grantee's benefit until such time as the Restricted Stock is forfeited to the Company or the restrictions lapse, or (ii) such certificates shall be delivered to the Grantee, provided, however, that such certificates shall bear a legend or legends that comply with the applicable securities laws and regulations and makes appropriate reference to the restrictions imposed under the Plan and the Award Agreement. In the alternative, as provided in **Section 3.7**, the Company may make a book entry registration evidencing a Grantee's ownership of shares of Restricted Stock.

10.4. Rights of Holders of Restricted Stock.

Unless the Administrator otherwise provides in an Award Agreement, holders of Restricted Stock shall have the right to vote such Stock and the right to receive any dividends declared or paid with respect to such Stock. The Administrator may provide that any dividends paid on Restricted Stock must be reinvested in shares of Stock, which may or may not be subject to the same vesting conditions and restrictions applicable to such Restricted Stock. All distributions, if any, received by a Grantee with respect to Restricted Stock as a result of any stock split, stock dividend, combination of shares, or other similar transaction shall be subject to the restrictions applicable to the original Grant.

10.5. Rights of Holders of Restricted Stock Units.

10.5.1. Voting and Dividend Rights.

Holders of Restricted Stock Units shall have no rights as stockholders of the Company. The Administrator may provide in an Award Agreement evidencing a grant of Restricted Stock Units that the holder of such Restricted Stock Units shall be entitled to receive, upon the Company's payment of a cash dividend on its outstanding Stock, a cash payment for each Restricted Stock Unit held equal to the per-share dividend paid on the Stock. Such Award Agreement may also provide that such cash payment will be deemed reinvested in additional Restricted Stock Units at a price per unit equal to the Fair Market Value of a share of Stock on the date that such dividend is paid.

10.5.2. Creditor's Rights.

A holder of Restricted Stock Units shall have no rights other than those of a general creditor of the Company. Restricted Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement.

10.6. Termination of Service.

Unless the Administrator otherwise provides in an Award Agreement or in writing after the Award Agreement is issued, upon the termination of a Grantee's Service, any Restricted Stock or Restricted Stock Units held by such Grantee that have not vested, or with respect to which all applicable restrictions and conditions have not lapsed, shall immediately be deemed forfeited. Upon forfeiture of Restricted Stock or Restricted Stock Units, the Grantee shall have no further rights with respect to such Award, including but not limited to any right to vote Restricted Stock or any right to receive dividends with respect to shares of Restricted Stock or Restricted Stock Units.

10.7. Purchase of Restricted Stock.

The Grantee shall be required, to the extent required by applicable law, to purchase the Restricted Stock from the Company at a Purchase Price equal to the greater of (i) the aggregate par value of the shares of Stock represented by such Restricted Stock or (ii) the Purchase Price, if any, specified in the Award Agreement relating to such Restricted Stock. The Purchase Price shall be payable in a form described in **Section 12** or, in the discretion of the Administrator, in consideration for past or future Services rendered to the Company or an Affiliate.

10.8. Delivery of Stock.

Upon the expiration or termination of any restricted period and the satisfaction of any other conditions prescribed by the Administrator, the restrictions applicable to shares of Restricted Stock or Restricted Stock Units settled in Stock shall lapse, and, unless otherwise provided in the Award Agreement, a stock certificate for such shares shall be delivered, free of all such restrictions, to the Grantee or the Grantee's beneficiary or estate, as the case may be. Neither the Grantee, nor the Grantee's beneficiary or estate, shall have any further rights with regard to a Restricted Stock Unit once the share of Stock represented by the Restricted Stock Unit has been delivered.

11. TERMS AND CONDITIONS OF UNRESTRICTED STOCK AWARDS

The Administrator may, in its sole discretion, grant (or sell at par value or such other higher purchase price determined by the Administrator) an Unrestricted Stock Award to any Grantee pursuant to which such Grantee may receive shares of Stock free of any restrictions ("Unrestricted Stock") under the Plan. Unrestricted Stock Awards may be granted or sold as described in the preceding sentence in respect of past services and other valid consideration, or in lieu of, or in addition to, any cash compensation due to such Grantee.

12. FORM OF PAYMENT FOR OPTIONS AND RESTRICTED STOCK

12.1. General Rule.

Payment of the Option Price for the shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock shall be made in cash or in cash equivalents acceptable to the Company.

12.2. Surrender of Stock.

To the extent the Award Agreement so provides, payment of the Option Price for shares purchased pursuant to the exercise of an Option or the Purchase Price for Restricted Stock may be made all or in part through the tender or attestation to the Company of shares of Stock, which shall be valued, for purposes of determining the extent to which the Option Price or Purchase Price has been paid thereby, at their Fair Market Value on the date of exercise or surrender.

12.3. Cashless Exercise.

With respect to an Option only (and not with respect to Restricted Stock), to the extent permitted by law and to the extent the Award Agreement so provides, payment of the Option Price for shares purchased pursuant to the exercise of an Option may be made all or in part by delivery (on a form acceptable to the Administrator) of an irrevocable direction to a licensed securities broker acceptable to the Company to sell shares of Stock and to deliver all or part of the sales proceeds to the Company in payment of the Option Price and any withholding taxes described in **Section 18.3**.

12.4. Other Forms of Payment.

To the extent the Award Agreement so provides, payment of the Option Price for shares purchased pursuant to exercise of an Option or the Purchase Price for Restricted Stock may be made in any other form that is consistent with applicable laws, regulations and rules, including, without limitation, Service.

13. TERMS AND CONDITIONS OF DIVIDEND EQUIVALENT RIGHTS

13.1. Dividend Equivalent Rights.

A Dividend Equivalent Right is an Award entitling the recipient to receive credits based on cash distributions that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the recipient. A Dividend Equivalent Right may be granted hereunder to any Grantee. The terms and conditions of Dividend Equivalent Rights shall be specified in the grant. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment. Dividend Equivalent Rights may be settled in cash or Stock or a combination thereof, in a single installment or installments, all determined in the sole discretion of the Administrator. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other award. A Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other award.

13.2. Termination of Service.

Except as may otherwise be provided by the Administrator either in the Award Agreement or in writing after the Award Agreement is issued, a Grantee's rights in all Dividend Equivalent Rights or interest equivalents shall automatically terminate upon the Grantee's termination of Service for any reason.

14. TERMS AND CONDITIONS OF PERFORMANCE SHARES, PERFORMANCE UNITS, PERFORMANCE AWARDS AND ANNUAL INCENTIVE AWARDS

14.1. Grant of Performance Units/Performance Shares.

Subject to the terms and provisions of this Plan, the Administrator, at any time and from time to time, may grant Performance Units and/or Performance Shares to Participants in such amounts and upon such terms as the Committee shall determine.

14.2. Value of Performance Units/Performance Shares.

Each Performance Unit shall have an initial value that is established by the Administrator at the time of grant. The Administrator shall set performance goals in its discretion which, depending on the extent to which they are met, will determine the value and/or number of Performance Units/Performance Shares that will be paid out to the Participant.

14.3. Earning of Performance Units/Performance Shares.

Subject to the terms of this Plan, after the applicable Performance Period has ended, the holder of Performance Units/Performance Shares shall be entitled to receive payout on the value and number of Performance Units/Performance Shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding performance goals have been achieved.

14.4. Form and Timing of Payment of Performance Units/Performance Shares.

Payment of earned Performance Units/Performance Shares shall be as determined by the Administrator and as evidenced in the Award Agreement. Subject to the terms of this Plan, the Administrator, in its sole discretion, may pay earned Performance Units/Performance Shares in the form of cash or in shares (or in a combination thereof) equal to the value of the earned Performance Units/Performance Shares at the close of the applicable Performance Period, or as soon as practicable after the end of the Performance Period. Any Shares may be granted subject to any restrictions deemed appropriate by the Committee. The determination of the Committee with respect to the form of payout of such Awards shall be set forth in the Award Agreement pertaining to the grant of the Award.

14.5. Performance Conditions.

The right of a Grantee to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Administrator. The Administrator may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions. If and to the extent required under Code Section 162(m), any power or authority relating to an Award intended to qualify under Code Section 162(m), shall be exercised by the Committee.

14.6. Performance Awards or Annual Incentive Awards Granted to Designated Covered Employees.

If and to the extent that the Administrator determines that an Award to be granted to a Grantee who is designated by the Committee as likely to be a Covered Employee should qualify as “performance-based compensation” for purposes of Code Section 162(m), the grant, exercise and/or settlement of such Award shall be contingent upon achievement of pre-established performance goals and other terms set forth in this **Section 14.6**.

14.6.1. Performance Goals Generally.

The performance goals for such Awards shall consist of one or more business criteria and a targeted level or levels of performance with respect to each of such criteria, as specified by the Committee consistent with this **Section 14.6**. Performance goals shall be objective and shall otherwise meet the requirements of Code Section 162(m) and

regulations thereunder including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being "substantially uncertain." The Committee may determine that such Awards shall be granted, exercised and/or settled upon achievement of any one performance goal or that two or more of the performance goals must be achieved as a condition to grant, exercise and/or settlement of such Awards. Performance goals may differ for Awards granted to any one Grantee or to different Grantees.

14.6.2. Timing For Establishing Performance Goals.

Performance goals shall be established not later than the earlier of (i) 90 days after the beginning of any performance period applicable to such Awards and (ii) the day on which 25% of any performance period applicable to such Awards has expired, or at such other date as may be required or permitted for "performance-based compensation" under Code Section 162(m).

14.6.3. Settlement of Awards; Other Terms.

Settlement of such Awards shall be in cash, Stock, other Awards or other property, in the discretion of the Committee. The Committee may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with such Awards. The Committee shall specify the circumstances in which such Performance or Annual Incentive Awards shall be paid or forfeited in the event of termination of Service by the Grantee prior to the end of a performance period or settlement of Awards.

14.6.4. Performance Measures.

The performance goals upon which the payment or vesting of an Award to a Covered Employee that is intended to qualify as Performance-Based Compensation shall be limited to the following Performance Measures:

(a) net earnings;

(b) operating earnings;

(c) pretax earnings;

(d) earnings (or loss) per share;

(e) share price, including growth measures and total stockholder return and appreciation in and/or maintenance of the price of the shares of Stock or any publicly traded securities of the Company;

(f) earnings (or losses), including earnings or losses before taxes, earnings (or losses) before interest and taxes, earnings (or losses) before interest, taxes and depreciation, earnings (or losses) before interest, taxes, depreciation and amortization, or earnings (or losses) before interest, taxes, depreciation, amortization and stock-based compensation, and other similar adjustments to earnings (or losses);

(g) sales or revenue, or sales or revenue growth, whether in general, by type of product or service, or by type of customer;

(h) net income (or loss) before or after taxes and before or after allocation of corporate overhead and bonus;

(i) operating income (or loss) before or after taxes;

(j) gross, cash or operating margins;

(k) gross profits;

(l) return measures, including return on assets or net assets, capital (including total capital or invested capital), investment, equity, sales or net sales, or revenue;

(m) cash flow, including operating cash flow, free cash flow, cash flow return on equity, cash flow return on investment, and cash flow per share (before or after dividends);

(n) economic value added models or equivalent metrics;

(o) productivity ratios;

(p) expense targets;

(q) market share;

(r) financial ratios as provided in credit agreements of the Company and its subsidiaries;

(s) working capital targets;

(t) year-end cash;

(u) debt reductions;

(v) reductions in cost;

(w) improvement in or attainment of expense levels or working capital levels;

(x) shareholder equity;

(y) implementation, completion or attainment of measurable objectives with respect to research, development, products or projects, recruiting and maintaining personnel, and strategic and operational initiatives;

(z) completion of acquisitions of business or companies.

(aa) completion of divestitures and asset sales; and

(bb) any combination of any of the foregoing business criteria.

Any Performance Measure(s) may be used to measure the performance of the Company, Subsidiary, and/or Affiliate as a whole or any business unit of the Company, Subsidiary, and/or Affiliate or any combination thereof, as the Committee may deem appropriate, or any of the above Performance Measures as compared to the performance of a group of comparator companies, or published or special index that the Committee, in its sole discretion, deems appropriate, or the Company may select Performance Measure (f) above as compared to various stock market indices. The Committee also has the authority to provide for accelerated vesting of any Award based on the achievement of performance goals pursuant to the Performance Measures specified in this **Section 14**.

14.6.5. Evaluation of Performance.

The Committee may provide in any such Award that any evaluation of performance may include or exclude any of the following events that occur during a Performance Period: (a) asset write-downs; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported results; (d) any reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form that meets the requirements of Code Section 162(m) for deductibility.

14.6.6. Adjustment of Performance-Based Compensation.

Awards that are intended to qualify as Performance-Based Compensation may not be adjusted upward. The Administrator shall retain the discretion to adjust such Awards downward, either on a formula or discretionary basis, or any combination as the Committee determines.

14.6.7. Administrator Discretion.

In the event that applicable tax and/or securities laws change to permit Administrator discretion to alter the governing Performance Measures without obtaining shareholder approval of such changes, the Administrator shall have sole discretion to make such changes without obtaining shareholder approval provided the exercise of such discretion does not violate Code Section 409A. In addition, in the event that the Committee determines that it is advisable to grant Awards that shall not qualify as Performance-Based Compensation, the Committee may make such grants without satisfying the requirements of Code Section 162(m) and base vesting on Performance Measures other than those set forth in **Section 14.6.4**.

14.7. Status of Section Awards Under Code Section 162(m).

It is the intent of the Company that Awards under **Section 14.6** hereof granted to persons who are designated by the Committee as likely to be Covered Employees within the meaning of Code Section 162(m) and regulations thereunder shall, if so designated by the Committee, constitute "qualified performance-based compensation" within the meaning of Code Section 162(m) and regulations thereunder. Accordingly, the terms of **Section 14.6**, including the definitions of Covered Employee and other terms used therein, shall be interpreted in a manner consistent with Code Section 162(m) and regulations thereunder. The foregoing notwithstanding, because the Committee cannot determine with certainty whether a given Grantee will be a Covered Employee with respect to a fiscal year that has not yet been completed, the term Covered Employee as used herein shall mean only a person designated by the Committee, at the time of grant of an Award, as likely to be a Covered Employee with respect to that fiscal year. If any provision of the Plan or any agreement relating to such Awards does not comply or is inconsistent with the requirements of Code Section 162(m) or regulations thereunder, such provision shall be construed or deemed amended to the extent necessary to conform to such requirements.

15. PARACHUTE LIMITATIONS

Notwithstanding any other provision of this Plan or of any other agreement, contract, or understanding heretofore or hereafter entered into by a Grantee with the Company or any Affiliate, except an agreement, contract, or understanding that expressly addresses Section 280G or Section 4999 of the Code (an "Other Agreement"), and notwithstanding any formal or informal plan or other arrangement for the direct or indirect provision of compensation to the Grantee (including groups or classes of Grantees or beneficiaries of which the Grantee is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Grantee (a "Benefit Arrangement"), if the Grantee is a "disqualified individual," as defined in Section 280G(c) of the Code, any Option, Restricted Stock,

Restricted Stock Unit, Performance Share or Performance Unit held by that Grantee and any right to receive any payment or other benefit under this Plan shall not become exercisable or vested (i) to the extent that such right to exercise, vesting, payment, or benefit, taking into account all other rights, payments, or benefits to or for the Grantee under this Plan, all Other Agreements, and all Benefit Arrangements, would cause any payment or benefit to the Grantee under this Plan to be considered a "parachute payment" within the meaning of Section 280G(b)(2) of the Code as then in effect (a "Parachute Payment") and (ii) if, as a result of receiving a Parachute Payment, the aggregate after-tax amounts received by the Grantee from the Company under this Plan, all Other Agreements, and all Benefit Arrangements would be less than the maximum after-tax amount that could be received by the Grantee without causing any such payment or benefit to be considered a Parachute Payment. In the event that the receipt of any such right to exercise, vesting, payment, or benefit under this Plan, in conjunction with all other rights, payments, or benefits to or for the Grantee under any Other Agreement or any Benefit Arrangement would cause the Grantee to be considered to have received a Parachute Payment under this Plan that would have the effect of decreasing the after-tax amount received by the Grantee as described in clause (ii) of the preceding sentence, then the Grantee shall have the right, in the Grantee's sole discretion, to designate those rights, payments, or benefits under this Plan, any Other Agreements, and any Benefit Arrangements that should be reduced or eliminated so as to avoid having the payment or benefit to the Grantee under this Plan be deemed to be a Parachute Payment.

16. REQUIREMENTS OF LAW

16.1. General.

The Company shall not be required to sell or issue any shares of Stock under any Award if the sale or issuance of such shares would constitute a violation by the Grantee, any other individual exercising an Option, or the Company of any provision of any law or regulation of any governmental authority, including without limitation any federal or state securities laws or regulations. If at any time the Company shall determine, in its discretion, that the listing, registration or qualification of any shares subject to an Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of shares hereunder, no shares of Stock may be issued or sold to the Grantee or any other individual exercising an Option pursuant to such Award unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Without limiting the generality of the foregoing, in connection with the Securities Act, upon the exercise of any Option or any SAR that may be settled in shares of Stock or the delivery of any shares of Stock underlying an Award, unless a registration statement under such Act is in effect with respect to the shares of Stock covered by such Award, the Company shall not be required to sell or issue such shares unless the Administrator has received evidence satisfactory to it that the Grantee or any other individual exercising an Option may acquire such shares pursuant to an exemption from registration under the Securities Act. Any determination in this connection by the Administrator shall be final, binding, and conclusive. The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the exercise of an Option or a SAR or the issuance of

shares of Stock pursuant to the Plan to comply with any law or regulation of any governmental authority. As to any jurisdiction that expressly imposes the requirement that an Option (or SAR that may be settled in shares of Stock) shall not be exercisable until the shares of Stock covered by such Option (or SAR) are registered or are exempt from registration, the exercise of such Option (or SAR) under circumstances in which the laws of such jurisdiction apply shall be deemed conditioned upon the effectiveness of such registration or the availability of such an exemption.

16.2. Rule 16b-3.

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards pursuant to the Plan and the exercise of Options and SARs granted hereunder will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Administrator does not comply with the requirements of Rule 16b-3, it shall be deemed inoperative to the extent permitted by law and deemed advisable by the Administrator, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Administrator may exercise its discretion to modify this Plan in any respect necessary to satisfy the requirements of, or to take advantage of any features of, the revised exemption or its replacement.

17. EFFECT OF CHANGES IN CAPITALIZATION

17.1. Changes in Stock.

If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number or kind of shares or other securities of the Company on account of any recapitalization, reclassification, stock split, reverse split, combination of shares, exchange of shares, stock dividend or other distribution payable in capital stock, or other increase or decrease in such shares effected without receipt of consideration by the Company occurring after the Effective Date, the number and kinds of shares for which grants of Options and other Awards may be made under the Plan, including, without limitation, the limits set forth in **Section 6.3**, shall be adjusted proportionately and accordingly by the Company. In addition, the number and kind of shares for which Awards are outstanding shall be adjusted proportionately and accordingly so that the proportionate interest of the Grantee immediately following such event shall, to the extent practicable, be the same as immediately before such event. Any such adjustment in outstanding Options or SARs shall not change the aggregate Option Price or SAR Exercise Price payable with respect to shares that are subject to the unexercised portion of an outstanding Option or SAR, as applicable, but shall include a corresponding proportionate adjustment in the Option Price or SAR Exercise Price per share. The conversion of any convertible securities of the Company shall not be treated as an increase in shares effected without receipt of consideration. Notwithstanding the foregoing, in the event of any distribution to the Company's stockholders of securities of any other entity or other assets (including an extraordinary dividend but excluding a non-extraordinary dividend of the Company) without receipt of consideration by the Company, the Company shall, in such manner as the Company deems appropriate, adjust (i) the number and kind of shares subject to outstanding Awards and/or (ii) the exercise price of outstanding Options and Stock Appreciation Rights to reflect such distribution.

17.2. Reorganization in Which the Company Is the Surviving Entity Which does not Constitute a Corporate Transaction.

Subject to **Section 17.3** hereof, if the Company shall be the surviving entity in any reorganization, merger, or consolidation of the Company with one or more other entities which does not constitute a Corporate Transaction, any Option or SAR theretofore granted pursuant to the Plan shall pertain to and apply to the securities to which a holder of the number of shares of Stock subject to such Option or SAR would have been entitled immediately following such reorganization, merger, or consolidation, with a corresponding proportionate adjustment of the Option Price or SAR Exercise Price per share so that the aggregate Option Price or SAR Exercise Price thereafter shall be the same as the aggregate Option Price or SAR Exercise Price of the shares remaining subject to the Option or SAR immediately prior to such reorganization, merger, or consolidation. Subject to any contrary language in an Award Agreement evidencing an Award, any restrictions applicable to such Award shall apply as well to any replacement shares received by the Grantee as a result of the reorganization, merger or consolidation. In the event of a transaction described in this Section 17.2, Restricted Stock Units shall be adjusted so as to apply to the securities that a holder of the number of shares of Stock subject to the Restricted Stock Units would have been entitled to receive immediately following such transaction.

17.3. Corporate Transaction in which Awards are not Assumed.

Upon the occurrence of a Corporate Transaction in which outstanding Options, SARs, Restricted Stock Units and Restricted Stock are not being assumed or continued:

(i) all outstanding shares of Restricted Stock shall be deemed to have vested, and all Restricted Stock Units shall be deemed to have vested and the shares of Stock subject thereto shall be delivered, immediately prior to the occurrence of such Corporate Transaction, and

(ii) either of the following two actions shall be taken:

(A) fifteen days prior to the scheduled consummation of a Corporate Transaction, all Options and SARs outstanding hereunder shall become immediately exercisable and shall remain exercisable for a period of fifteen days, or

(B) the Administrator may elect, in its sole discretion, to cancel any outstanding Awards of Options, Restricted Stock, Restricted Stock Units, and/or SARs and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Administrator acting in good faith), in the case of Restricted Stock or Restricted Stock Units, equal to the formula or fixed price per share paid to holders of shares of Stock and, in the case of Options or SARs, equal to the product of the number of shares of Stock subject to the Option or SAR (the "Award Shares") multiplied by the amount, if any, by which (I) the formula or fixed price per share paid to holders of shares of Stock pursuant to such transaction exceeds (II) the Option Price or SAR Exercise Price applicable to such Award Shares.

With respect to the Company's establishment of an exercise window, (i) any exercise of an Option or SAR during such fifteen-day period shall be conditioned upon the consummation of the event and shall be effective only immediately before the consummation of the event, and (ii) upon consummation of any Corporate Transaction, the Plan and all outstanding but unexercised Options and SARs shall terminate. The Administrator shall send notice of an event that will result in such a termination to all individuals who hold Options and SARs not later than the time at which the Company gives notice thereof to its stockholders.

17.4. Corporation Transaction in which Awards are Assumed.

The Plan, Options, SARs, Restricted Stock Units and Restricted Stock theretofore granted shall continue in the manner and under the terms so provided in the event of any Corporate Transaction to the extent that provision is made in writing in connection with such Corporate Transaction for the assumption or continuation of the Options, SARs, Restricted Stock Units and Restricted Stock theretofore granted, or for the substitution for such Options, SARs, Restricted Stock Units and Restricted Stock for new common stock options and stock appreciation rights and new common stock units and restricted stock relating to the stock of a successor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock) and option and stock appreciation right exercise prices.

17.5. Adjustments

Adjustments under this **Section 17** related to shares of Stock or securities of the Company shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share. The Administrator shall determine the effect of a Corporate Transaction upon Awards other than Options, SARs, Restricted Stock Units and Restricted Stock, and such effect shall be set forth in the appropriate Award Agreement. The Administrator may provide in the Award Agreements at the time of grant, or any time thereafter with the consent of the Grantee, for different provisions to apply to an Award in place of those described in **Sections 17.1, 17.2, 17.3** and **17.4**. This **Section 17** does not limit the Company's ability to provide for alternative treatment of Awards outstanding under the Plan in the event of change of control events that are not Corporate Transactions.

17.6. No Limitations on Company

The making of Awards pursuant to the Plan shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets.

18. GENERAL PROVISIONS

18.1. Disclaimer of Rights

No provision in the Plan or in any Award or Award Agreement shall be construed to confer upon any individual the right to remain in the employ or service of the Company or any Affiliate, or to interfere in any way with any contractual or other right or authority of the Company either to increase or decrease the compensation or other payments to any individual at any time, or to terminate any employment or other relationship between any individual and the Company. In addition, notwithstanding anything contained in the Plan to the contrary, unless otherwise stated in the applicable Award Agreement, no Award granted under the Plan shall be affected by any change of duties or position of the Grantee, so long as such Grantee continues to be a director, officer, consultant or employee of the Company or an Affiliate. The obligation of the Company to pay any benefits pursuant to this Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms of the Plan.

18.2. Nonexclusivity of the Plan

Neither the adoption of the Plan nor the submission of the Plan to the stockholders of the Company for approval shall be construed as creating any limitations upon the right and authority of the Administrator to adopt such other incentive compensation arrangements (which arrangements may be applicable either generally to a class or classes of individuals or specifically to a particular individual or particular individuals) as the Administrator in its discretion determines desirable, including, without limitation, the granting of stock options otherwise than under the Plan.

18.3. Withholding Taxes

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state, or local taxes of any kind required by law to be withheld with respect to the vesting of or other lapse of restrictions applicable to an Award or upon the issuance of any shares of Stock upon the exercise of an Option or pursuant to an Award. At the time of such vesting, lapse, or exercise, the Grantee shall pay to the Company or the Affiliate, as the case may be, any amount that the Company or the Affiliate may reasonably determine to be necessary to satisfy such withholding obligation. Subject to the prior approval of the Company or the Affiliate, which may be withheld by the Company or the Affiliate, as the case may be, in its sole discretion, the Grantee may elect to satisfy such obligations, in whole or in part, (i) by causing the Company or the Affiliate to withhold shares of Stock otherwise issuable to the Grantee or (ii) by delivering to the Company or the Affiliate shares of Stock already owned by the Grantee. The shares of Stock so delivered or withheld shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value of the shares of Stock used to satisfy such withholding obligation shall be determined by the Company or the Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 18.3** may satisfy his or her withholding obligation only

with shares of Stock that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements. The maximum number of shares of Stock that may be withheld from any Award to satisfy any federal, state or local tax withholding requirements upon the exercise, vesting, lapse of restrictions applicable to such Award or payment of shares pursuant to such Award, as applicable, cannot exceed such number of shares having a Fair Market Value equal to the minimum statutory amount required by the Company to be withheld and paid to any such federal, state or local taxing authority with respect to such exercise, vesting, lapse of restrictions or payment of shares.

18.4. Captions

The use of captions in this Plan or any Award Agreement is for the convenience of reference only and shall not affect the meaning of any provision of the Plan or such Award Agreement.

18.5. Other Provisions

Each Award granted under the Plan may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Administrator, in its sole discretion.

18.6. Number and Gender

With respect to words used in this Plan, the singular form shall include the plural form, the masculine gender shall include the feminine gender, etc., as the context requires.

18.7. Severability

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

18.8. Governing Law

The validity and construction of this Plan and the instruments evidencing the Awards hereunder shall be governed by the laws of the State of Delaware, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Plan and the instruments evidencing the Awards granted hereunder to the substantive laws of any other jurisdiction.

18.9. Section 409A of the Code

The Administrator intends to comply with Section 409A of the Code (“Section 409A”), or an exemption to Section 409A, with regard to Awards hereunder that constitute nonqualified deferred compensation within the meaning of Section 409A. To the extent that the Administrator determines that a Grantee would be subject to the additional 20% tax imposed on certain nonqualified deferred compensation plans pursuant to Section 409A as a result of any provision of any Award granted under this Plan, such provision shall be deemed amended to the minimum extent necessary to avoid application of such additional tax. The nature of any such amendment shall be determined by the Administrator.

* * *

To record adoption of the Plan by the Board as of October 31, 2007, and approval of the Plan by the stockholders on November 8, 2007, the Company has caused its authorized officer to execute the Plan.

SUN MICROSYSTEMS, INC.

BY: /s/ Maria Pizzoli
ITS: Assistant Secretary

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Exhibit 10.84

SUN MICROSYSTEMS, INC.
U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN
AMENDED AS OF JUNE 30, 2002

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SUN MICROSYSTEMS, INC.
U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN
AMENDED AS OF JUNE 30, 2002

Sun Microsystems, Inc. (the "Company"), acting on behalf of itself and its U.S. subsidiaries, initially adopted the Sun Microsystems, Inc. U.S. Non-Qualified Deferred Compensation Plan (the "Plan"), effective July 1, 1995

RECITALS

1. The Company maintains the Plan, a deferred compensation plan for the benefit of a select group of management or highly compensated employees of the Company as well as members of the Company's Board of Directors.

2. Under the Plan, the Company is obligated to pay vested accrued benefits to Plan Participants and their Beneficiary or Beneficiaries from the Company's general assets.

3. The Company intends to enter into an agreement (the "Trust Agreement") with a person or persons, including an entity, who shall serve as trustee (the "Trustee") under an irrevocable trust, to be used in connection with the Plan (the "Trust").

4. The Company intends to make contributions to the Trust so that such contributions will be held by the Trust and invested, reinvested and distributed, all in accordance with this Plan and the Trust Agreement.

5. The Company intends that amounts contributed to the Trust and the earnings thereon shall be used by the Trustee to satisfy the liabilities of the Company under the Plan with respect to each Plan Participant for whom an Account has been established and such utilization shall be in accordance with the procedures set forth herein.

6. The Company intends that the Trust be a "grantor trust" with the principal and income of the Trust treated as assets and income of the Company for federal and state income tax purposes.

7. The Company intends that the assets of the Trust shall at all times be subject to the claims of the general creditors of the Company as provided in the Trust Agreement.

8. The Company intends that the existence of the Trust shall not alter the characterization of the Plan as "unfunded" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and shall not be construed to provide income to Plan Participants under the Plan prior to actual payment of the vested accrued benefits hereunder.

NOW THEREFORE, the Company does hereby adopt this amended and restated Plan as follows and does also hereby agree that the Plan shall be structured, held and disposed of as follows:

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1. Purpose: The Plan provides Participants an opportunity to defer payment of a portion of:

- Employee salary and incentive bonus/commissions (for Sales Vice Presidents and Directors);

- Employee annual bonus awards; and

- Board of Directors retainer payments.

2. Definitions:

(a)Account means a bookkeeping account established pursuant to Section 5(a) for Compensation that is subject to a Participant's deferral

election.

(b)Beneficiary means the person or persons designated by the Participant or by the Plan under Section 11(b) to receive payment of the Participant's Account in the event of the Participant's death.

(c) Board means the Board of Directors of the Company, as constituted from time to time.

(d) Committee means the Benefits Plan Committee, appointed by the Board from time to time.

(e) Company means Sun Microsystems, Inc. and its U.S. subsidiaries.

(f) Compensation means:

(i) The amount of the Eligible Employee's base salary paid by the Company or one of its U.S. subsidiaries; and

(ii) The amount paid by the Company or one of its U.S. subsidiaries to an Eligible Employee as an annual corporate bonus award and any other bonus/incentive award that is approved by the Committee as earnings that can be deferred under the Plan (some incentive/bonus awards will not be eligible for deferral); and

(iii) For Sales Vice Presidents and Directors, incentive bonus/commissions; and

(iv) In the case of an Eligible Board Member, the amount of his or her director's fees from the Company, which includes only retainer payments. Compensation does not include directors' expense reimbursements or meeting fees.

For purposes of the foregoing, Compensation as described in clauses (i), (ii) and (iii) shall be eligible for deferral only to the extent such amounts are otherwise subject to U.S. payroll reporting and withholding.

(g) Election Period means:

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(i) Generally June of each year; and

(ii) For newly hired vice presidents, at the sole discretion of the Benefits Plan Committee, may be eligible to enroll within thirty (30) days of hire.

(iii) With respect to the Plan Restatement, September, 1997.

(h) Eligible Board Member means a member of the Board (other than a member who is also an Eligible Employee).

(i) Eligible Employee means an officer of the Company or other common-law employee of the Company or one of its U.S. subsidiaries.

(j) Participant means an Eligible Board Member or an Eligible Employee who has elected to defer Compensation.

(k) Plan means this Sun Microsystems, Inc. U.S. Non-Qualified Deferred Compensation Plan, as amended from time to time.

(l) Plan Restatement means the amendment and restatement of the Plan as approved by the Board on August 13, 1997.

(m) Plan Restatement Effective Date means October 1, 1997.

(n) Retirement Date means the last day of the month coinciding with or following the Participant's termination of employment following the earlier of his or her:

(i) 55th birthday, if the Participant's full years of Service with the Company added to Participant's age (in full years) equals or exceeds 65; or

(ii) 20th year anniversary of Service.

(o) Service means:

(i) Employment as a common-law employee of the Company or one of its subsidiaries; or

(ii) Period served as an elected Board Member.

A Participant's Service shall be determined by the Committee in its sole discretion.

(p) Total Disability has the same meaning as "Disability" under Sun Microsystems, Inc. Comprehensive Welfare Plan.

(q) Unforeseeable Emergency means a severe financial hardship to the Participant resulting from:

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(i) Sudden or unexpected illness or accident of either the Participant or dependent of same; or

(ii) Loss of the Participant's property due to casualty or other extraordinary and unforeseeable circumstances beyond the control of the Participant.

Hardship shall not constitute an unforeseeable Emergency under the Plan to the extent that it is, or may be, relieved by:

(i) Reimbursement or compensation, by insurance or otherwise; or

(ii) Liquidation of the Participant's assets to the extent that the liquidation of such assets would not itself cause severe financial hardship. Such assets shall include but not be limited to stock options, company stock, and 401(k) plan balances.

An Unforeseeable Emergency under the Plan does not include:

(i) Sending a child to college; or

(ii) Purchasing a home, per Rev. Proc. 95-64.

(r) Year means the Company's fiscal year unless otherwise noted.

3. Eligibility: Participation in the Plan is limited to Eligible Board Members, and Eligible Employees, who are eligible to participate in the Plan if:

(a) He or she is subject to U.S. income and social security taxes and not covered under a non-U.S. retirement plan;

(b) He or she is an officer, or his or her position is approved as a director level, or higher; or

(c) He or she has been designated expressly as an Eligible Employee by the Committee.

If a Participant receives a distribution described in Section 10(c), the Participant shall be ineligible to participate in the Plan for the balance of the Plan Year in which the distribution occurs and the following Plan Year.

4. Election to Participate in Plan:

(a) Deferral Election. A Participant may elect to participate in the Plan by submitting an election in such forms as the Company may specify during any Election Period.

(b) Election Form. All deferral elections under this Section 4 shall be made in a manner prescribed for this purpose by the Committee.

5. Accounts:

(a) Establishment of Account. The Company shall establish an Account for the terms of the Deferred Compensation Election.

(b) Credits to Account. A Participant's Account shall be credited with an amount equal to the percentage of each Compensation payment which would have been payable currently to the Participant but for the terms of the Deferred Compensation Election Form. Deferred Compensation for Participants shall be credited to the Participant's Account as of the first day of the month in which such deferred amounts would otherwise be paid to the Participant.

(c) Vesting. Participants shall at all times be 100% vested in their deferrals under the Plan and all earnings or losses allocable thereto.

6. Deferral Increments and Growth:

(a) The minimum deferral per year will be determined by the Committee.

(b) The Participant who is an Eligible Employee may elect to defer (less any withholding requirements).

(i) Up to 100% of any eligible annual bonus award; and

(ii) Up to 60% of base salary and incentive awards/commissions.

(c) The Participant who is an Eligible Board Member may elect to defer (less any withholding requirements), up to 100% of their retainer payments (to be credited to the account quarterly).

7. Earnings or Losses on Accounts:

(a) General Rule. Subject to Section 7(c) below, the amount in a Participant's Account shall be adjusted for gain or loss based on the performance of the investment options selected by the Participant in accordance with Section 7(b). Gain or loss shall be computed as of the last day of the month, using the closing price on the last business day of the month. All distributions from the Account will be withdrawn at the end of the last day of the month.

(b) Designation of Investment Indices by the Committee. The Committee shall specify two or more investment funds that shall serve as benchmarks for the investment performance of amounts credited to the Accounts. Accounts shall be adjusted to reflect the gain or loss, net of any allocable costs or expenses, such accounts would experience had they actually been invested in the specified funds at the relevant times. The Committee may vary the available investment funds from time to time, but not more frequently than quarterly. Effective July 1, 2000, a Participant may select his or her

investment options for new deferrals and contributions, or for amounts already credited to his or her Account, once per calendar month effective as of the end of the last day of the month and in such manner as the Committee may specify.

8. Certain In-Service Account Distributions.

(a) After Completion of Two Years of Plan Participation. Each Participant may elect in his or her Deferred Compensation Election Form to have one or more distributions of a specified percentage or dollar amount of his or her Account, not more frequently than once in a Plan Year, commencing in his or her third year of participation, provided that the Participant has not terminated his or her Service with the Company. A Participant may delay once or cancel such distribution at any time prior to the date which is one year prior to the calendar year in which the originally scheduled distribution would take place, but such election is otherwise irrevocable.

(b) Previously Scheduled In-Service Distributions. Elections in effect prior to the Plan Restatement Date for in-service distributions prior to January 1, 2000 shall remain in full force and effect.

9. Statements: Quarterly, and/or at intervals determined by the Committee, the Company shall prepare and deliver to each Participant a statement listing the amount credited to such Account as of the applicable date.

10. Form and Time of Payment of Accounts:

(a) Timing and Method of Distribution of Accounts. In the event of a Participant's termination of Service on or after his or her Retirement Date, distribution of the value of the Participant's Account balance shall be made as soon as practicable after such termination consistent with the form of distribution specified on the Participant's election. Available forms shall include either a lump sum payment or a series of installments. Accounts subject to installment payouts shall continue to be adjusted for gains or losses in the same manner as active Accounts. Notwithstanding the foregoing, the Participant who is receiving an installment payout on or after his or her Retirement Date may request a lump sum distribution of such Participant's Account. Any such lump sum distribution shall be at the sole discretion of the Committee, and shall be reduced by a penalty equal to ten percent (10%) of the amount otherwise distributable, which penalty shall be forfeited to the Company. A Participant may modify his or her elected form of distribution (i.e., lump sum or installments) at any time prior to the date that is three years before his or her retirement date. If a Participant modifies his or her elected form of distribution but his or her retirement date is less than three years following the date of the modification election, his or her prior elected form of distribution shall apply.

If the Participant terminates his or her service with the Company prior to his or her Retirement Date, (other than on account of death), he or she shall receive the value of his or her Account in one lump sum payment as soon as practicable after such termination. The account balance is determined as of the last day of the month in which he or she terminates his or her employment, based on the indexed value of his or her investment options.

If a Participant elects a distribution date prior to termination of Service, the distribution will be paid as soon as reasonably practicable in a lump sum after such distribution date.

(b) Disability or Emergency. In the event of Participant's Total Disability or Unforeseeable Emergency, and upon application by such Participant, the Committee may determine at its sole discretion that payment of all, or part,

of such Participant's Account shall be made in a different manner, or on an earlier date than the time or times specified in Subsection (a) above. Payments due to Participant's Total Disability or Unforeseeable Emergency shall be permitted only to the extent reasonably required to satisfy the Participant's need. The Participant's account will be valued on the last day of the month in which the distribution request is approved.

(c) Early Distribution Penalty. Upon application by a Participant, the Committee may determine at its sole discretion that payments from such Participant's Account shall be made in a different manner, or on an earlier date than the time or times specified in Subsection (a) above. The Participant may request the distribution only once a year and the minimum amount of distribution is 50% of the Participant's account balance. All distributions under this Subsection (c) shall be reduced by a penalty equal to 10 percent (10%) of the amount otherwise distributable. The penalty is forfeited to the Company. A Participant who receives a distribution under this Subsection (c) is ineligible to participate in the Plan for the balance of the Plan Year in which the distribution occurs and the following Plan Year.

11. Effect of Death of Participant:

(a) Distributions. In the event of a Participant's death while an Eligible Employee or Eligible Board Member (except in the case of a Participant's suicide during the first two years of their participation in the Plan), the Participant's Account balance, together with an amount equal to two times the sum of (i) the Participant's actual deferrals under the Plan after the Plan Restatement Effective Date (exclusive of earnings), plus (ii) the Participant's actual deferrals under the Plan before the Plan Restatement Effective Date (exclusive of earnings) to the extent such deferrals are scheduled to be distributed on or after January 1, 2000, shall be distributed to the Participant's Beneficiary. Notwithstanding the foregoing, the amount to be determined pursuant to this paragraph (a), shall not exceed Three Million Dollars ($3,000,000). In the event of (i) a Participant's death while no longer an Eligible Employee or Eligible Board Member (as applicable), or (ii) a Participant's suicide during the first two years of their participation in the Plan, the Account balance, if any, shall be distributed to the Participant's Beneficiary. Any distributions pursuant to this paragraph shall be made to the Beneficiary in three annual installments or, at the request of the Beneficiary and subject to the Committee's approval, in a single lump sum, commencing in either case as soon as reasonably practicable after the Participant's death. If installment payments are made, the remaining account balance (during the period of the installment payouts) shall cease to be credited with earnings on the investment chosen by the deceased Participant, and instead shall be credited with earnings based on a fixed rate of interest determined by the Committee in its discretion from time to time.

(b) Beneficiary Designation. Upon enrollment in the Plan, each Participant shall file a prescribed form with the Company naming a person or persons as the Beneficiary who will receive distributions payable under the Plan in the event of the Participant's death. If the Participant does not name a Beneficiary, or if none of the named Beneficiaries is living at the time payment is due, then the Beneficiary shall be:

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(i) The spouse of the deceased Participant; or

(ii) The living children of the deceased Participant, in equal shares, if no spouse of the Participant is living; or

(iii) The estate of the Participant if neither spouse nor children of Participant are living.

The Participant may change the designation of a Beneficiary at any time in accordance with procedures established by the Committee. Designations of

a Beneficiary, or an amendment or revocation thereof, shall be effective only if made in the prescribed manner and received by the Company prior to the Participant's death.

12. General Duties of Trustee:

(a) Trustee Duties. The Trustee shall manage, invest and reinvest the Trust Fund as provided in the Trust Agreement. The Trustee shall collect the income on the Trust Fund, and make distributions therefrom, all as provided in this Plan and in the Trust Agreement.

(b) Company Contributions. While the Plan remains in effect, the Company shall make contributions to the Trust Fund at least once each year. As soon as practicable after the close of each Plan Year, the Company shall make an additional contribution to the Trust Fund to the extent that previous contributions to the Trust Fund for the current Plan Year are less than total future liabilities (other than death benefits) created with respect to Participants' Accounts as of the close of the current Plan Year. Contributions to the Trust Fund are based on liabilities created with respect to Participants' Accounts on and after the Plan Restatement Effective Date. The Trustee shall not be liable for any failure by the Company to provide contributions sufficient to pay all accrued benefits under the Plan in accordance with the terms of this Plan.

13. Withholding Taxes: All distributions under the Plan shall be subject to reduction in order to reflect withholding tax obligations imposed by law.

14. Participant's Unsecured Rights: The Account of any Participant, and such Participant's right to receive distributions from his or her Account, shall be considered an unsecured claim against the general assists of the Company; such Accounts are unfunded bookkeeping entries. The Company considers the Plan to be unfunded for tax purposes and for purposes of Title I of ERISA. No Participant shall have an interest in, or make claim against, any specified asset of the Company pursuant to the Plan.

15. Non-assignability of Interests: The interest of a Participant under the Plan is not subject to option nor assignable by either voluntary or involuntary assignment or by operation of law, including without limitation to: bankruptcy, garnishment, attachment or other creditor's process. Any act in violation of this Section 15 shall make the Plan void.

16. Limitation of Rights:

(a) Bonuses. Nothing in this Plan shall be construed to give any Eligible

Employee any right to be granted a bonus award.

(b) Employment Rights. Neither the Plan nor deferral of any Compensation, nor any other action taken pursuant to the Plan, shall constitute, or be evidence of, any agreement or understanding, express or implied, that the Company or any of its subsidiaries will employ an Eligible Employee for any period of time, in any position at any particular rate of compensation. The Company and its subsidiaries reserve the right to terminate an Eligible Employee's Service at any time for any reason, except as otherwise expressly provided in a written employment agreement.

17. Administration of the Plan: The Plan shall be administered by the Committee. The Committee shall have full power and authority to administer, interpret, establish procedures for administering the Plan, prescribe forms, and take any and all necessary actions in connection with the Plan. The Committee's interpretation and construction of the Plan shall be conclusive and binding on

all persons. The Committee may appoint a plan administrator or any other agent and delegate to them such powers and duties in connection with the administration of the Plan as the Committee may from time to time prescribe. In the event that any Participants are found to be ineligible, that is, not members of a select group of management or highly compensated employees, according to a determination made by the U.S. Department of Labor, the Committee shall take whatever steps it deems necessary, in its sole discretion, to equitably protect the interests of the affected Participants.

18. Amendment or Termination of the Plan: The Board may amend, suspend, or terminate the Plan at any time; provided, however, that no such action shall reduce a Participant's Account under the Plan without the Participant's written consent. In the event of termination of the Plan, the Accounts of Participants shall continue to be credited with earnings until distributed pursuant to Section 10, unless the Board prescribes an earlier time or different manner for the payment of such Accounts. Without limiting the generality of the foregoing, termination of the Plan following Change in Control shall constitute an event giving rise to distribution of Accounts. In such event, the Company shall pay all Account balances in a lump sum or in annual installments over three years (with earnings), in its discretion, to Participants and Beneficiaries of deceased Participants; and all deferrals and payment of benefits except as provided above shall cease. For purposes of this Plan, the term "Change in Control" shall mean the purchase or acquisition by any person, entity or group of persons, within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "Act"), or any comparable successor provisions, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act) of 30% or more of either the outstanding shares of common stock or the combined voting power of the Company's then outstanding voting securities entitled to vote generally, where the approval by the stockholders of the Company or a reorganization, merger or consolidation, in each case with respect to which persons who are stockholders of the Company immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated Company's then outstanding securities, or a liquidation or dissolution of the Company or of the sale of all or substantially all of the Company's assets.

19. Choice of Law and Claims Procedure:

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(a) Choice of Law. The validity, interpretation, construction and performance of the Plan shall be governed by ERISA, and, to the extent that they are not preempted, by the laws of the State of California, excluding California's choice-of-law provisions.

(b) Claims and Review Procedure. In accordance with the regulations of the U.S. Secretary of Labor, the Committee shall:

(i) Provide adequate notice in writing to any Participant or Beneficiary whose claim for benefits under the Plan has been denied. Specific reasons for such denial must be presented in a clear and precise manner intended to be easily understood by such Participant or Beneficiary, and

(ii) Afford a reasonable opportunity for a full and fair review before the Board to any Participant or Beneficiary whose claim for benefits has been denied.

20. Execution and Signature: To record the adoption of the Plan by the Board, the Company has caused its duly authorized officer to affix the corporate name hereto:

SUN MICROSYSTEMS, INC.

By: _____
Authorized Company Officer

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EX-10.3 4 dex103.htm AMENDMENT TO U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

Exhibit 10.3

AMENDMENT TO THE
SUN MICROSYSTEMS, INC.
U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

WHEREAS, Sun Microsystems, Inc. (the "Company") has adopted the Sun Microsystems, Inc. U.S. Non-Qualified Deferred Compensation Plan (the "Plan"), which has been amended from time to time;

WHEREAS, Section 18 of the Plan provides for the amendment of the Plan by the Company;

WHEREAS, the Company intends to adopt a new nonqualified deferred compensation plan, the Sun Microsystems, Inc. 2005 U.S. Non-Qualified Deferred Compensation Plan (the "2005 Plan") effective January 1, 2005;

WHEREAS, in accordance with IRS Notice 2005-1, A-20 and with the terms and conditions of the 2005 Plan, on or before March 11, 2005, Eligible Employees were permitted to (i) cancel Deferred Compensation Elections made with respect to salary and incentive award/commission Compensation earned during the period January 1, 2005 through March 20, 2005, and (ii) cancel Deferred Compensation Elections made with respect to fiscal year 2005 bonus Compensation that was otherwise payable in 2005;

WHEREAS, if Eligible Employees took no action with respect to Deferred Compensation Elections related to fiscal year 2005 bonus Compensation that were effective as of January 1, 2005, such Deferred Compensation Elections remained in full force and effect in 2005 under the 2005 Plan;

WHEREAS, any election made in accordance with IRS Notice 2005-1, A-20 and with the terms and conditions of the 2005 Plan became irrevocable on March 11, 2005 and was subject to special administrative rules imposed by the Administrator consistent with Section 409A of the Code and IRS Notice 2005-1, A-20;

WHEREAS, no Deferred Compensation Election or any cancellation of a Deferred Compensation Election made in accordance with IRS Notice 2005-1, A-20 shall be permitted after December 31, 2005; and

WHEREAS, the Company wishes to amend the Plan to provide for the special open enrollment period relating to compensation earned in 2005 and to provide that any supplemental survivor benefit will be paid in one lump sum as soon as reasonably practicable after a Participant's death.

NOW THEREFORE, a new Section 4(c) is added to the Plan, effective January 1, 2005, to read as follows:

(c) March 2005 Special Open Enrollment Period. In accordance with IRS Notice 2005-1, A-21, on or before March 11, 2005, Eligible

Employees were permitted to make new Deferred Compensation Elections with respect to salary and incentive award/commission Compensation earned during the period March 21, 2005 through December 31, 2005. In addition, on or before March 11, 2005, Eligible Employees who were not Participants in the Plan as of January 1, 2005 were permitted to make Deferred Compensation Elections with respect to salary and incentive award/commission compensation earned during the period March 21, 2005 through December 31, 2005. Any election made pursuant to this Section 4(c) became irrevocable on March 11, 2005 and was subject to special administrative rules imposed by the Administrator consistent with Section 409A of the Code and IRS Notice 2005-1, A-21. No Deferred Compensation Election shall be permitted under this Section 4(c) after March 15, 2005.

RESOLVED FURTHER, that Section 11(a) is amended, effective January 1, 2005, to read in its entirety as follows:

(a) Distributions. In the event of a Participant's death while an Eligible Employee or Eligible Board Member (except in the case of a Participant's suicide during the first two years of their participation in the Plan), the Participant's Account balance, together with an amount equal to two times the sum of (i) the Participant's actual deferrals under the Plan after the Prior Plan Restatement Effective Date (exclusive of earnings), plus (ii) the Participant's actual deferrals under the Plan before the Prior Plan Restatement Effective Date (exclusive of earnings) (the "supplemental survivor benefit"), to the extent such deferrals are scheduled to be distributed on or after January 1, 2000, shall be distributed to the Participant's Beneficiary. Notwithstanding the foregoing, the total supplemental survivor benefit shall not exceed Three Million Dollars ($3,000,000). In the event of (i) a Participant's death while no longer an Eligible Employee or Eligible Board Member (as applicable), or (ii) a Participant's suicide during the first two years of their participation in the Plan, only the Participant's Account shall be distributed to the Beneficiary. The supplemental survivor benefit shall be distributed to the Beneficiary in a lump sum as soon as reasonably practicable after the death of the Participant and the Participant's remaining Account balance, if any, shall be distributed to the Beneficiary in three annual installments or, at the request of the Beneficiary and subject to the Administrator's approval, in a single lump sum, commencing in either case as soon as reasonably practicable after the Participant's death. If installment payments are made, the remaining Account balance (during the period of the installment payouts) shall continue to be credited with earnings and losses in the same manor as active Accounts.

RESOLVED FURTHER, that if the amendment to Section 11(a) of the Plan is deemed to be a "material modification" of the Plan which would cause amounts deferred under the plan prior to January 1, 2005 to be subject to the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, then such amendment shall be null, void and without effect retroactive to January 1, 2005.

IN WITNESS WHEREOF Sun Microsystems, Inc. has caused this amendment to be executed this 23rd day of December 2005, by its duly authorized officer.

SUN MICROSYSTEMS, INC.

By: /s/ William N. MacGowan

Printed Name: William N. MacGowan
Title: Senior Vice President, Human Resources

EX-10.5 6 dex105.htm AMENDMENT TO U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

Exhibit 10.5

AMENDMENT TO
THE SUN MICROSYSTEMS, INC.
U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

The Sun Microsystems, Inc. U.S. Non-Qualified Deferred Compensation Plan (the "Plan"), as originally effective as of July 1, 1995, and as most recently amended and restated effective June 30, 2003, is hereby further amended effective January 1, 2007 as follows:

1. Section 7(b) is amended in its entirety to read as follows:

> (b) Investment of Accounts. The Investment Committee shall select two or more investment investment options to be made available to Participants for investment under the Plan. The Investment Committee may change, discontinue, or add to the investment options made available under the Plan at any time as determined by the Investment Committee in its sole discretion. A Participant (or Beneficiary following a Participant's death) may select his or her investment options for new deferrals or for amounts already credited to his or her Account, once per month effective as of the first day of the following month and in such manner as the Investment Committee may specify.

2. Section 11(a) is amended in its entirety to read as follows:

> (a) Distributions. In the event of a Participant's death, the Participant's Account balance shall be distributed to the Participant's Beneficiary in three annual installments or, at the request of the Beneficiary and subject to the Administrator's approval, in a single lump sum, commencing in either case as soon as reasonably practicable after the Participant's death. If installment payments are made, the remaining Account balance (during the period of the installment payouts) shall continue to be credited with earnings and losses in the same manner as active Accounts.

If this amendment is deemed to be a "material modification" of the Plan which would cause amounts deferred under the Plan prior to January 1, 2005 to be subject to the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, then such amendment shall be null, void and without effect retroactive to January 1, 2007.

In Witness Whereof, Sun Microsystems, Inc. has caused this amendment to be executed on its behalf by its duly authorized representative.

Sun Microsystems, Inc.

Dated: November 2, 2006

By: /s/ William N. MacGowan

Printed Name: William N. MacGowan

Title: Executive Vice President, People and Places and Chief Human Resources Officer

EX-10.4 5 dex104.htm 2005 U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

Exhibit 10.4

SUN MICROSYSTEMS, INC.

2005 U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

Amended and Restated Effective January 1, 2005

Sun Microsystems, Inc. (the "Company"), acting on behalf of itself and its U.S. subsidiaries, hereby amends and restates the Sun Microsystems, Inc. 2005 U.S. Non-Qualified Deferred Compensation Plan (the "Plan") effective January 1, 2005.

RECITALS

1. The Company maintains the Plan, a deferred compensation plan for the benefit of a select group of management or highly compensated employees of the Company as well as members of the Company's Board of Directors.

2. The Plan is the successor plan to the Sun Microsystems, Inc. U.S. Non-Qualified Deferred Compensation Plan (the "Prior Plan"). Effective December 31, 2004, the U.S. Non-Qualified Deferred Compensation Plan shall be frozen and no new contributions shall be made to it; provided, however, that any deferrals made under the Prior Plan before January 1, 2005 shall continue to be governed by the terms and conditions of the Prior Plan as in effect on December 31, 2004.

3. Any deferrals made under the Prior Plan after December 31, 2004 shall be deemed to have been made under the Plan and all such deferrals shall be governed by the terms and conditions of the Plan as it may be amended from time to time.

4. Under the Plan, the Company is obligated to pay vested accrued benefits to Plan Participants and their Beneficiary or Beneficiaries from the Company's general assets.

5. The Company has entered into an agreement (the "Trust Agreement") with Wells Fargo Bank, N.A. pursuant to which Wells Fargo Bank, N.A., serves as the trustee (the "Trustee") under an irrevocable trust, to be used in connection with the Plan (the "Trust").

6. The Company intends to make contributions to the Trust so that such contributions will be held by the Trust and invested, reinvested and distributed, all in accordance with this Plan and the Trust Agreement.

7. The Company intends that amounts contributed to the Trust and the earnings thereon shall be used by the Trustee to satisfy the liabilities of the Company under the Plan with respect to each Plan Participant for whom an Account (as defined below) has been established and such utilization shall be in accordance with the procedures set forth herein.

8. The Company intends that the Trust be a "grantor trust" with the principal and income of the Trust treated as assets and income of the Company for federal and state income tax purposes.

9. The Company intends that the assets of the Trust shall at all times be subject to the claims of the general creditors of the Company as provided in the Trust Agreement.

10. The Company intends that the existence of the Trust shall not alter the characterization of the Plan as "unfunded" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and shall not be construed to provide income to Plan Participants under the Plan prior to actual payment of the vested accrued benefits hereunder.

11. The Company intends that the Plan comply with the requirements of Section 409A of the Code.

NOW THEREFORE, the Company does hereby adopt this Plan as follows and does also hereby agree that the Plan shall be structured, held and disposed of as follows:

1. Purpose. The Plan provides Participants an opportunity to defer payment of a portion of Employee salary and incentive bonus/commissions (for Sales Vice Presidents and Directors); Employee annual and quarterly bonus awards; retention awards, and Board of Directors' Director Fees.

2. Definitions.

(a) Account means a bookkeeping account established pursuant to Section 5(a) of the Plan for Compensation that is subject to a Participant's Deferred Compensation Election.

(b) Administrator means the Compensation Committee or such other person, company or entity as may be designated from time to time by the Compensation Committee except as otherwise provided herein.

(c) Beneficiary means the person or persons designated by the Participant or by the Plan under Section 11(b) of the Plan to receive payment of the Participant's Account in the event of the Participant's death.

(d) Board means the Board of Directors of the Company, as constituted from time to time.

(e) Change of Control. A "Change of Control" shall be deemed, consistent with Section 409A of the Code and the proposed regulations promulgated thereunder, to occur on the date that:

(i) Any one person, or more than one person acting as a group (as defined in Proposed Regulation Section 1.409A-3(g)(5)(v)(B)), acquires ownership of stock of the Company, that together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company. However, if any one person, or more than one person acting as a group, is considered to own more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company, the acquisition of additional stock by the

same person or persons is not considered a Change of Control. This Section 2(e)(i) applies only when there is a transfer of stock of the Company (or the issuance of stock of the Company) and stock in the Company remains outstanding after the transaction; or

(ii) Any one person, or more than one person acting as a group (as defined in Proposed Regulation Section 1.409A-3(g)(5)(v)(B)), acquires (or has acquired during the twelve-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total "Gross Fair Market Value" (as defined in Proposed Regulation Section 1.409A-3(g)(5)(vii)(A)) equal to or more than forty percent (40%) of the total Gross Fair Market Value of all of the assets of the Company immediately prior to such acquisition or acquisitions; or

(iii) Any one person, or more than one person acting as a group (as defined in Proposed Regulation Section 1.409A-3(g)(5)(v)(B)), acquires (or has acquired during the twelve-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty-five percent (35%) or more of the total voting power of the stock of the Company; or

(iv) A majority of the members of the Board is replaced during any twelve-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; provided, however, that no Change of Control shall be deemed to have occurred if any other corporation is a majority shareholder of the Company.

(f) Code means the Internal Revenue Code of 1986, as amended.

(g) Compensation Committee means the Leadership Development and Compensation Committee of the Board, appointed by the Board from time to time.

(h) Company means Sun Microsystems, Inc. and its U.S. subsidiaries, and any successor organization thereto.

(i) Compensation means:

(i) The amount paid by the Company to an Eligible Employee as base salary; and

(ii) The amount paid by the Company to an Eligible Employee as an annual or quarterly corporate bonus award, retention award, and any other bonus/incentive award that is approved by the Administrator as earnings that can be deferred under the Plan (some incentive/bonus awards will not be eligible for deferral); and

(iii) For Sales Vice Presidents and Directors, incentive bonus/commissions; and

(iv) In the case of an Eligible Board Member, the amount of his or her Director Fees from the Company.

For purposes of the foregoing, Compensation as described in clauses (i), (ii) and (iii) shall be eligible for deferral only to the extent such amounts are otherwise subject to U.S. payroll reporting and withholding.

(j) Deferred Compensation Election means an election by an Eligible Employee or Eligible Board Member to participate in the Plan in accordance with Section 4 of the Plan.

(k) Determination Date means each December 31.

(l) Director Fees means any compensation payable with respect to an Eligible Board Member's service as a member of the Board, including, but not limited to, meeting fees and annual retainer fees. Director Fees do not include directors' expense reimbursements, stock options, or other stock-based compensation.

(m) Election Period means November/December of each Plan Year.

(n) Eligible Board Member means a member of the Board (other than a member who is also an Eligible Employee) who meets the requirements set forth in Section 3 of the Plan.

(o) Eligible Employee means an officer of the Company or other common-law employee of the Company whose position is approved as a director level or higher and who otherwise meets the requirements set forth in Section 3 of the Plan. Eligible Employee does not include any individual who performs services for the Company as (i) an employee of a third party pursuant to a written agreement between the Company and such third party, (ii) an independent contractor, (iii) a consultant, or (iv) is classified as such by the Company (whether or not such classification is upheld upon governmental or judicial review or such individual is reclassified by the Company).

(p) ERISA means the Employee Retirement Income Security Act of 1974, as amended.

(q) Investment Committee means the Administrative Committee of the Sun Microsystems, Inc. Tax Deferred Retirement Savings Plan.

(r) Key Employee means an Eligible Employee who, on a Determination Date, is

(i) An officer of the Company having annual compensation greater than the compensation limit in Section 416(i)(1)(A)(i) of the Code, provided that no more than fifty officers of the Company shall be determined to be Key Employees as of any Determination Date;

(ii) A five percent owner of the Company; or

(iii) A one percent owner of the Company having annual compensation from the Company of more than $150,000.

If an Eligible Employee is determined to be a Key Employee on a Determination Date, then such Eligible Employee shall be considered a Key Employee for purposes of the Plan during the period beginning on the first April 1 following the Determination Date and ending on the next March 31.

(s) Participant means an Eligible Board Member or an Eligible Employee who has elected to defer Compensation.

(t) Plan means this Sun Microsystems, Inc. 2005 U.S. Non-Qualified Deferred Compensation Plan, as amended from time to time.

(u) Plan Year means the calendar year.

(v) Prior Plan means the Sun Microsystems, Inc. U.S. Non-Qualified Deferred Compensation Plan, as amended from time to time.

(w) Retirement Date means the earlier of the Participant's

(i) 55th birthday, if the Participant's full years of Service with the Company and its non-U.S. subsidiaries added to Participant's age (in full years) equals or exceeds 65; or

(ii) 20th year anniversary of Service (including Service with businesses acquired by the Company and designated by the Administrator for this purpose).

(x) Service means:

(i) Employment as a common-law employee of the Company or one of its non-U.S. subsidiaries; or

(ii) Period served as an elected Board Member.

A Participant's Service shall be determined by the Administrator in its sole discretion. A Participant's Service shall not be deemed to have separated from Service merely because the capacity in which the Participant renders Service to the Company or any of its non-U.S. subsidiaries changes from Eligible Employee to Eligible Board Member or vice-versa.

Notwithstanding the foregoing, a separation from Service will not be deemed to have occurred if an Eligible Employee continues to provide services to the Company or any of its non-U.S. subsidiaries in a capacity other than as an employee and if the former Eligible Employee is providing services at an annual rate that is fifty percent or more of the services rendered, on average, during the immediately preceding three full calendar years of employment with the Company or any of its non-U.S. subsidiaries (or if employed by the Company or any of its non-U.S. subsidiaries less than three years, such lesser period) and the annual remuneration for such services is fifty percent or more of the annual remuneration earned during the final three full calendar years of employment (of if less, such lesser period); provided, however, that a separation from Service will be deemed to have occurred if an Eligible Employee's service with the Company or any of its non-U.S. subsidiaries is reduced to an annual rate that is less than twenty percent of the services rendered, on average, during the immediately preceding three full calendar years of employment with the Company or any of its non-U.S. subsidiaries (or if employed by the Company or any of its non-U.S. subsidiaries less than three years, such lesser period) or the annual remuneration for such services is less than twenty percent of the annual remuneration earned during the three full calendar years of employment with the Company or any of its non-U.S. subsidiaries (or if less, such lesser period).

In addition to the foregoing, a separation from Service will not be deemed to have occurred while an Eligible Employee is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or if longer, so long as the Eligible Employee's right to reemployment with the Company or any of its non-U.S. subsidiaries is provided either by statute or contract. If the period of leave exceeds six months and the Eligible Employee's right to reemployment is not provided either by statute or contract, then the employee is deemed to have separated from Service on the first day immediately following such six-month period.

(y) Unforeseeable Emergency means a severe financial hardship to the Participant or Beneficiary resulting from:

(i) An illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152(a) of the Code); or

(ii) Loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance); or

(iii) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

Hardship shall not constitute an Unforeseeable Emergency under the Plan to the extent that it is, or may be, relieved by:

(i) Reimbursement or compensation, by insurance or otherwise;

(iv) Liquidation of the Participant's or Beneficiary's assets to the extent that the liquidation of such assets would not itself cause severe financial hardship. Such assets shall include but not be limited to stock options, Company stock, and 401(k) plan balances; or

(v) Cessation of deferrals under the Plan.

An Unforeseeable Emergency under the Plan does not include (among other events):

(ii) Sending a child to college; or

(vi) Purchasing a home.

3. Eligibility. Participation in the Plan is limited to Eligible Board Members, and Eligible Employees who are members of a select group of management or highly compensated employees. Such Eligible Board Member or Eligible Employee is eligible to participate in the Plan if he or she is paid through the Company's U.S. payroll and not covered under a non-U.S. retirement plan.

4. Election to Participate in Plan.

(a) Deferral Election. An Eligible Employee or an Eligible Board Member may elect to participate in the Plan by submitting a Deferred Compensation Election in such form as the Company may specify during any Election Period. Subject to the provisions of Sections 4(b) below, a Deferral Election must be made and become irrevocable not later than last day of the Plan Year preceding the Plan Year in which the Compensation being deferred is earned. A Deferred Compensation Election made in the 2006 Plan Year or thereafter will remain in force until it is amended or revoked. Any such amendment or revocation will take affect on the first day of the Plan Year following the Plan Year in which the Participant elects to amend or revoke the outstanding Deferred Compensation Election. In the event an Eligible Employee is downgraded below the director level during a Plan Year, his or her Deferred Compensation Election will remain in effect through the end of such Plan Year. In addition to the foregoing, a Participant's Deferred Compensation Election shall be suspended if such Participant applies for and is otherwise eligible to receive a distribution on account of an Unforeseeable Emergency. Such suspension shall continue through the end of Plan Year in which the Participant applies for a distribution due to an Unforeseeable Emergency and the Participant must submit a new Deferred Compensation Election during an Election Period to resume participation in the Plan.

(b) Deferral Election for Newly Eligible Employees and Newly Eligible Board Members. In the Administrator's discretion, a newly Eligible Employee or a newly Eligible Board Member may elect to participate in the Plan by submitting a Deferred Compensation Election in such form as the Company may specify; provided that such Deferred Compensation Election is made

and becomes irrevocable not later than thirty days following the date such newly Eligible Employee or Board Member first becomes eligible to participate in the Plan and provided further that such Deferred Compensation Election applies only to Compensation earned after the date of the election. In compliance with this Section 4(b), only a prorated portion of a Participant's bonus may be deferred if the Participant's initial Deferred Compensation Election is made after the performance period applicable to the bonus has begun. Effective January 1, 2006 only a newly Eligible Employee whose position is approved as a vice president level or higher shall be permitted in the Administrator's discretion to make a Deferred Compensation Election pursuant to this Section 4(b).

(c) Special Elections in 2005 regarding Deferrals. In accordance with IRS Notice 2005-1, A-20, (i) on or before March 11, 2005, Eligible Employees were permitted to terminate Deferred Compensation Elections made with respect to salary and incentive award/commission Compensation earned during the period January 1, 2005 through March 20, 2005 and Deferred Compensation Elections made with respect to fiscal year 2005 bonus Compensation that was otherwise payable in 2005 and (ii) on or before November 25, 2005 certain Eligible Employees were permitted to terminate Deferred Compensation Elections made with respect to 2005 bonus Compensation, notwithstanding the fact that such Deferred Compensation Elections otherwise would have been irrevocable under Section 4 (a) above. Elections made pursuant to this Section 4(c) are irrevocable and subject to any special administrative rules imposed by the Administrator consistent with Section 409A of the Code and Notice 2005-1, A-20. No special election under this Section 4(c) shall be permitted after December 31, 2005.

(d) Initial Deferral Election. Any Deferred Compensation Election under this Section 4 that is an initial Deferred Compensation Election also will include an election as to the time and form of payment of the deferred Compensation.

(e) Election Form. All Deferred Compensation Elections under this Section 4 shall be made in a manner prescribed for these purposes by the Administrator.

(f) Retention Awards Following Acquisition. The Company may, in its discretion, provide retention awards subject to vesting to selected employees in connection with an acquisition of a business. Such award may, by its terms, provide for the deferral of payment to a later year. Alternatively, an Eligible Employee who receives a retention award that does not vest for a period of at least twelve (12) months from grant may submit a Deferred Compensation Election with respect to part or all of such award; provided the Deferred Compensation Election is filed within thirty (30) days following the date of grant and at least 12 months prior to the date such award (or portion thereof) is no longer subject to a substantial risk of

forfeiture (as defined in Section 409A of the Code). The award or Deferred Compensation Election, as applicable, shall specify the payment year and payment schedule and shall otherwise be subject to the terms and conditions of the Plan. Nothing in this Section 4(f) shall preclude a Participant from filing a Deferred Compensation Election to defer a retention award consistent with the provisions of IRS Notice 2006-79.

5. Accounts.

(a) Establishment of Account. The Company shall establish an Account for the terms of the Deferred Compensation Election.

(b) Credits to Account. A Participant's Account shall be credited with an amount equal to the percentage of each Compensation payment which would have been payable currently to the Participant but for the terms of the Deferred Compensation Election. Deferred Compensation for Participants shall be credited to the Participant's Account as of the first day of the month in which such deferred amounts would otherwise be paid to the Participant. Effective January 1, 2007, Deferred Compensation for Participants shall be credit to the Participant's Account as soon as administratively possible after the date such deferred amount would otherwise be paid to the Participant.

(c) Vesting. Participants shall at all times be 100% vested in their deferrals under the Plan and all earnings or losses allocable thereto.

6. Deferral Increments.

(a) Minimum Deferral. The minimum deferral per Plan Year will be determined by the Administrator.

(b) Maximum Deferral – Eligible Employees. The Participant who is an Eligible Employee may elect to defer (less any withholding requirements):

(i) Up to 75% of any eligible annual or quarterly bonus award; and

(ii) Up to 60% of base salary and incentive awards/commissions.

(c) Maximum Deferral – Eligible Board Members. A Participant who is an Eligible Board Member may elect to defer (less any withholding requirements), up to 100% of his or her Director Fees (to be credited to the account quarterly).

7. Earnings or Losses on Accounts.

(a) General Rule. Except as otherwise provided in the Plan, the amount in a Participant's Account shall be adjusted for gain or loss based on the performance of the investment options selected

by the Participant (or Beneficiary following a Participant's death) in accordance with Section 7(b) of 7(c) below. Gain or loss shall be computed daily. All distributions from the Account will be valued as of the end of the last day of the month preceding the payment date.

(b) Designation of Investment Indices by the Investment Committee. Prior to January 1, 2007, the Investment Committee shall specify two or more investment funds that shall serve as benchmarks for the investment performance of amounts credited to the Accounts. Accounts shall be adjusted to reflect the gain or loss, net of any allocable costs or expenses, such accounts would experience had they actually been invested in the specified funds at the relevant times. The Investment Committee may vary the available investment funds from time to time, but not more frequently than quarterly. A Participant (or Beneficiary following a Participant's death) may select his or her investment options for new deferrals or for amounts already credited to his or her Account, once per month effective as of the first day of the following month and in such manner as the Investment Committee may specify.

(c) Investment of Accounts. Effective January 1, 2007, the Investment Committee shall select two or more investment options to be made available to Participants for investment under the Plan. The Investment Committee may change, discontinue, or add to the investment options made available under the Plan at any time as determined by the Investment Committee in its sole discretion. A Participant (or Beneficiary following a Participant's death) may select his or her investment options for new deferrals or for amounts already credited to his or her Account, once per month effective as of the first day of the following month and in such manner as the Investment Committee may specify.

8. Certain In-Service Account Distributions.

(a) In-Service Account Distribution Elections. Each Participant may elect at the time of his or her initial Deferred Compensation Election or in accordance with Section 8(c) below, to have one or more distributions of a specified percentage or dollar amount of his or her Account commencing in his or her third year of Plan participation, provided that the Participant has not separated from Service with the Company or any of its non-U.S. subsidiaries prior to the elected in-service distribution date. A Participant may delay once or cancel such in-service account distribution election at any time, provided that such election must be made at least one year prior to the first day of the Plan Year in which the original distribution date was scheduled, and provided further that the newly elected distribution date is at least five years after the originally scheduled distribution date. A Participant may not receive an in-service account distribution more frequently than once in a Plan Year whether such distribution is on account of an initial in-service account distribution election or a modified in-service account distribution election. Any in-service account distribution shall be paid with the last payroll of the month following the distribution date elected by the Participant.

(b) Previously Scheduled In-Service Account Distributions. In-service account distribution elections in effect under the Prior Plan and not otherwise modified pursuant to Section 8(c) below shall remain in full force and effect with respect to the Plan. Notwithstanding the foregoing, in-service account distributions elections in effect under the Prior Plan pursuant to which distributions were scheduled to occur in 2005 shall not apply to Compensation deferred in 2005 (and earnings thereon); provided, however, that if a Participant elected a distribution of one hundred percent of his Account in 2005 pursuant to an in-service account distribution election in effect under the Prior Plan, then such election shall apply to Compensation deferred in 2005 (and earnings thereon). In-service account distribution elections in effect under the Prior Plan that apply, pursuant to this Section 8(b), to Compensation deferred under the Plan and to Compensation deferred under the Prior Plan and pursuant to which distributions shall be made in 2006 and later, shall be applied pro rata to Compensation deferred under the Plan and the Prior Plan based on the relative values of the Plan and Prior Plan accounts.

(c) Special In-Service Account Distribution Election. Notwithstanding any other provision of the Plan to the contrary, a Participant may elect an in-service account distribution or change the time of an in-service account distribution as elected in accordance with Section 8(a) or 8(b) above, provided that the election is made at least twelve months prior to the originally scheduled distribution date and the election is made not later than December 31, 2006. An elections made pursuant to this Section 8(c) shall be treated as an initial in-service account distribution election and shall be subject to any special administrative rules imposed by the Administrator including rules intended to comply with Section 409A of the Code and Notice 2005-1, A-19. No election under this Section 4(c) shall (i) result in an in-service distribution before the Participant's third year of Plan participation, (ii) result in a Participant receiving an in-service distribution more frequently than once in a Plan Year, (iii) change the payment date of any distribution otherwise scheduled to be paid in 2006 or cause a payment to be paid in 2006, or (iv) be permitted after December 31, 2006.

9. Statements. Quarterly, and/or at intervals determined by the Administrator, the Company shall prepare and deliver to each Participant a statement listing the amount credited to such Account as of the applicable date.

10. Form and Time of Payment of Accounts.

(a) Distribution of Account upon Retirement. In the event of a Participant's separation from Service on or after his or her Retirement Date, distribution of the Participant's Account shall begin with the last payroll of the month following the month in which the Participant separates from Service, and shall be made consistent with the form of distribution specified on the

Participant's Deferred Compensation Election. After the first installment, future installments shall be paid with the second payroll of each Plan Year. Available forms shall include either a lump sum payment or a series of approximately equal annual installments over a period of five years, ten years or fifteen years. For purposes of the Plan, installment payments shall be treated as a single distribution under Section 409A of the Code. Accounts subject to installment payouts shall continue to be adjusted for gains or losses in the same manner as active Accounts. A Participant may modify his or her elected form of distribution (i.e., lump sum or installments) at any time prior to the date that is at least one year before the date the Participant separates from Service, provided that the Participant's distribution is delayed at least five years from the originally scheduled distribution date. If a Participant modifies his or her elected form of distribution but he or she separates from Service less than one year following the date of the modification election, his or her prior elected form of distribution shall apply to any distribution.

(b) Distribution Prior to Retirement. If a Participant separates from Service with the Company or any of its non-U.S. subsidiaries prior to his or her Retirement Date (other than on account of death), distribution of the Participant's Account shall begin with the last payroll of the month following the month in which the Participant separates from Service and shall be made consistent with the form of distribution specified on the Participant's Deferred Compensation Election. After the first installment, future installments shall be paid with the second payroll of each Plan Year. Available forms of distribution shall include either a lump sum payment or a series of approximately equal annual installments over a period of five years. For purposes of the Plan, installment payments shall be treated as a single distribution under Section 409A of the Code. Accounts subject to installment payouts shall continue to be adjusted for gains or losses in the same manner as active Accounts. A Participant may modify his or her elected form of distribution (i.e. lump sum or installments) at any time prior to the date that is at least one year before the date the Participant separates from Service, provided that the Participant's distribution is delayed at least five years from the originally scheduled distribution date. If a Participant modifies his or her elected form of distribution but he or she separates from Service less than one year following the date of the modification election, his or her prior elected form of distribution shall apply to any distribution.

(c) Previously Scheduled Distribution Elections. A distribution election applicable to a Participant's separation from Service on or after his or her Retirement Date or a Participant's separation from Service prior to his or her Retirement Date in effect under the Prior Plan shall remain in full force and effect with respect to the Plan subject to the terms and conditions of Sections 10(a) and (b) above.

(d) Default Distribution Election. In the absence of an effective Deferred Compensation Election as to the timing and/or method of distribution of a Participant's Account, distribution of the Participant's Account shall be made in one lump sum payment with the last payroll of the month following the month in which the Participant separates from Service.

(e) Delayed Distribution to Key Employees. Notwithstanding any other provision of Sections 10(a), (b), (c), (d) or (f), a distribution made to a Participant who is designated as a Key Employee shall be delayed for a minimum of sixth months following the Participant's separation from Service. Any payment that otherwise would have been made pursuant to Sections 10(a), (b), (c), (d) or (f) during such sixth month period shall be made in one lump sum payment with the last payroll of the seventh month following the month in which the Participant separates from Service. The determination of which Participants are Key Employees shall be made by the Administrator in its sole discretion in accordance with Section 2(r) of the Plan and Sections 416(i) and 409A of the Code and the regulations promulgated thereunder.

(f) Separation from Service on Account of Leave of Absence or Reduction in Service. Notwithstanding any other provision of this Section 10, any distribution triggered under the Plan on account of a Participant's separation from Service following (i) a military leave, sick leave, or other bona fide leave of absence that is more than six months in duration where the Participant's right to reemployment with the Company or any of its non-U.S. subsidiaries is not provided either by statute or contract or (ii) a reduction in the Participant's service with the Company or any of its non-U.S. subsidiaries to an annual rate that is less than twenty percent of the services rendered, on average, during the immediately preceding three full calendar years of employment with the Company or any of its non-U.S. subsidiaries (or if employed by the Company or any of its non-U.S. subsidiaries less than three years, such lesser period) or the annual remuneration for such services is less than twenty percent of the annual remuneration earned during the three full calendar years of employment (or if less, such lesser period), shall begin with the last payroll of the month following the month in which the Participant is no longer paid through the Company's or any of its non-U.S. subsidiaries' payroll.

(g) Unforeseeable Emergency. In the event of a Participant's Unforeseeable Emergency, and upon application by such Participant, the Administrator may determine at its sole discretion that payment of all, or part, of such Participant's Account shall be made in one lump sum payment with the last payroll of the month following the month in which the distribution is approved by the Administrator. Payments due to a Participant's Unforeseeable Emergency shall be permitted only to the extent reasonably required to satisfy the Participant's need.

(h) Prohibition on Acceleration. Notwithstanding any other provision of the Plan to the contrary, no distribution shall be made from the Plan that would constitute an impermissible

acceleration of payment as defined in Section 409A(a)(3) of the Code and the regulations promulgated thereunder.

(i) De Minimis Accounts. Notwithstanding any other payment schedule provided in the Plan or in a Participant's Deferred Compensation Election, such Participant will receive a lump sum payment, subject to the provisions of Section 10(e), if the unpaid balance of the Participant's Account upon the payment date following a Separation from Service is less than $10,000.

11. Effect of Death of Participant.

(a) Death Prior to January 1, 2007. This Section 11(a) shall apply prior to January 1, 2007. In the event of a Participant's death while an Employee or Eligible Board Member (except in the case of a Participant's suicide during the first two years of his or her participation in the Plan), the Participant's Account, together with an amount equal to two times the Participant's actual deferrals under the Plan (exclusive of earnings) (the "supplemental survivor benefit") shall be distributed to the Participant's Beneficiary. Notwithstanding the foregoing, the total supplemental survivor benefit under the Plan and the Prior Plan shall not exceed Three Million Dollars ($3,000,000). In the event of (i) a Participant's death while no longer an Employee or Eligible Board Member (as applicable), or (ii) a Participant's suicide during the first two years of his or her participation in the Plan, only the Participant's Account, if any, shall be distributed to the Beneficiary. The Participant's supplemental survivor benefit shall be paid in a lump sum not later than twelve months following the Participant's death and the Participant's Account, if any, shall be distributed to the Participant's Beneficiary in three annual installments commencing with the last payroll of the month following the month in which the Participant dies. After the first installment, future installments shall be paid with the second payroll of each Plan Year. The remaining Account balance (during the period of the installment payouts) shall continue to be adjusted for gains or losses in the same manner as active Accounts.

(b) Death On or After January 1, 2007. This Section 11(b) shall apply effective January 1, 2007. In the event of a Participant's death, the Participant's Account shall be distributed to the Participant's Beneficiary in three annual installments commencing with the last payroll of the month following the month in which the Participant dies. After the first installment, future installments shall be paid with the second payroll of each Plan Year. The remaining Account balance (during the period of the installment payouts) shall continue to be adjusted for gains or losses in the same manner as active Accounts.

(c) Beneficiary Designation. Upon enrollment in the Plan, each Participant shall file a prescribed form with the Company naming a person or persons as the Beneficiary who will receive

distributions payable under the Plan in the event of the Participant's death. If the Participant does not name a Beneficiary, or if none of the named Beneficiaries is living at the time payment is due, then the Beneficiary shall be the Participant's spouse, or if none, the Participant's children in equal shares, or if none, the Participant's estate.

The Participant may change the designation of a Beneficiary at any time in accordance with procedures established by the Administrator. Designation of a Beneficiary, or an amendment or revocation thereof, shall be effective only if made in the prescribed manner and received by the Company prior to the Participant's death.

12. General Duties of Trustee. The Trustee shall manage, invest and reinvest the Trust Fund as provided in the Trust Agreement. The Trustee shall collect the income on the Trust Fund, and make distributions therefrom, all as provided in the Plan and in the Trust Agreement.

13. Withholding Taxes. All distributions under the Plan shall be subject to reduction in order to reflect tax withholding obligations imposed by law.

14. Participant's Unsecured Rights. The Account of any Participant, and such Participant's right to receive distributions from his or her Account, shall be considered an unsecured claim against the general assets of the Company; such Accounts are unfunded bookkeeping entries. The Company considers the Plan to be unfunded for tax purposes and for purposes of Title I of ERISA. No Participant shall have an interest in, or make claim against, any specific asset of the Company pursuant to the Plan.

15. Non-assignability of Interests. Except as provided under Section 19 of the Plan, the interest of a Participant under the Plan is not subject to option or assignable by either voluntary or involuntary assignment or by operation of law, including without limitation to: bankruptcy, garnishment, attachment or other creditor's process. Any act in violation of this Section 15 shall be void and without effect.

16. Limitation of Rights.

    (a) Bonuses. Nothing in this Plan shall be construed to give any Eligible Employee any right to be granted a bonus award.

    (b) Employment Rights. Neither the Plan nor deferral of any Compensation, nor any other action taken pursuant to the Plan, shall constitute, or be evidence of, any agreement or understanding, express or implied, that the Company will employ an Eligible Employee for any period of time, in any position at any particular rate of compensation. The Company reserves the right to terminate an Eligible Employee's Service at any time for any reason, except as otherwise expressly provided in a written employment agreement.

17. Administration of the Plan. The Plan shall be administered by the Administrator. The Administrator shall have full power and authority to administer, construe and determine all questions that shall arise as to interpretations of the Plan's provisions, including determination of eligibility, allocation of assets, method of payment, participation and benefits under the terms of the Plan, establish procedures for administering the Plan, prescribe forms, and take any and all necessary actions in connection with the Plan. The Administrator's interpretation and construction of the Plan shall be conclusive and binding on all persons, and will be given the maximum possible deference allowed by law. The Administrator may appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan and to allocate and delegate its power and authority described herein to one or more employees, officers or agents or to one or more persons or organizations that it has employed to perform its administrative responsibilities. In the event that any Participants are found to be ineligible, that is, not members of a select group of management or highly compensated employees, according to a determination made by the U.S. Department of Labor, the Administrator shall take whatever steps it deems necessary, in its sole discretion, to equitably protect the interests of the affected Participants.

18. Amendment or Termination of the Plan.

(a) General Rule. The Compensation Committee may amend, suspend, or terminate the Plan at any time; provided, however, that no such action shall reduce a Participant's Account under the Plan without the Participant's written consent. In the event of termination of the Plan, the Accounts of Participants shall be distributed within the period beginning twelve months after the date the Plan was terminated and ending twenty-four months after the date the Plan was terminated, or pursuant to Sections 8 or 10 of the Plan, if earlier. If the Plan is terminated and Accounts are distributed, the Company shall terminate all account balance non-qualified deferred compensation plans with respect to all participants and shall not adopt a new account balance non-qualified deferred compensation plan for at least five years after the date the Plan was terminated.

(b) Change of Control. The Compensation Committee may terminate the Plan thirty days prior to or twelve months following a Change of Control and distribute the Accounts of the Participants within the twelve-month period following the termination of the Plan. If the Plan is terminated and Accounts are distributed, the Company shall terminate all substantially similar non-qualified deferred compensation plans sponsored by the Company and all of the benefits of the terminated plans shall be distributed within twelve months following the termination of the plans.

(c) Dissolution or Bankruptcy. The Plan shall automatically terminate upon a corporation dissolution of the Company that is taxed under Section 331 of the Code or with the approval of a bankruptcy court pursuant to 11 U.S.C. Section 503(b)(1(A), provided that the Participants' Accounts are distributed and included in the gross income of the Participants by the latest of (i) the Plan Year in which the Plan terminates or (ii) the first Plan Year in which payment of the Accounts is administratively practicable.

19. Domestic Relations Orders.

(a) In General. The procedures established by the Company for the determination of the qualified status of domestic relations orders and for making distributions under qualified domestic relations orders, as provided in Section 206(d) of ERISA, shall apply to the Plan, to the extent applicable.

(b) Distributions. To the extent required to comply with a qualified domestic relations order, amounts awarded to an alternate payee under a qualified domestic relations order shall be distributed in the form of a lump sum distribution as soon as administratively feasible following the determination of the qualified status of the domestic relations order. To the extent that the qualified domestic relations order does not require an immediate lump sum distribution, the alternate payee shall have all rights regarding investment elections and distribution elections and withdrawal rights as if such alternate payee were a Participant. For purposes of determining distributions to an alternate payee, "separation from Service" or "Retirement Date" shall be the separation from Service or Retirement Date of the Participant whose Account was the subject of the qualified domestic relations order.

20. Incompetency. In the event a benefit is payable to a minor or person declared incompetent or incapable of handling the disposition of his property, the Administrator may pay such benefit to the guardian, legal representative or person having the care or custody of such minor, incompetent or incapable person. The Administrator may require proof of incompetency, minority or guardianship as it may deem appropriate prior to distribution of the benefit. Such distribution shall completely discharge the Company from all liability with respect to such benefit.

21. Choice of Law. The validity, interpretation, construction and performance of the Plan shall be governed by ERISA and the Code, and, to the extent that they are not preempted, by the laws of the State of California, excluding California's choice-of-law provisions.

22. Claims and Review Procedure.

(a) Informal Resolution of Questions. Any Participant or Beneficiary who has questions or concerns about his or her benefits under the Plan is encouraged to communicate with Global Benefits. If this discussion does not give the Participant or Beneficiary satisfactory results, a formal claim for benefits may be made within one year of the event giving rise to the claim in accordance with the procedures of this Section 22.

(b) Formal Benefits Claim – Review by Global Benefits. A Participant or Beneficiary may make a written request for review of any matter concerning his or her benefits under this Plan.

The claim must be addressed to Global Benefits, 2005 U.S. Non-Qualified Deferred Compensation Plan, Sun Microsystems, Inc., 4230 Network Circle, M\S USCA23-106, Santa Clara, California 95054. Global Benefits shall decide the action to be taken with respect to any such request and may require additional information if necessary to process the request. Global Benefits shall review the request and shall issue its decision, in writing, no later than 90 days after the date the request is received, unless the circumstances require an extension of time. If such an extension is required, written notice of the extension shall be furnished to the person making the request within the initial 90-day period, and the notice shall state the circumstances requiring the extension and the date by which Global Benefits expects to reach a decision on the request. In no event shall the extension exceed a period of 90 days from the end of the initial period.

(c) Notice of Denied Request. If Global Benefits denies a request in whole or in part, he or she shall provide the person making the request with written notice of the denial within the period specified in Section 22(b) above. The notice shall set forth the specific reason for the denial, reference to the specific Plan provisions upon which the denial is based, a description of any additional material or information necessary to perfect the request, an explanation of why such information is required, and an explanation of the Plan's appeal procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

(d) Appeal to Administrator.

(i) A person whose request has been denied in whole or in part (or such person's authorized representative) may file an appeal of the decision in writing with the Administrator within 60 days of receipt of the notification of denial. The appeal must be addressed to: Administrator, 2005 U.S. Non-qualified Deferred Compensation Plan, Sun Microsystems, Inc., 4230 Network Circle, M\S USCA23-106, Santa Clara, California 95054. The Administrator, for good cause shown, may extend the period during which the appeal may be filed for another 60 days. The appellant and/or his or her authorized representative shall be permitted to submit written comments, documents, records and other information relating to the claim for benefits. Upon request and free of charge, the applicant should be provided reasonable access to and copies of, all documents, records or other information relevant to the appellant's claim.

(ii) The Administrator's review shall take into account all comments, documents, records and other information submitted by the appellant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit

determination. The Administrator shall not be restricted in his or her review to those provisions of the Plan cited in the original denial of the claim.

(iii) The Administrator shall issue a written decision within a reasonable period of time but not later than 60 days after receipt of the appeal, unless special circumstances require an extension of time for processing, in which case the written decision shall be issued as soon as possible, but not later than 120 days after receipt of an appeal. If such an extension is required, written notice shall be furnished to the appellant within the initial 60-day period. This notice shall state the circumstances requiring the extension and the date by which the Administrator expects to reach a decision on the appeal.

(iv) If the decision on the appeal denies the claim in whole or in part written notice shall be furnished to the appellant. Such notice shall state the reason(s) for the denial, including references to specific Plan provisions upon which the denial was based. The notice shall state that the appellant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits. The notice shall describe any voluntary appeal procedures offered by the Plan and the appellant's right to obtain the information about such procedures. The notice shall also include a statement of the appellant's right to bring an action under Section 502(a) of ERISA.

(v) The decision of the Administrator on the appeal shall be final, conclusive and binding upon all persons and shall be given the maximum possible deference allowed by law.

(e) Exhaustion of Remedies. No legal or equitable action for benefits under the Plan shall be brought unless and until the claimant has submitted a written claim for benefits in accordance with Section 22 (b) above, has been notified that the claim is denied in accordance with Section 22(c) above, has filed a written request for a review of the claim in accordance with Section 22(d) above, and has been notified in writing that the Administrator has affirmed the denial of the claim in accordance with Section 22(d) above; provided, however, that an action for benefits may be brought after Global Benefits or the Administrator has failed to act on the claim within the time prescribed in Section 22 (b) and Section 22(d), respectively.

(f) Statute of Limitations. No legal or equitable action for benefits under the Plan may be commenced more than two years after the Administrator denies the claim on appeal or Global Benefits or the Administrator fails to act on the claim within the time prescribed in Section 22(b) and Section 22(d), respectively.

23. Execution and Signature. To record the amendment and restatement of the Plan by the Compensation Committee, the Company has caused its duly authorized officer to sign this document this 2nd day of November, 2006.

Sun Microsystems, Inc.

By: /s/ William N. MacGowan

Printed Name: William N. MacGowan

Title: Executive Vice President, People and Places and Chief Human Resources Officer

EX-10.5 7 dex105.htm AMENDMENT TO U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

Exhibit 10.5

AMENDMENT TO
THE SUN MICROSYSTEMS, INC.
2005 U.S. NON-QUALIFIED DEFERRED COMPENSATION PLAN

The Sun Microsystems, Inc. 2005 U.S. Non-Qualified Deferred Compensation Plan (the "Plan"), as originally effective as of January 1, 2005, and as most recently amended and restated effective January 1, 2005, is hereby further amended effective January 1, 2008 (except as otherwise noted) as follows:

1. Section 1 is amended in its entirety to read as follows:

> Purpose. The Plan provides Participants an opportunity to defer payment of a portion of Employee salary, Employee annual and quarterly bonus awards, retention awards, and Board of Directors' Director Fees.

2. Section 2(i)(iii) is deleted in its entirety.

3. A new Section 2(z) is added to the Plan as follows:

> Disabled. Disabled means that a Participant is determined to be totally disabled by the Social Security Administration or the Railroad Retirement Board.

4. The following sentence is added to the end of Section 4(a):

> In the event a Participant receives an early distribution from the Prior Plan pursuant to Section 10(c) of the Prior Plan, the Participant's Deferred Compensation Election shall be suspended for the Plan Year following the Plan Year in which such distribution is made and the Participant must submit a new Deferred Compensation Election during an Election Period to resume participation in the Plan.

5. Section 6(a) is deleted in its entirety.

6. Section 6(b)(ii) is amended in its entirety to read as follows:

> Up to 60% of base salary.

7. Section 10(a) is amended in its entirety to read as follows:

> Distribution of Account upon Retirement. In the event of a Participant's separation from Service on or after his or her Retirement Date, distribution of the Participant's Account shall begin with the last payroll of the month following the month in which the Participant separates from Service, and shall be made consistent with the form of distribution specified on the Participant's Deferred Compensation Election. Effective January 1, 2007,

after the first installment, future installments shall be paid on the last payroll date of the anniversary month of the first installment. Available forms shall include either (i) a lump sum payment, (ii) a series of approximately equal annual installments over a period of two (2) to fifteen (15) years, or (iii) a lump sum payment of a percentage of the Participant's Account with the balance paid in a series of approximately equal annual installments over a period of two (2) to ten (10) years. For purposes of the Plan, installment payments shall be treated as a single distribution under Section 409A of the Code. Accounts subject to installment payouts shall continue to be adjusted for gains or losses in the same manner as active Accounts. A Participant may modify his or her elected form of distribution (i.e., lump sum or installments) at any time prior to the date that is at least one year before the date the Participant separates from Service, provided that the Participant's distribution is delayed at least five (5) years from the originally scheduled distribution date. If a Participant modifies his or her elected form of distribution but he or she separates from Service less than one (1) year following the date of the modification election, his or her prior elected form of distribution shall apply to any distribution.

8. Section 10(b) is amended in its entirety to read as follows:

Distribution Prior to Retirement. If a Participant separates from Service with the Company or any of its non-U.S. subsidiaries prior to his or her Retirement Date (other than on account of death), distribution of the Participant's Account shall begin with the last payroll of the month following the month in which the Participant separates from Service and shall be made consistent with the form of distribution specified on the Participant's Deferred Compensation Election. Effective January 1, 2007, after the first installment, future installments shall be paid on the last payroll date of the anniversary month of the first installment. Available forms of distribution shall include either a lump sum payment or a series of approximately equal annual installments over a period of two (2) to five (5) years. For purposes of the Plan, installment payments shall be treated as a single distribution under Section 409A of the Code. Accounts subject to installment payouts shall continue to be adjusted for gains or losses in the same manner as active Accounts. A Participant may modify his or her elected form of distribution (i.e. lump sum or installments) at any time prior to the date that is at least one year before the date the Participant separates from Service, provided that the Participant's distribution is delayed at least five (5) years from the originally scheduled distribution date. If a Participant modifies his or her elected form of distribution but he or she separates from Service less than one (1) year following the date of the modification election, his or her prior elected form of distribution shall apply to any distribution.

9. Section 10(i) is amended in its entirety to read as follows:

De Minimis Accounts. Notwithstanding any other payment schedule provided in the Plan or in a Participant's Deferred Compensation Election, such Participant will receive a lump sum payment if the balance of the Participant's Account following a Separation from Service is not greater than the applicable dollar amount under Section 402(g)(1)(B) of the Code and the payment results in the complete liquidation of the Participant's interest in the Plan. In addition, any remaining installment payments will be paid in a lump sum payment with the last payroll of the month following the month in which the the balance of the Participant's Account falls below the applicable dollar amount under Section 402(g)(1)(B) of the Code.

10. A new Section 10(j) is added to the Plan as follows:

Disability Benefit. In the event a Participant is Disabled, and upon application by such Participant, payment of all, or part, of such Participant's Account shall be made in one lump sum payment with the last payroll of the month following the month in which the distribution is requested by the Participant.

11. Effective January 1, 2007, Section 11(b) is amended in its entirety to read as follows:

Death On or After January 1, 2007. This Section 11(b) shall apply effective January 1, 2007. In the event of a Participant's death, the Participant's Account shall be distributed to the Participant's Beneficiary in three annual installments commencing with the last payroll of the month following the month in which the Participant dies. After the first installment, future installments shall be paid on the last payroll date of the anniversary month of the first installment. The remaining Account balance (during the period of the installment payouts) shall continue to be adjusted for gains or losses in the same manner as active Accounts.

In Witness Whereof, Sun Microsystems, Inc. has caused this amendment to be executed on its behalf by its duly authorized representative.

Sun Microsystems, Inc.

Dated: October 30, 2007

By: /s/ William N. MacGowan
Printed Name: William N. MacGowan
Title: Executive Vice President, People and Places and Chief Human Resources Officer

EX-10.11 6 dex1011.htm REGISTRANT'S SECTION 162(M) EXECUTIVE OFFICER PERFORMANCE-BASED BONUS PLAN

Exhibit 10.11

SUN MICROSYSTEMS, INC.

SECTION 162(M) EXECUTIVE OFFICER

PERFORMANCE-BASED BONUS PLAN

SECTION 1
BACKGROUND, PURPOSE AND DURATION

1.1 Effective Date.

Sun Microsystems, Inc., having established the Plan effective as of August 9, 1995 and amended and restated the Plan effective as of July 1, 2001, hereby amends and restates the Plan, effective as of July 1, 2006, subject to ratification by an affirmative vote of the holders of a majority of the Shares that are present in person or by proxy and entitled to vote at the 2006 Annual Meeting of Stockholders of the Company.

1.2 Purpose of the Plan.

The Plan is intended to increase shareholder value and the success of the Company by motivating key executives (1) to perform to the best of their abilities, and (2) to achieve the Company's objectives. The Plan's goals are to be achieved by providing such executives with incentive awards based on the achievement of goals relating to the performance of the Company. The Plan is intended to permit the grant of awards that qualify as performance-based compensation under section 162(m) of the Code.

SECTION 2
DEFINITIONS

The following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

2.1 "1934 Act"

means the Securities Exchange Act of 1934, as amended. Reference to a specific section of the 1934 Act or regulation thereunder shall include such section or regulation, any valid regulation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

2.2 "Actual Award"

means as to any Performance Period, the actual award (if any) payable to a Participant for the Performance Period. Each Actual Award is determined by the Payout Formula for the Performance Period, subject to the Committee's authority under Section 3.7 to eliminate or reduce the award otherwise determined by the Payout Formula.

2.3 "Affiliate"

means any corporation or other entity (including, but not limited to, partnerships and joint ventures) controlled by the Company.

2.4 "Board"

means the Board of Directors of the Company.

2.5 "Code"

means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or regulation thereunder shall include such section or regulation, any valid regulation promulgated thereunder, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

2.6 "Committee"

means the committee appointed by the Board (pursuant to Section 5.1) to administer the Plan.

2.7 "Company"

means Sun Microsystems, Inc., a Delaware corporation, or any successor thereto.

2.8 "Disability"

means a permanent and total disability determined in accordance with uniform and nondiscriminatory standards adopted by the Committee from time to time.

2.9 "Employee"

means any employee of the Company or of an Affiliate, whether such employee is so employed at the time the Plan is adopted or becomes so employed subsequent to the adoption of the Plan.

2.10 "Participant"

means as to any Performance Period, an Employee who has been selected by the Committee for participation in the Plan for that Performance Period.

2.11 "Payout Formula"

means as to any Performance Period, the formula or payout matrix established by the Committee pursuant to Section 3.5 in order to determine the Actual Awards (if any) to be paid to Participants. The formula or matrix may differ from Participant to Participant.

2.12 "Performance Period"

means the period of time established by the Committee in its sole discretion.

2.13 "Performance Goals"

means the goal(s) (or combined goal(s)) determined by the Committee (in its discretion) to be applicable to a Participant for a Target Award for a Performance Period. As determined by the Committee, the Performance Goals for any Target Award applicable to a Participant may provide for a targeted level or levels of achievement using one or more of the following measures: (a) earnings (or loss) per share, (b) individual objectives that are measurable and consistent with Section 162(m) of the Code, (c) net income (or loss) before or after taxes and before or after allocation or corporate overhead and bonus, (d) cash flow, operating cash flow, or cash flow or operating cash flow per share (before or after dividends), (e) operating income, (or loss) before or after taxes (f) return on assets or net assets, (g) return on equity, (h) return on sales or net sales, (i) revenue, revenue growth or product revenue growth, (j) total shareholder return, (k) earnings or loss per share; (l) attainment of strategic and operational initiatives, (m) appreciation in and/or maintenance of the price of the Shares or any other publicly traded securities of the Company, (n) market shares, (o) gross profits, (p) earnings (or losses), including earnings or losses before taxes, earnings or losses before interest and taxes, earnings or losses before interest, taxes and depreciation or earnings or losses before interest, taxes depreciation and amortization, (q) economic value-added models (or equivalent metrics), (r) comparisons with various stock market indices, (s) reduction in costs, (t) return on capital, including return on total capital or return on invested capital, (u) cash flow return on investment, (v) improvement in or attainment of expense levels or working capital levels, (w) operating margin or gross margin, (x) year-end cash, (y) cash margin, (z) debt reduction, (aa) stockholders' equity, (bb) market share; (cc) research progress, including the development or programs, and (dd) recruiting and maintaining personnel. Such performance goals also may be based solely by reference to the Company's performance or the performance of an Affiliate, division, business segment or business unit of the Company, or based upon the relative performance of other companies or upon comparisons of any of the indicators of performance relative to other companies.

2.14 "Plan"

means the Sun Microsystems, Inc. Section 162(m) Executive Officer Performance-Based Bonus Plan, as set forth in this instrument and as hereafter amended from time to time.

2.15 "Retirement"

means, with respect to any Participant, a Termination of Service after attaining at least (a) age 65, (b) age 60 and 5 years of service with the Company or an Affiliate, or (c) age 55 and 10 years of service with the Company or an Affiliate.

2.16 "Shares"

means shares of the Company's common stock.

2.17 "Target Award"

means the target award payable under the Plan to a Participant for the Performance Period as determined by the Committee in accordance with Section 3.4.

2.18 "Termination of Service"

means a cessation of the employee-employer relationship between a Participant and the Company or an Affiliate for any reason, including, but not by way of limitation, a termination by resignation, discharge, death, Disability, Retirement, or the disaffiliation of an Affiliate, but excluding any such termination where there is a simultaneous reemployment by the Company or an Affiliate.

SECTION 3
SELECTION OF PARTICIPANTS AND DETERMINATION OF AWARDS

3.1 Selection of Participants.

The Committee, in its sole discretion, shall select the Employees who are executive officers of the Company (within the meaning of Rule 3b-7 under the 1934 Act) and who shall be Participants for any Performance Period. Participation in the Plan is in the sole discretion of the Committee, and on a Performance Period by Performance Period basis. Accordingly, an Employee who is a Participant for a given Performance Period in no way is guaranteed or assured of being selected for participation in any subsequent Performance Period.

3.2 Determination of Performance Period.

The Committee, in its sole discretion, shall establish in writing whether the Performance period shall be the Company's fiscal year or such other period of time.

3.3 Determination of Performance Goals.

The Committee, in its sole discretion, shall establish the Performance Goals for each Participant for the Performance Period. Such Performance Goals shall be set forth in writing. The Performance Goals may differ from Participant to Participant and from award to award. The Committee shall also determine and set forth in writing whether any significant elements shall be included in or excluded from the calculation of any Performance Goal with respect to any Participants, including (a) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (b) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management, or (c) the cumulative effects of tax or accounting changes in accordance with U.S. generally accepted accounting principles.

3.4 Determination of Target Awards.

The Committee, in its sole discretions, shall establish a Target Award for each Participant. Each Participant's Target Award shall be determined by the Committee in its sole discretion, and each Target Award shall be set forth in writing. The Target Award may be denominated by reference to a number of Shares or an amount of cash.

3.5 Determination of Payout Formula or Formulae.

The Committee, in its sole discretion, shall establish a Payout Formula or Formulae for purposes of determining the Actual Award (if any) payable to each Participant. Each Payout Formula shall (a) be in writing, (b) be based on a comparison of actual performance to the Performance Goals, (c) provide for the payment of a Participant's Target Award if the Performance Goals for the Performance Period are achieved, and (d) provide for an Actual Award greater than or less than the Participant's Target Award, depending upon the extent to which actual performance exceeds or falls below the Performance Goals. Notwithstanding the preceding, in no event shall a Participant's Actual Award for any Performance Period exceed $10,000,000 or 1,500,000 Shares for each 12 months in a Performance Period (proportionately adjusted for periods of less than 12 months).

3.6 Date for Determinations.

The Committee shall make all determinations under Sections 3.1 through 3.5 on or before the earlier of (i) 90 days after the commencement of each Performance Period or (ii) the expiration of 25% of the Performance Period.

3.7 Determination of Actual Awards.

After the end of each Performance Period, the Committee shall certify in writing the extent to which the Performance Goals applicable to each Participant for the Performance Period were achieved or exceeded. The Actual Award for each Participant shall be determined by applying the Payout Formula to the level of actual performance that has been certified by the Committee. Notwithstanding any contrary provision of the Plan, the Committee, in its sole discretion, may (a) eliminate or reduce the Actual Award payable to any Participant below that which otherwise would be payable under the Payout Formula, and (b) determine what Actual Award, if any, will be paid in the event of a Termination of Service prior to the end of the Performance Period.

SECTION 4
PAYMENT OF AWARDS

4.1 Right to Receive Payment.

Each Actual Award that may become payable under the Plan shall be paid solely from the general assets of the Company. Nothing in this Plan shall be construed to create a trust or to establish or other than as an unsecured general creditor with respect to any payment to which he or she may be entitled.

4.2 Timing of Payment.

Payment of each Actual Award shall be made as soon as practicable after the end of the Performance Period during which the Award was earned and the certification of the Committee provided for in Section 3.7.

4.3 Form of Payment.

Each Actual Award shall be paid in cash (or its equivalent) or Shares in a single lump sum, except as otherwise determined by the Committee. To the extent an Actual Award is paid in whole or in part in Shares, such Shares shall be granted under the Company's 1990 Long-Term Equity Incentive Plan or such other shareholder approved plan of the Company providing for payment of Shares. If (i) a Target Award denominated in cash is paid in Shares or (ii) a Target Award denominated in Shares is paid in cash, the amount of cash or Shares shall be determined based on the closing per share selling price for Shares as quoted on the NASDAQ Stock Market on the date payment of the Actual Award would otherwise have been made.

4.4 Payment in the Event of Death.

If a Participant dies prior to the payment of an Actual Award earned by him or her prior to death for a prior Performance Period, the Award shall be paid to his or her estate, except as provided in Section 6.6.

SECTION 5
ADMINISTRATION

5.1 Committee is the Administrator.

The Plan shall be administered by the Committee. The Committee shall consist of not less than two (2) members of the Board. The members of the Committee shall be appointed from time to time by, and serve at the pleasure of, the Board. Each member of the Committee shall qualify as an "outside director" under section 162(m) of the Code. If it is later determined that one or more members of the Committee do not so qualify, actions taken by the Committee prior to such determination shall be valid despite such failure to qualify.

5.2 Committee Authority.

It shall be the duty of the Committee to administer the Plan in accordance with the Plan's provisions. The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (a) determine which Employees who are executive officers shall be granted awards, (b) prescribe the terms and conditions of awards, (c) interpret the Plan and the awards, (d) adopt such procedures and sub plans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside of the United States, (e) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and (f) interpret, amend or revoke any such rules.

5.3 Decisions Binding.

All determinations and decisions made by the Committee, the Board, and any delegate of the Committee pursuant to the provisions of the Plan shall be final, conclusive, and binding on all persons, and shall be given the maximum deference permitted by law.

5.4 Delegation by the Committee.

The Committee, in its sole discretion and on such terms and conditions as it may provide, may delegate all or part of its authority and powers under the Plan to one or more directors and/or officers of the Company; provided, however, that the Committee may delegate its authority and powers only to the extent consistent with applicable laws (including the provisions of Section 162(m) of the Code) and the rules and regulations of the principal securities market on which the Company's securities are listed or qualified for trading.

SECTION 6
GENERAL PROVISIONS

6.1 Tax Withholding.

The Company shall withhold all applicable taxes from any Actual Award, including any federal, state and local taxes (including, but not limited to, the Participant's FICA and SDI obligations).

6.2 No Effect on Employment.

Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment at any time, with or without cause. For purposes of the Plan, transfer of employment of a Participant between the Company and any one of its Affiliates (or between Affiliates) shall not be deemed a Termination of Service. Employment with the Company and its Affiliates is on an at-will basis only. The Company expressly reserves the right, which may be exercised at any time and without regard to when during a Performance Period such exercise occurs, to terminate any individual's employment with or without cause, and to treat him or her without regard to the effect which such treatment might have upon him or her as a Participant.

6.3 Participation.

No Employee shall have the right to be selected to receive an award under this Plan, or, having been so selected, to be selected to receive a future award.

6.4 Indemnification.

Each person who is or shall have been a member of the Committee, or of the Board, shall be indemnified and held harmless by the Company against and from (a) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or any award, and (b) from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company may have to indemnify them or hold them harmless.

6.5 Successors.

All obligations of the Company under the Plan, with respect to awards granted hereunder, shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business or assets of the Company.

6.6 Beneficiary Designations.

If permitted by the Committee, a Participant under the Plan may name a beneficiary or beneficiaries to whom an Actual Award which the Participant has earned shall be paid in the event of the Participant's death. Each such designation shall revoke all prior designations by the Participant and shall be effective only if given in a form and manner acceptable to the Committee. In the absence of any such designation, any such Actual Award remaining unpaid at the Participant's death shall be paid to the Participant's estate.

6.7 Nontransferability of Awards.

No award granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will, by the laws of descent and distribution, or to the limited extent provided in Section 6.6. All rights with respect to an award granted to a Participant shall be available during his or her lifetime only to the Participant.

6.8 Deferrals.

The Committee, in its sole discretion, may permit a Participant to defer receipt of the payment of cash or Shares that would otherwise be delivered to a Participant under the Plan. Any such deferral elections shall be made under a plan or arrangement consistent with the requirements of section 409A of the Code.

SECTION 7
AMENDMENT, TERMINATION AND DURATION

7.1 Amendment, Suspension or Termination.

The Board, in its sole discretion, may amend or terminate the Plan, or any part thereof, at any time and for any reason. The amendment, suspension or termination of the Plan shall not, without the consent of the Participant, alter or impair any rights or obligations under any Target Award theretofore granted to such Participant. No award may be granted during any period of suspension or after termination of the Plan.

7.2 Duration of the Plan.

The Plan shall commence on the date specified herein, and subject to Section 7.1 (regarding the Board's right to amend or terminate the Plan), shall remain in effect thereafter.

SECTION 8
LEGAL CONSTRUCTION

8.1 Gender and Number.

Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

8.2 Severability.

In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

8.3 Requirements of Law.

The granting of awards under the Plan shall be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

8.4 Governing Law.

The Plan and all awards shall be construed in accordance with and governed by the laws of the State of California, but without regard to its conflict of law provision.

8.5 Captions.

Captions are provided herein for convenience only, and shall not serve as a basis for interpretation or construction of the Plan.

EXECUTION

IN WITNESS WHEREOF, Sun Microsystems, Inc., by its duly authorized officer, has executed the Plan on the date indicated below.

SUN MICROSYSTEMS, INC.

Date: _____, 2006

By: _____
Michael A. Dillon
Executive Vice President,
General Counsel and Secretary
Sun Microsystems, Inc.

EX-10.12 7 dex1012.htm U.S. VICE PRESIDENT SEVERANCE PLAN AND SUMMARY PLAN DESCRIPTION

Exhibit 10.12

SUN MICROSYSTEMS, INC.
U.S. VICE PRESIDENT SEVERANCE PLAN
AND
SUMMARY PLAN DESCRIPTION

Purpose of Plan

The Sun Microsystems, Inc. U.S. Vice President Severance Plan (the "Plan") provides Notification Pay and Severance Benefits if your employment terminates because of a Retirement or Mutual Agreement (defined below). However, this Plan does not provide benefits if you voluntarily terminate employment prior to qualifying for Retirement or if you are involuntarily terminated with or without Cause. You must sign, and not revoke, a Release and Waiver Agreement in order to receive Severance Benefits.

This Plan was originally adopted effective July 1, 2005. It was restated effective November 1, 2005. It is now restated again effective May 1, 2006. In this document "Sun" means Sun Microsystems, Inc., its subsidiaries and its successor or successors. The Plan is intended to comply with Section 409A of the Internal Revenue Code and from its original effective date, the Plan has been operated in accordance with a good faith, reasonable interpretation of Section 409A of the Internal Revenue Code.

This document constitutes both the official plan document and the required summary plan description under ERISA.

Highlights

Under this Plan, you are eligible to receive two types of benefits: Notification Pay and Severance Benefits.

"Notification Pay" consists of either a period of time you remain on Sun's payroll or a lump sum payment. You need not sign a Release and Waiver Agreement in order to receive Notification Pay.

"Severance Benefits" consist of a lump sum Severance Payment and payment of COBRA Premiums (if eligible). You will not receive Severance Benefits if you do not sign a Release and Waiver Agreement, or if you sign a Release and Waiver Agreement but revoke it within the seven (7) calendar day revocation period.

The amount of Severance Benefits available to you depends on whether you are a member of Sun's Executive Leadership Team ("ELT") or a Vice President who is not a member of the ELT.

Eligibility

You are an Eligible Employee under the Plan if you are:

- A regular full-time or part-time Sun employee on the U.S. Payroll;

- Not on the payroll of, or considered an employee of, any Sun subsidiary outside the U.S.;
- Employed at the Vice President level or above; and
- Not a Contingent Worker or Partner Worker (includes independent contractor, consultant or vendor) as defined in Sun's Headcount Policy.

If Sun has not classified you as an employee on the date your service with Sun is terminated and, for that reason, has not withheld employment taxes with respect to you, and you are later determined retroactively to have been a common-law employee of Sun, whether by Sun, a governmental agency or a court, you will nevertheless be ineligible to receive Plan benefits.

Notwithstanding any other provision of the Plan to the contrary, if you were a Storage Technology Corporation ("StorageTek") employee who received severance benefits as a result of the acquisition of StorageTek by Sun, you will not be eligible for some or all of the benefits under the Plan for a period of time, as set forth in your offer letter from Sun dated on or around August 5-10, 2005.

Conditions For Receiving Plan Benefits

You will receive Plan benefits if you are an Eligible Employee and meet all of the following conditions:

- You inform Sun of your intent to retire and receive a formal written notice that states the date your employment will terminate and that your termination is because of Retirement or Mutual Agreement ("Termination Letter")**;**
- You abide by any written terms and requirements that Sun may establish as a condition to your receiving Plan benefits; and
- For Severance Benefits only, you sign the Release and Waiver Agreement within a reasonable period of time (as determined by Sun in its sole discretion) after your employment termination date and do not revoke the Release and Waiver Agreement within the seven (7) calendar day revocation period.

"Retirement" for purposes of this Plan means your voluntary resignation from Sun at or after attaining age 55 and with a number of full years of service with Sun that when added to your age (in full years), the sum equals or exceeds 65. Notwithstanding the foregoing sentence, you must have a minimum of five (5) full years of service in order to qualify for Retirement. Your resignation will not be considered Retirement if you work in the same or similar profession during the six-month period following your termination of employment. You will be considered to have retired if you perform services for a nonprofit organization following your termination of employment. Sun shall make the determination of whether you have retired in its sole discretion.

"Mutual Agreement" for purposes of this Plan means that both you and Sun agree that your employment should terminate.

Conditions Under Which You Will Not Receive Plan Benefits

Even if you are an Eligible Employee, you will not receive Plan benefits if any of the following apply:

- You are involuntarily terminated with or without Cause. "Cause" means (i) misconduct as described in Sun's Misconduct Policy (HR503) or (ii) documented unsatisfactory job performance. Sun shall make this determination in its sole discretion.
- You voluntarily terminate employment (including as a result of disability) other than due to Retirement or Mutual Agreement even if you claim "constructive termination," prior to your termination date as set forth in your Termination Letter.
- You decline a written offer of a **"Comparable Job"** at Sun for which, in Sun's judgment, you are reasonably qualified. A **"Comparable Job"** is a job within 50 miles of your current job location at the same or higher salary/job grade as the current job and with at least the same total target cash compensation opportunity. A Comparable Job need not involve the same duties and responsibilities as your current job.
- You accept another regular job at Sun before your employment at Sun terminates (i.e., a job other than a Temporary Job Assignment, defined below).
- You are on an unpaid personal non-FMLA, non-Military Leave of Absence on the date of the Termination Letter.
- You begin working for another employer (whether regular or temporary) before your employment at Sun terminates. You are required to immediately notify Sun in writing if you begin another job prior to your termination date.
- Your job is re-leveled for any reason, for example, to reflect your current job duties and responsibilities or to reflect any changes in your job duties and responsibilities.
- For Severance Benefits only, you do not timely sign a Release and Waiver Agreement or you timely sign a Release and Waiver Agreement but you revoke it within the seven calendar day revocation period.

Temporary Job Assignments

For purposes of this Plan, a **"Temporary Job Assignment"** is a job as a Sun employee that is not expected to last more than two years at the time it is offered to you and which is offered to you after you receive a Termination Letter but prior to your employment termination. If you accept a job which, at the time it is offered to you, is expected to last more than two years, you will be treated as a regular Sun employee and will not receive Plan benefits in connection with the Retirement or Mutual Agreement that occurred immediately prior to your acceptance of your new job at Sun.

While you are on a Temporary Job Assignment you will not receive Plan benefits. However, at the end of the Temporary Job Assignment, provided you meet the conditions of the Plan, you will receive Plan benefits in accordance with the terms of the Plan in effect as of the date of the Termination Letter.

If you accept a Temporary Job Assignment and it has not ended after two years, you will be treated as if you are in a regular position and will not be eligible for Plan benefits unless you terminate employment as a result of Retirement or Mutual Agreement. In other words, you will not receive Plan benefits in connection with Retirement or Mutual Agreement that occurred immediately prior to your acceptance of your new job at Sun.

Notification Pay

You need not sign a Release and Waiver Agreement in order to be eligible for Notification Pay.

If you are an Eligible Employee and you receive a written Termination Letter that your employment will terminate, you will receive the following Notification Pay:

- **Notification Pay.** You will remain employed for sixteen (16) weeks following the date of your Termination Letter. During this sixteen (16) week period, you will receive your regularly bi-weekly Pay (defined below under Severance Benefits) and your Sun Flex benefits will continue, but you are not required to work during this time.

  Note: If you are a Key Employee (defined below under Severance Benefits), your Notification Pay will be paid in one lump sum payment on the second Friday (or as soon as administratively practical thereafter) that is six (6) months following the date of your Separation from Service (defined below under Severance Benefits).

Severance Benefits

When you receive a Termination Letter, you may choose to sign a Release and Waiver Agreement in order to also receive Severance Benefits. You will have at least **45 calendar days** after your employment termination date to sign the Agreement. If you do not sign and return to Sun a Release and Waiver Agreement within a reasonable period of time (as determined by Sun in its sole discretion) after your employment termination date or you subsequently revoke the Agreement during the seven (7) calendar day revocation period, you will not be eligible to receive the Severance Payment and the payment of COBRA Premiums described below. You may not sign the Release and Waiver Agreement prior to your employment termination date.

You will receive the following benefits on the second Friday after Sun receives your signed Release and Waiver Agreement and the revocation period has ended (or as soon as administratively practical thereafter):

- **Severance Payment.** This is a lump sum payment equal to four (4) weeks Pay (defined below) for each Year of Service (defined below), up to a maximum

determined by your Position (defined below) plus sixteen (16) or thirty-two (32) weeks Pay determined by your Position.

Note: If you are a Key Employee (defined below), your Severance Payment will be paid on the second Friday (or as soon as administratively practical thereafter) that is six (6) months following the date of your Separation from Service (defined below).

- **COBRA Premiums**. Your existing coverage under Sun's group health plan (and, if applicable, the existing group health coverage for your eligible dependents) will end on the date on which your employment terminates. You and your eligible dependents may then be eligible to elect temporary continuation coverage under Sun's group health plan in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"). If you are eligible for a Severance Payment and elect COBRA continuation coverage, Sun will pay your COBRA Premiums (defined below) for a period equal to the number of weeks of Pay you will receive as a Severance Payment (not to exceed the maximum period of COBRA coverage). However, in no event may payment of COBRA Premiums continue beyond December 31 of the second calendar year following the calendar year in which you have a Separation from Service. After such period of Sun-paid coverage, you (and, if applicable, your eligible dependents) may continue COBRA coverage at your own expense in accordance with COBRA. No provision of the Plan will affect the continuation coverage rules under COBRA. Therefore, the period during which you must elect to continue Sun's group health plan coverage under COBRA, the length of time during which COBRA coverage will be made available to you, and all your other rights and obligations under COBRA will be applied in the same manner that such rules would apply in the absence of the Plan.

"Key Employee" means, in general, one of Sun's top fifty (50) officers based on compensation. The determination of which Eligible Employees are Key Employees will be made by Sun in its sole discretion in accordance with Sections 416(i) and 409A of the Internal Revenue Code and the regulations promulgated thereunder. If you are determined to be a Key Employee on any December 31, then you will be considered a Key Employee for purposes of the Plan during the period beginning on the first April 1 following such December 31 and ending on the next March 31.

"Separation from Service" means, in general, the date you work less than twenty percent (20%) of your average work schedule during the preceding three (3) full calendar years (or if you were employed by Sun for less than three (3) years, such lesser period). The determination of when your Separation from Service occurs will be made by Sun in its sole discretion in accordance with Section 409A of the Internal Revenue Code and the regulations promulgated thereunder.

"Year of Service" for purposes of this Plan means a full or partial year of service with Sun prior to your employment termination date. If you are a rehired employee, prior service at Sun will be counted as Year of Service provided that the prior service period

exceeded the period when you were not employed by Sun. Years of Service includes up to seven (7) (ten (10) for former employees of Procom Technology, Inc.) years of service credit for service with a predecessor employer that was acquire by Sun; however, the service credit limit will not apply to former employees of Storage Technology Corporation and SeeBeyond Technology Corporation. A partial year of service will be treated as a full year of service.

"COBRA Premiums" for purposes of this Plan are the COBRA premiums that you would have to pay to continue for a certain period of time, the medical, dental, and/or vision coverage you had immediately prior to terminating employment.

"Pay" for purposes of this Plan (other than for sales-related incentive based positions) means your base pay as of the date of the Termination Letter, which does not include car allowance, draws, spifs, bonuses or any non-base compensation. **"Pay"** for sales-related incentive based positions is based on the On-Target Earnings rate (OTE) effective on the date of the Termination Letter.

"Position" for purposes of this Plan means your position as either a member of the ELT or a Vice President who is not a member of the ELT on the date of the Termination Letter as recorded in Sun's HR Database.

Example of Calculation of Severance Payment

Assume you are a Vice President with eight years of service. The calculation of your Severance Payment is as follows:

16 weeks Pay based on the Pay you would have received had you worked for those 16 weeks, plus 20 weeks Pay*, for a total of 36 weeks of Pay.

*4 weeks Pay per Year of Service x 8 years = 32 weeks but the maximum allowed payment based on Years of Service is 20 weeks Pay. The 16 weeks of Pay is not included in calculating the maximum payment based on Years of Service.

Stock Options

If your employment terminates because of Retirement and you are eligible to receive benefits under the Plan, your stock options that would have vested during the 15 months following your employment termination date will become immediately vested on your employment termination date. Except as provided in the previous sentence, all other terms and conditions of your option agreements remain the same.

Sales-Related Incentive Based Positions

If you are in a sales-related incentive based position, commission earnings end effective the date of your Termination Letter. Base pay will be used to determine the payment of unused, accrued vacation in your final paycheck.

Obligation to Repay Sun

If you are reemployed by Sun (in any capacity) before the end of the number of weeks used to determine your Severance Benefits, you must repay to Sun the portion of your Severance Payment for the period that you have been reemployed.

For example, if you are a Vice President with eight years of service, you would have received 36 weeks of Pay. If you were then reemployed by Sun 4 weeks following your employment termination date, you would be required to repay to Sun an amount calculated as follows:

36 weeks of Severance Payment paid minus 4 weeks of actual unemployment equals 32 weeks of Severance Payment to be repaid to Sun.

Reduction of Other Benefits

Any Notification Pay received under this Plan will reduce the amount of any short term and long term disability benefits you are entitled to receive under the Sun Microsystems, Inc. Comprehensive Welfare Plan.

Taxes and Other Deductions

Sun will withhold all appropriate federal, state, local, income and employment taxes from your Plan benefit payments. Contributions to Sun's 401(k) plan and employee stock purchase plan will not be deducted from your Severance Payment or any Notification Pay paid after your employment termination date.

Bonus Programs

The Plan does not change the terms of any bonus program for which you may have been eligible at the time of your termination with Sun.

Accordingly, if you are eligible for a bonus payment under a program operated on a quarterly or fiscal year basis (such as SMI Bonus) and terminate employment prior to the last day of a quarter or fiscal year, you will not be eligible to receive the bonus for the quarter or fiscal year in which you terminate employment, except to the extent the bonus program provides otherwise. Unless the bonus program provides otherwise, bonus program payments will not be prorated for a partial quarter's or year's participation.

Disability Prior to Employment Termination

If you become disabled after receiving a Termination Letter but before you terminate employment, your employment termination date will not change. You should contact SunDial to discuss the employment disability benefits for which you may be eligible.

Death Prior to Employment Termination

If you die after receiving a Termination Letter but before you sign the Release and Waiver Agreement, neither you nor your estate will be entitled to any further Plan benefits.

SUN MICROSYSTEMS, INC.

U.S. VICE PRESIDENT SEVERANCE PLAN
SUMMARY OF PLAN BENEFITS

To receive the Severance Payment and Payment of COBRA Premiums, the Release and Waiver Agreement must be signed and not revoked. See Important Notes at the end of Summary.

SALARY/JOB GRADE	*NOTIFICATION PAY*	*SEVERANCE PAYMENT*	*PAYMENT OF COBRA PREMIUMS*
Vice President	16 weeks of Pay	16 weeks Pay plus 4 weeks Pay per Year of Service up to 20 weeks	16 weeks of COBRA premiums plus 4 weeks of COBRA premiums per Year of Service up to 20 weeks
Executive Leadership Team	16 weeks of Pay	32 weeks Pay plus 4 weeks Pay per Year of Service up to 32 weeks	32 weeks of COBRA premiums plus 4 weeks of COBRA premiums per Year of Service up to 32 weeks

IMPORTANT NOTES TO SUMMARY OF PLAN BENEFITS

NOTIFICATION PAY

1. A Signed Release and Waiver Agreement is not required.

2. Calculated as number of days Pay (base pay or OTE, as applicable). “Pay” has the same meaning as used for Severance Payment.

3. If you are a Key Employee, your Notification Pay will be paid in one lump sum payment on the second Friday (or as soon as administratively practical thereafter) that is six (6) months following the date of your Separation from Service.

SEVERANCE PAYMENT

1. Lump sum Severance Payment paid after Sun receives signed Release and Waiver Agreement and period for revoking Agreement has ended.

2. “Pay” (other than for sales-related incentive based positions) means base pay and does not include any non-base compensation.

3. “Pay” for sales-related incentive based positions is based on on-target earnings (OTE) effective on the date of the Termination Letter.

4. “Years of Service” for calculating benefits means each full or partial year of service with Sun prior to your employment termination date.

5. The 16 weeks/32 weeks additional payment is not included for purpose of calculating the maximum payment based on Years of Service.

6. If you are a Key Employee, your Severance Payment will be paid on the second Friday (or as soon as administratively practical thereafter) that is six (6) months following the date of your Separation from Service.

PAYMENT OF COBRA PREMIUMS

1. If you elect COBRA coverage, your COBRA premiums will be paid after Sun receives signed Release and Waiver Agreement and period for revoking Agreement has ended.

2. “Years of Service” for calculating benefits means each full or partial year of service with Sun prior to your employment termination date.

3. The 16 weeks/32 weeks additional period for payment of COBRA premiums is not included for purpose of calculating the maximum period for payment of COBRA premiums based on Years of Service.

Plan Operation, Administration and General Provisions

Other Benefit Plans/Agreements

Your rights and participation in any other Sun benefit plan at termination of employment are governed solely by the terms of those other plans. Amounts you receive under the Plan will be reduced by any other type of severance (or similar) payment you receive under any plan or agreement (including any change of control agreement), if any (including any payments pursuant to a Sun foreign subsidiary's or an acquired company's plan or agreement) or as required by law.

Amendment and Termination

Sun reserves the right to modify, suspend or terminate the Plan at any time and for any reason. Any action amending or terminating the Plan shall be in writing and shall be approved by the Leadership and Development Compensation Committee of the Board of Directors of Sun.

Unfunded Plan

All Plan benefits are paid from Sun's general funds, and each participant is an unsecured general creditor of Sun. Nothing contained in the Plan creates a trust fund of any kind for your benefit or creates any fiduciary relationship between you and Sun with respect to any of Sun's assets. Sun is under no obligation to fund the benefits provided under the Plan prior to payment.

Plan Benefits Cannot Be Assigned

The rights of any person to any benefit under the Plan may not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including bankruptcy, garnishment, attachment or other creditor's process. Any act in violation of this rule shall be void.

No Employment Rights

Nothing in the Plan may be deemed to give any individual a right to remain employed by Sun or affect Sun's right to terminate an individual's employment at any time, with or without cause.

Legal Construction

The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and, to the extent not preempted by ERISA, California law. If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

Plan Administrator

Sun is the "Plan Administrator" of the Plan as that term is used in ERISA. Sun has full discretionary authority to administer and interpret the Plan, including the exclusive right

to adopt rules and procedures to implement the Plan, to interpret in its sole discretion, provisions of the Plan, to decide any questions in connection with the administration of the Plan, or relating to any claim for Plan benefits, including, whether an individual is eligible for Plan benefits and the amount of Plan benefits. Sun may delegate its responsibilities to other persons, which includes delegation of discretion. Subject to the claims and appeal procedures, the decisions of Sun and its delegatees relating to the Plan are final and binding on all persons.

Claims and Appeal Procedures

If you disagree with Sun's determination of the amount of your benefits or with any other decision Sun may have made regarding your interest in the Plan, you may file a claim with Sun. You must send your claim in writing to: Director, Executive Compensation – U.S. Vice President Severance Plan, Sun Microsystems, Inc., 4230 Network Circle, M/S USCA23-106, Santa Clara, CA 95054. You should file the claim as soon as possible, but no later than one (1) year after the determination /decision.

In the event that your claim for benefits is denied in whole or in part, Sun must provide you written or electronic notification of the denial of the claim, and of your right to appeal the denial. The notice of denial will be set forth in a manner designed to be understood by you, and will include (i) the specific reason or reasons for the denial, (ii) reference to the specific Plan provisions upon which the denial is based, (iii) a description of any information or material that Sun needs to complete the review and an explanation of why such information or material is necessary, and (iv) an explanation of the Plan's appeal procedures and the time limits applicable to such procedures, including a statement of your right to bring a civil action under Section 502(a) of ERISA following a denial on appeal. This notice will be given to you within 90 calendar days after Sun receives the claim, unless special circumstances require an extension of time – in which case Sun has up to an additional 90 calendar days for processing the claim. If an extension of time for processing is required, notice of the extension will be furnished to you before the end of the initial 90-day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which Sun expects to render its decision on the claim.

If your claim for benefits is denied, in whole or in part, you (or your authorized representative) may appeal the denial by submitting a written appeal to the Appeal Committee within 60 calendar days after you receive the denial. If you fail to appeal a denial within the 60-day period, Sun's determination will be final and binding. If you appeal to the Appeal Committee, you (or your authorized representative) may submit comments, documents, records and other information relating to your claim for benefits. You may request (free of charge) reasonable access to, and copies of, all documents, records, and other information relevant to your claim.

The Appeal Committee will make a decision on each appeal no later than 60 calendar days following receipt of the appeal. If special circumstances require an extension of time for processing the appeal, the Appeal Committee will make a decision on the appeal no later than 120 calendar days following receipt of the appeal. If an extension for

review is required, notice of the extension will be furnished to you before the extension begins. The extension notice will indicate the special circumstances requiring an extension and the date by which the Appeal Committee expects to render a decision. The Appeal Committee will give written or electronic notice of its decision to you after its decision is made. In the event that the Appeal Committee confirms the denial of the claim for benefits in whole or in part, the notice will outline, in a manner calculated to be understood by you, (i) the specific reason or reasons for the decision, (ii) reference to the specific Plan provisions upon which the decision is based, (iii) a statement that you may request (free of charge) reasonable access to, and copies of, all documents, records, and all other information relevant to your claim, and (iv) a statement of your right to bring an action under Section 502(a) of ERISA.

No legal action for benefits under the Plan may be brought until you (i) have submitted a written claim for benefits in accordance with the procedures described above, have been notified by Sun that the claim is denied, have filed a written appeal in accordance with the appeal procedures described above, and have been notified that the Appeal Committee has denied the appeal, or (ii) Sun or the Appeal Committee fail to follow these procedures. No legal action may be commenced or maintained against the Plan, Sun or the Appeal Committee more than two (2) years after the Appeal Committee denies your appeal or Sun or the Appeal Committee fail to follow these procedures.

If you wish to take legal action after exhausting the appeal procedures, you may serve process on Sun at the address indicated in the section below entitled “Plan Information.”

Plan Information

Plan Governed by ERISA

The Plan is an employee welfare benefit plan subject to ERISA. The Plan is subject to most of the provisions of Title I of ERISA. However, it is not subject to Title IV of ERISA, which includes the plan termination insurance provisions.

Address of Sun

The principal executive office of Sun Microsystems, Inc. is 4150 Network Circle, Santa Clara, California 95054. Its telephone number is (650) 960-1300.

Identification Numbers

Sun’s Employer Identification Number (EIN) is 94-2805249. The Plan Number assigned to the Plan is 540.

Type of Plan

The Plan is a welfare benefit plan providing special severance benefits to eligible employees. All benefits under the Plan are paid directly by Sun to participants.

Plan Year

The Plan’s year ends on December 31.

Service of Process

The Plan's agent for service of legal process is:

General Counsel
Legal Department
Sun Microsystems, Inc.
4120 Network Circle, MS USCA 12-202
Santa Clara, CA 95054

Statement of ERISA Rights and Protections

As a participant in the Sun Microsystems, Inc. U.S. Vice President Severance Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all plan participants are entitled to:

Receive Information About your Plan and Benefits

Examine, without charge, at the plan administrator's office - and at other specified locations - all documents governing the Plan and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the plan administrator, copies of documents governing the operation of the plan, copies of the latest annual report (Form 5500 Series) and updated summary plan description (there may be a reasonable charge for the copies).

Prudent Actions by Plan Fiduciaries

In addition to creating rights for plan participants, ERISA imposes obligations on those responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including Sun or any other individual, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report from the plan administrator and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to $110 a day until you receive them, unless the materials were not sent because of reasons beyond the administrator's control. If your claim for benefits is denied or ignored, in whole or in part, and you have been through the Plan's appeal procedures, you may sue in a state or Federal court. If it should happen that plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit

in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you sued to pay these legal costs and fees. If you lose, the court may order you to pay these costs and fees (for example, if it finds your claim is frivolous).

Assistance With Your Questions

If you have questions about the Plan, you should contact the plan administrator. If you have questions about this statement or your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C., 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Execution

To record the amendment and restatement of the Plan effective May 1, 2006 as set forth herein, Sun Microsystems, Inc. has caused its authorized representative to sign this document the _____ day of May, 2006.

Sun Microsystems, Inc.

By: _____

Printed Name: William N. MacGowan

Title: Executive Vice President People and Places
and Chief Human Resources Officer

EX-10.13 8 dex1013.htm U.S. VICE PRESIDENT INVOLUNTARY SEPARATION PLAN AND SUMMARY PLAN DESCRIPTION

Exhibit 10.13

SUN MICROSYSTEMS, INC.
U.S. VICE PRESIDENT INVOLUNTARY SEPARATION PLAN
AND
SUMMARY PLAN DESCRIPTION

Purpose of Plan

The Sun Microsystems, Inc. U.S. Vice President Involuntary Separation Plan (the "Plan") provides Notification Benefits and Severance Benefits if your employment terminates because of a Workforce Reduction or Involuntary Termination (defined below). However, this Plan does not provide benefits if you voluntarily terminate employment or if you are terminated for Cause. You must sign, and not revoke, a Release and Waiver Agreement in order to receive Severance Benefits.

The Plan is intended to satisfy, where applicable, the obligations of Sun under the Federal Worker Adjustment and Retraining Notification ("WARN") Act. The Plan is also intended to constitute a separation pay arrangement that does not provide for a deferral of compensation for purposes of Section 409A of the Internal Revenue Code.

This Plan is adopted effective May 1, 2006. In this document "Sun" means Sun Microsystems, Inc., its subsidiaries and its successor or successors.

This document constitutes both the official plan document and the required summary plan description under ERISA.

Highlights

Under this Plan, you are eligible to receive two types of benefits: Notification Benefits and Severance Benefits.

"Notification Benefits" consist of Notification Pay and Employment Transition Services. You need not sign a Release and Waiver Agreement in order to receive Notification Benefits.

"Severance Benefits" consist of a lump sum Severance Payment and payment of COBRA Premiums (if eligible). You will not receive Severance Benefits if you do not sign a Release and Waiver Agreement, or if you sign a Release and Waiver Agreement but revoke it within the seven (7) calendar day revocation period.

The amount of Severance Benefits available to you depends on whether you are a member of Sun's Executive Leadership Team ("ELT") or a Vice President who is not a member of the ELT.

Eligibility

You are an Eligible Employee under the Plan if you are:

- A regular full-time or part-time Sun employee on the U.S. Payroll;

- Not on the payroll of, or considered an employee of, any Sun subsidiary outside the U.S.;
- Employed at the Vice President level or above; and
- Not a Contingent Worker or Partner Worker (includes independent contractor, consultant or vendor) as defined in Sun's Headcount Policy.

If Sun has not classified you as an employee on the date your service with Sun is terminated and, for that reason, has not withheld employment taxes with respect to you, and you are later determined retroactively to have been a common-law employee of Sun, whether by Sun, a governmental agency or a court, you will nevertheless be ineligible to receive Plan benefits.

Notwithstanding any other provision of the Plan to the contrary, if you were a Storage Technology Corporation ("StorageTek") employee who received severance benefits as a result of the acquisition of StorageTek by Sun, you will not be eligible for some or all of the benefits under the Plan for a period of time, as set forth in your offer letter from Sun dated on or around August 5-10, 2005.

Conditions For Receiving Plan Benefits

You will receive Plan benefits if you are an Eligible Employee and meet all of the following conditions:

- You receive a formal written notice that states the date your employment will terminate and that your termination is because of a Workforce Reduction or Involuntary Termination ("Termination Letter");
- You abide by any written terms and requirements that Sun may establish as a condition to your receiving Plan benefits; and
- For Severance Benefits only, you sign the Release and Waiver Agreement within a reasonable period of time (as determined by Sun in its sole discretion) after your employment termination date and do not revoke the Release and Waiver Agreement within the seven (7) calendar day revocation period.

"Workforce Reduction" for purposes of this Plan means your employment is terminated because of the elimination or coordinated reduction of jobs within your group, division, department or branch due to a corporate transaction or reorganization, technology change, funding reduction, reduced workload or similar occurrence (including an outsourcing arrangement). A Workforce Reduction also includes a Material Job Change. A Material Job Change means your job is re-leveled downward and Sun has determined, in its sole discretion, that the re-leveling constitutes a Material Job Change as described in the Global Compensation Treatment for Job Level Downgrades Policy (HR310).

"Involuntary Termination" for purposes of this Plan means termination of your employment by Sun for any reason except for Cause.

Conditions Under Which You Will Not Receive Plan Benefits

Even if you are an Eligible Employee, you will not receive Plan benefits if any of the following apply:

- You are terminated for Cause. "Cause" means (i) misconduct as described in Sun's Misconduct Policy (HR503) or (ii) documented unsatisfactory job performance. Sun shall make this determination in its sole discretion.
- You voluntarily terminate employment (including as a result of disability) even if you claim "constructive termination," prior to your termination date as set forth in your Termination Letter.
- You decline a written offer of a **"Comparable Job"** at Sun for which, in Sun's judgment, you are reasonably qualified. A **"Comparable Job"** is a job within 50 miles of your current job location at the same or higher salary/job grade as the current job and with at least the same total target cash compensation opportunity. A Comparable Job need not involve the same duties and responsibilities as your current job.
- You accept another regular job at Sun before your employment at Sun terminates.
- You are on an unpaid personal non-FMLA, non-Military Leave of Absence on the date of the Termination Letter.
- You begin working for another employer (whether regular or temporary) before your employment at Sun terminates. You are required to immediately notify Sun in writing if you begin another job prior to your termination date.
- Your job is re-leveled for any reason, for example, to reflect your current job duties and responsibilities or to reflect any changes in your job duties and responsibilities. A job re-leveling is not a Workforce Reduction unless Sun determines, in its sole discretion, that you have experienced a Material Job Change as defined above.
- For Severance Benefits only, you do not timely sign a Release and Waiver Agreement or you timely sign a Release and Waiver Agreement but you revoke it within the seven calendar day revocation period.

Outsourcing Situations

Additional eligibility requirements apply if your job is eliminated due to outsourcing. Outsourcing is the transfer of work, a function, a group or an organization at Sun to a vendor. The vendor (the **"Outsourcing Service Provider"**) may seek to hire Sun employees who were previously performing that function or who were members of the group being outsourced.

If your position is outsourced, you will be able to receive Plan benefits, but only if all the following apply:

- You are an Eligible Employee (described above).
- You do not receive an offer of a Comparable Outsource Job, which is Regular Employment. A **"Comparable Outsource Job"** is a job at the Outsourcing Service Provider for which you are qualified, providing the same level of base pay or higher as your Sun job, and which is not anticipated, pursuant to the outsourcing agreement between Sun and the Outsourcing Service Provider, to require you to relocate to a job location more than 50 miles away from your Sun job location within the first 12 months of your employment with the Outsourcing Service Provider. For purposes of the Plan, if you participate in the iWork program, Sun job location means your home if you are a home assigned employee or the location of your mailstop if you are a flexible employee. If you work from home or a flexible office based on any arrangement outside of the iWork program, your Sun mailstop is your job location. For purposes of the Plan, **"Regular Employment"** is employment with the Outsourcing Service Provider that is on the same terms and conditions as those provided to their other employees and that is anticipated to be ongoing for an indefinite period. If you are currently working part-time for Sun and you are offered a full-time job by the Outsourcing Service Provider *or* you are offered a job by the Outsourcing Service Provider that is outside the outsourcing agreement between the Outsourcing Service Provider and Sun (i.e., your job would not support Sun), you will not be considered to have received an offer of a Comparable Outsource Job, which is Regular Employment.
- You fulfill all the regular duties of your Sun job from the date of the outsourcing notice until your last day of work (which may be prior to your termination date) as set forth in the Termination Letter. For purposes of the Plan, outsourcing notice is a written notice of termination due to outsourcing, which does not contain the date your employment will terminate.
- You meet all the Conditions For Receiving Plan Benefits (described above).

You will be ineligible to receive Plan benefits if:

- You receive an offer of a Comparable Outsource Job, which is Regular Employment,
- You accept an offer of a Comparable Outsource Job, which is Short-Term Employment (for purposes of the Plan, Short-Term Employment is employment with the Outsourcing Service Provider that is anticipated, at the time of the job offer, to last less than 12 months), with the Outsourcing Service Provider and the outsourcing agreement between the Outsourcing Service Provider and Sun provides that severance benefits equivalent to the severance benefits under this Plan will be paid by the Outsourcing Service Provider, or
- You meet any of the Conditions Under Which You Will Not Receive Plan Benefits (described above).

Notification Benefits

You need not sign a Release and Waiver Agreement in order to be eligible for Notification Benefits.

If you are an Eligible Employee and you receive a written Termination Letter that your employment will terminate, you will receive the following Notification Benefits:

- **Notification Pay.** You will remain employed for sixteen (16) weeks following the date of your Termination Letter. During this sixteen (16) week period, you will receive your regularly bi-weekly Pay (defined below under Severance Benefits) and your Sun Flex benefits will continue, but you are not required to work during this time.
- **Employment Transition Services** (career service assistance) for six (6) months. Employment Transition Services become available to you on the date of your Termination Letter and must be started no later than your employment termination date in order to receive the full benefit.

Severance Benefits

When you receive a Termination Letter, you may choose to sign a Release and Waiver Agreement in order to also receive Severance Benefits. You will have at least **45 calendar days** after your employment termination date to sign the Agreement. If you do not sign and return to Sun a Release and Waiver Agreement within a reasonable period of time (as determined by Sun in its sole discretion) after your employment termination date or you subsequently revoke the Agreement during the seven (7) calendar day revocation period, you will not be eligible to receive the Severance Payment and the payment of COBRA Premiums described below. You may not sign the Release and Waiver Agreement prior to your employment termination date.

You will receive the following benefits on the second Friday after Sun receives your signed Release and Waiver Agreement and the revocation period has ended (or as soon as administratively practical thereafter):

- **Severance Payment.** This is a lump sum payment equal to four (4) weeks Pay (defined below) for each Year of Service (defined below), up to a maximum determined by your Position (defined below) plus sixteen (16) or thirty-two (32) weeks Pay determined by your Position, and
- **COBRA Premiums**. Your existing coverage under Sun's group health plan (and, if applicable, the existing group health coverage for your eligible dependents) will end on the date on which your employment terminates. You and your eligible dependents may then be eligible to elect temporary continuation coverage under Sun's group health plan in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"). If you are eligible for a Severance Payment and elect COBRA continuation coverage, Sun will pay your COBRA Premiums (defined below) for a period equal to the number of weeks of

Pay you will receive as a Severance Payment (not to exceed the maximum period of COBRA coverage). After such period of Sun-paid coverage, you (and, if applicable, your eligible dependents) may continue COBRA coverage at your own expense in accordance with COBRA. No provision of the Plan will affect the continuation coverage rules under COBRA. Therefore, the period during which you must elect to continue Sun's group health plan coverage under COBRA, the length of time during which COBRA coverage will be made available to you, and all your other rights and obligations under COBRA will be applied in the same manner that such rules would apply in the absence of the Plan.

In order that Plan benefits will not constitute a deferral of compensation under Section 409A of the Internal Revenue Code, Notification Pay and the Severance Payment will be paid no later than the later of (i) March 15 following the calendar year in which such payments are no longer subject to a substantial risk of forfeiture or (ii) September 15 following Sun's fiscal year in which such payments are no longer subject to a substantial risk of forfeiture. Such payments will be considered to be no longer subject to a substantial risk of forfeiture on the date of your Termination Letter (i.e., the date you first have a legally binding right to the Plan benefits). Furthermore, in no event may Employment Transition Services and payment of COBRA Premiums continue beyond December 31 of the second calendar year following the calendar year in which you separate from service. You are deemed to have separated from service on the date you work less than twenty percent (20%) of your average work schedule during the preceding three (3) full calendar years (or, if you were employed by Sun for less than three (3) years, such lesser period). The determination of when you have separated from service will be made by Sun in its sole discretion in accordance with Section 409A of the Internal Revenue Code and the regulations promulgated thereunder.

"Year of Service" for purposes of this Plan means a full or partial year of service with Sun prior to your employment termination date. If you are a rehired employee, prior service at Sun will be counted as Year of Service provided that the prior service period exceeded the period when you were not employed by Sun. Years of Service includes up to seven (7) (ten (10) for former employees of Procom Technology, Inc.) years of service credit for service with a predecessor employer that was acquire by Sun; however, the service credit limit will not apply to former employees of Storage Technology Corporation and SeeBeyond Technology Corporation. A partial year of service will be treated as a full year of service.

"COBRA Premiums" for purposes of this Plan are the COBRA premiums that you would have to pay to continue for a certain period of time, the medical, dental, and/or vision coverage you had immediately prior to terminating employment.

"Pay" for purposes of this Plan (other than for sales-related incentive based positions) means your base pay as of the date of the Termination Letter, which does not include car allowance, draws, spifs, bonuses or any non-base compensation. **"Pay"** for sales-related incentive based positions is based on the On-Target Earnings rate (OTE) effective on the date of the Termination Letter.

"Position" for purposes of this Plan means your position as either a member of the ELT or a Vice President who is not a member of the ELT on the date of the Termination Letter as recorded in Sun's HR Database.

Example of Calculation of Severance Payment

Assume you are a Vice President with eight years of service. The calculation of your Severance Payment is as follows:

16 weeks Pay based on the Pay you would have received had you worked for those 16 weeks, plus 20 weeks Pay*, for a total of 36 weeks of Pay.

*4 weeks Pay per Year of Service x 8 years = 32 weeks but the maximum allowed payment based on Years of Service is 20 weeks Pay. The 16 weeks of Pay is not included in calculating the maximum payment based on Years of Service.

Sales-Related Incentive Based Positions

If you are in a sales-related incentive based position, commission earnings end effective the date of your Termination Letter. Base pay will be used to determine the payment of unused, accrued vacation in your final paycheck.

Obligation to Repay Sun

If you are reemployed by Sun (in any capacity) before the end of the number of weeks used to determine your Severance Benefits, you must repay to Sun the portion of your Severance Payment for the period that you have been reemployed.

For example, if you are a Vice President with eight years of service, you would have received 36 weeks of Pay. If you were then reemployed by Sun 4 weeks following your employment termination date, you would be required to repay to Sun an amount calculated as follows:

36 weeks of Severance Payment paid minus 4 weeks of actual unemployment equals 32 weeks of Severance Payment to be repaid to Sun.

Reduction of Other Benefits

Any Notification Pay received under this Plan will reduce the amount of any short term and long term disability benefits you are entitled to receive under the Sun Microsystems, Inc. Comprehensive Welfare Plan.

Taxes and Other Deductions

Sun will withhold all appropriate federal, state, local, income and employment taxes from your Plan benefit payments. Contributions to Sun's 401(k) plan and employee stock purchase plan will not be deducted from your Severance Payment or any Notification Pay paid after your employment termination date.

Bonus Programs

The Plan does not change the terms of any bonus program for which you may have been eligible at the time of your termination with Sun.

Accordingly, if you are eligible for a bonus payment under a program operated on a quarterly or fiscal year basis (such as SMI Bonus) and terminate employment prior to the last day of a quarter or fiscal year, you will not be eligible to receive the bonus for the quarter or fiscal year in which you terminate employment, except to the extent the bonus program provides otherwise. Unless the bonus program provides otherwise, bonus program payments will not be prorated for a partial quarter's or year's participation.

Disability Prior to Employment Termination

If you become disabled after receiving a Termination Letter but before you terminate employment, your employment termination date will not change. You should contact SunDial to discuss the employment disability benefits for which you may be eligible.

Death Prior to Employment Termination

If you die after receiving a Termination Letter but before you sign the Release and Waiver Agreement, neither you nor your estate will be entitled to any further Plan benefits.

Leaves of Absence

If you are on a full-time Medical, FMLA, State Family Care Leave or Military Leave and your job is part of a Workforce Reduction, you may, in Sun's sole discretion, be given your Termination Letter either during your leave or at the end of your leave. If you receive the Termination Letter at the end of your leave of absence, you will receive the Plan benefits for which you are eligible and your employment will be terminated sixteen (16) weeks after your leave of absence ends. If you receive the Termination Letter while on leave, you may choose to (i) end your leave early and terminate your employment after sixteen (16) weeks (you will receive the Plan benefits for which you are eligible) or (ii) continue your leave (at the end of your leave, you will receive the Plan benefits for which you are eligible and your employment will be terminated sixteen (16) weeks after your leave of absence ends). In no event will your employment termination date extend beyond 24 months after your Medical Leave began. If you are on an intermittent Medical, FMLA or State Family Care Leave, the provisions of this section will not apply to you and your employment will be terminated on the employment termination date indicated on the Termination Letter.

Employees on leaves of absence who are eligible to receive Plan benefits at the end of their leave, will be covered by the terms of the Plan in effect as of the date their positions were designated by Sun to be part of a Workforce Reduction.

SUN MICROSYSTEMS, INC.

U.S. VICE PRESIDENT INVOLUNTARY SEPARATION PLAN
SUMMARY OF PLAN BENEFITS

To receive the Severance Payment and Payment of COBRA Premiums, the Release and Waiver Agreement must be signed and not revoked. See Important Notes at the end of Summary.

SALARY/JOB GRADE	*NOTIFICATION PAY*	*EMPLOYMENT TRANSITION SERVICES*	*SEVERANCE PAYMENT*	*PAYMENT OF COBRA PREMIUMS*
Vice President	16 weeks of Pay	6 months career service assistance	16 weeks Pay plus 4 weeks Pay per Year of Service up to 20 weeks	16 weeks of COBRA premiums plus 4 weeks of COBRA premiums per Year of Service up to 20 weeks
Executive Leadership Team	16 weeks of Pay	6 months career service assistance	32 weeks Pay plus 4 weeks Pay per Year of Service up to 32 weeks	32 weeks of COBRA premiums plus 4 weeks of COBRA premiums per Year of Service up to 32 weeks

IMPORTANT NOTES TO SUMMARY OF PLAN BENEFITS

NOTIFICATION PAY	*EMPLOYMENT TRANSITION SERVICES*	*SEVERANCE PAYMENT*	*PAYMENT OF COBRA PREMIUMS*
1. A Signed Release and Waiver Agreement is not required. 2. Calculated as number of days Pay (base pay or OTE, as applicable). "Pay" has the same meaning as used for Severance Payment.	1. Career service assistance will be provided by an agency designated by Sun. 2. Employment Transition Services become available to you on the date of the Termination Letter and must be started no later than your employment termination date in order to receive the full benefit. 3. A signed Release and Waiver Agreement is not required. 4. Instructions on initiating Employment Transition Services is provided with the Termination Letter.	1. Lump sum Severance Payment paid after Sun receives signed Release and Waiver Agreement and period for revoking Agreement has ended. 2. "Pay" (other than for sales-related incentive based positions) means base pay and does not include any non-base compensation. 3. "Pay" for sales-related incentive based positions is based on on-target earnings (OTE) effective on the date of the Termination Letter. 4. "Years of Service" for calculating benefits means each full or partial year of service with Sun prior to your employment termination date. 5. The 16 weeks/32 weeks additional payment is not included for purpose of calculating the maximum payment based on Years of Service.	1. If you elect COBRA coverage, your COBRA premiums will be paid after Sun receives signed Release and Waiver Agreement and period for revoking Agreement has ended. 2. "Years of Service" for calculating benefits means each full or partial year of service with Sun prior to your employment termination date. 3. The 16 weeks/32 weeks additional period for payment of COBRA premiums is not included for purpose of calculating the maximum period for payment of COBRA premiums based on Years of Service.

Plan Operation, Administration and General Provisions

Other Benefit Plans/Agreements

Your rights and participation in any other Sun benefit plan at termination of employment are governed solely by the terms of those other plans. Amounts you receive under the Plan will be reduced by any pay in lieu of notice you receive under the Worker Adjustment and Retraining Notice Act ("WARN"), if any, and by any other type of severance (or similar) payment you receive under any plan or agreement (including any change of control agreement), if any (including any payments pursuant to a Sun foreign subsidiary's or an acquired company's plan or agreement) or as required by law.

Amendment and Termination

Sun reserves the right to modify, suspend or terminate the Plan at any time and for any reason. Any action amending or terminating the Plan shall be in writing and shall be approved by the Leadership and Development Compensation Committee of the Board of Directors of Sun.

Unfunded Plan

All Plan benefits are paid from Sun's general funds, and each participant is an unsecured general creditor of Sun. Nothing contained in the Plan creates a trust fund of any kind for your benefit or creates any fiduciary relationship between you and Sun with respect to any of Sun's assets. Sun is under no obligation to fund the benefits provided under the Plan prior to payment.

Plan Benefits Cannot Be Assigned

The rights of any person to any benefit under the Plan may not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including bankruptcy, garnishment, attachment or other creditor's process. Any act in violation of this rule shall be void.

No Employment Rights

Nothing in the Plan may be deemed to give any individual a right to remain employed by Sun or affect Sun's right to terminate an individual's employment at any time, with or without cause.

Legal Construction

The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and, to the extent not preempted by ERISA, California law. If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

Plan Administrator

Sun is the "Plan Administrator" of the Plan as that term is used in ERISA. Sun has full discretionary authority to administer and interpret the Plan, including the exclusive right to adopt rules and procedures to implement the Plan, to interpret in its sole discretion, provisions of the Plan, to decide any questions in connection with the administration of the Plan, or relating to any claim for Plan benefits, including, whether an individual is eligible for Plan benefits and the amount of Plan benefits. Sun may delegate its responsibilities to other persons, which includes delegation of discretion. Subject to the claims and appeal procedures, the decisions of Sun and its delegatees relating to the Plan are final and binding on all persons.

Claims and Appeal Procedures

If you disagree with Sun's determination of the amount of your benefits or with any other decision Sun may have made regarding your interest in the Plan, you may file a claim with Sun. You must send your claim in writing to: Director, Executive Compensation – U.S. Vice President Involuntary Separation Plan, Sun Microsystems, Inc., 4230 Network Circle, M/S USCA23-106, Santa Clara, CA 95054. You should file the claim as soon as possible, but no later than one (1) year after the determination /decision.

In the event that your claim for benefits is denied in whole or in part, Sun must provide you written or electronic notification of the denial of the claim, and of your right to appeal the denial. The notice of denial will be set forth in a manner designed to be understood by you, and will include (i) the specific reason or reasons for the denial, (ii) reference to the specific Plan provisions upon which the denial is based, (iii) a description of any information or material that Sun needs to complete the review and an explanation of why such information or material is necessary, and (iv) an explanation of the Plan's appeal procedures and the time limits applicable to such procedures, including a statement of your right to bring a civil action under Section 502(a) of ERISA following a denial on appeal. This notice will be given to you within 90 calendar days after Sun receives the claim, unless special circumstances require an extension of time – in which case Sun has up to an additional 90 calendar days for processing the claim. If an extension of time for processing is required, notice of the extension will be furnished to you before the end of the initial 90-day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which Sun expects to render its decision on the claim.

If your claim for benefits is denied, in whole or in part, you (or your authorized representative) may appeal the denial by submitting a written appeal to the Appeal Committee within 60 calendar days after you receive the denial. If you fail to appeal a

denial within the 60-day period, Sun's determination will be final and binding. If you appeal to the Appeal Committee, you (or your authorized representative) may submit comments, documents, records and other information relating to your claim for benefits. You may request (free of charge) reasonable access to, and copies of, all documents, records, and other information relevant to your claim.

The Appeal Committee will make a decision on each appeal no later than 60 calendar days following receipt of the appeal. If special circumstances require an extension of time for processing the appeal, the Appeal Committee will make a decision on the appeal no later than 120 calendar days following receipt of the appeal. If an extension for review is required, notice of the extension will be furnished to you before the extension begins. The extension notice will indicate the special circumstances requiring an extension and the date by which the Appeal Committee expects to render a decision. The Appeal Committee will give written or electronic notice of its decision to you after its decision is made. In the event that the Appeal Committee confirms the denial of the claim for benefits in whole or in part, the notice will outline, in a manner calculated to be understood by you, (i) the specific reason or reasons for the decision, (ii) reference to the specific Plan provisions upon which the decision is based, (iii) a statement that you may request (free of charge) reasonable access to, and copies of, all documents, records, and all other information relevant to your claim, and (iv) a statement of your right to bring an action under Section 502(a) of ERISA.

No legal action for benefits under the Plan may be brought until you (i) have submitted a written claim for benefits in accordance with the procedures described above, have been notified by Sun that the claim is denied, have filed a written appeal in accordance with the appeal procedures described above, and have been notified that the Appeal Committee has denied the appeal, or (ii) Sun or the Appeal Committee fail to follow these procedures. No legal action may be commenced or maintained against the Plan, Sun or the Appeal Committee more than two (2) years after the Appeal Committee denies your appeal or Sun or the Appeal Committee fail to follow these procedures.

If you wish to take legal action after exhausting the appeal procedures, you may serve process on Sun at the address indicated in the section below entitled "Plan Information."

Plan Information

Plan Governed by ERISA

The Plan is an employee welfare benefit plan subject to ERISA. The Plan is subject to most of the provisions of Title I of ERISA. However, it is not subject to Title IV of ERISA, which includes the plan termination insurance provisions.

Address of Sun

The principal executive office of Sun Microsystems, Inc. is 4150 Network Circle, Santa Clara, California 95054. Its telephone number is (650) 960-1300.

Identification Numbers

Sun's Employer Identification Number (EIN) is 94-2805249. The Plan Number assigned to the Plan is 541.

Type of Plan

The Plan is a welfare benefit plan providing special severance benefits to eligible employees. All benefits under the Plan are paid directly by Sun to participants.

Plan Year

The Plan's year ends on December 31.

Service of Process

The Plan's agent for service of legal process is:

General Counsel
Legal Department
Sun Microsystems, Inc.
4120 Network Circle, MS USCA 12-202
Santa Clara, CA 95054

Statement of ERISA Rights and Protections

As a participant in the Sun Microsystems, Inc. U.S. Vice President Involuntary Separation Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all plan participants are entitled to:

Receive Information About your Plan and Benefits

Examine, without charge, at the plan administrator's office - and at other specified locations - all documents governing the Plan and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the plan administrator, copies of documents governing the operation of the plan, copies of the latest annual report (Form 5500 Series) and updated summary plan description (there may be a reasonable charge for the copies).

Prudent Actions by Plan Fiduciaries

In addition to creating rights for plan participants, ERISA imposes obligations on those responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including Sun or any other individual, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report from the plan administrator and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to $110 a day until you receive them, unless the materials were not sent because of reasons beyond the administrator's control. If your claim for benefits is denied or ignored, in whole or in part, and you have been through the Plan's appeal procedures, you may sue in a state or Federal court. If it should happen that plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you sued to pay these legal costs and fees. If you lose, the court may order you to pay these costs and fees (for example, if it finds your claim is frivolous).

Assistance With Your Questions

If you have questions about the Plan, you should contact the plan administrator. If you have questions about this statement or your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C., 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Execution

To record the adoption of the Plan effective May 1, 2006 as set forth herein, Sun Microsystems, Inc. has caused its authorized representative to sign this document the _____ day of May, 2006.

Sun Microsystems, Inc.

By: _____

Printed Name: William N. MacGowan

Title: Executive Vice President People and Places
and Chief Human Resources Officer

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Exhibit 10.104

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("AGREEMENT") is made as of this_____ day of _____ , 20__ , by and between Sun Microsystems, Inc., a Delaware corporation (the "COMPANY"), and _____("INDEMNITEE").

WHEREAS, the Company and Indemnitee recognize the significant cost of directors' and officers' liability insurance and the general reductions in the coverage of such insurance;

WHEREAS, the Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting officers and directors to expensive litigation risks at the same time as the coverage of liability insurance has been severely limited; and

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve as officers and directors of the Company and to indemnify its officers and directors so as to provide them with the maximum protection permitted by law.

NOW, THEREFORE, in consideration for Indemnitee's services as an officer or director of the Company, the Company and Indemnitee hereby agree as follows:

1. INDEMNIFICATION.

(a) Third Party Proceedings. The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or any alternative dispute resolution mechanism, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee in connection with such action, suit or proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any
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criminal action or proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) Proceedings By or in the Right of the Company. The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made

a party to any threatened, pending or completed action or suit by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such action or suit if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(c) Mandatory Payment of Expenses. To the extent that Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Subsections (a) and (b) of this Section 1, or in defense of any claim, issue or matter therein, Indemnitee shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by Indemnitee in connection therewith.

2. CONSIDERATION. The Company acknowledges that good and valuable consideration, including services as a director has been received from the Indemnitee.

3. EXPENSES; INDEMNIFICATION PROCEDURE.

(a) Advancement of Expenses. The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action, suit or proceeding referenced in Section 1(a) or (b) hereof (but not amounts actually paid in settlement of any such action, suit or proceeding). Indemnitee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby. The advances to be made hereunder shall be paid by the Company to Indemnitee within thirty (30) days following delivery of a written request therefor by Indemnitee to the Company.

(b) Notice/Cooperation by Indemnitee. Indemnitee shall, as a condition precedent to his right to be indemnified under this Agreement, give the Company notice in writing as soon as practicable of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the President of the Company at the

address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). Notice shall be deemed received three business days after the date postmarked if sent by domestic certified or registered mail, properly addressed, five business days if sent by airmail to a country outside of North America; otherwise notice shall be deemed received when such notice shall actually be received by the Company. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) Procedure. Any indemnification and advances provided for in Section 1 and this Section 3 shall be made no later than thirty (30) days after receipt of the written request of Indemnitee. If a claim under this Agreement, under any statute, or under any provision of the Company's Certificate of Incorporation or

Bylaws providing for indemnification, is not paid in full by the Company within thirty (30) days after a written request for payment thereof has first been received by the Company, Indemnitee may, but need not, at any time thereafter bring an action against the Company to recover the unpaid amount of the claim and, subject to Section 14 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. However, Indemnitee shall be entitled to receive interim payments of expenses pursuant to Subsection 3(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Company contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its stockholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including it Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) Notice to Insurers. If, at the time of the receipt of a notice of a claim pursuant to Section 3(b) hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) Selection of Counsel. In the event the Company shall be obligated under Section 3(a) hereof to pay the expenses of any proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently

incurred by Indemnitee with respect to the same proceeding, provided that (i) Indemnitee shall have the right to employ his counsel in any such proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company.

4. ADDITIONAL INDEMNIFICATION RIGHTS; NONEXCLUSIVITY.

(a) Scope. Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Certificate of Incorporation, the Company's Bylaws or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute, or

rule which expands the right of a Delaware corporation to indemnify a member of its board of directors or an officer, such changes shall be, ipso facto, within the purview of Indemnitee's rights and Company's obligations, under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify a member of its board of directors or an officer, such changes, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) Nonexclusivity. The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its Bylaws, any agreement, any vote of stockholders or disinterested Directors, the General Corporation Law of the State of Delaware, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though he may have ceased to serve in such capacity at the time of any action, suit or other covered proceeding.

5. PARTIAL INDEMNIFICATION. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by him in the investigation, defense, appeal or settlement of any civil or criminal action, suit or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

6. MUTUAL ACKNOWLEDGEMENT. Both the Company and Indemnitee acknowledge that in certain instances, Federal law or applicable public policy may prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

7. OFFICER AND DIRECTOR LIABILITY INSURANCE. The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. In all policies of director and officer liability insurance, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Company.

8. SEVERABILITY. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in

this Section 8. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

9. EXCEPTIONS. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) Claims Initiated by Indemnitee. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 of the Delaware General Corporation Law, but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors has approved the initiation or bringing of such suit; or

(b) Lack of Good Faith. To indemnify Indemnitee for any expenses incurred by the Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by the Indemnitee in such proceeding was not made in good faith or was frivolous; or

(c) Insured Claims. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and

amounts paid in settlement) which have been paid directly to Indemnitee by an insurance carrier under a policy of officers' and directors' liability insurance maintained by the Company.

(d) Claims Under Section 16(b). To indemnify Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

10. CONSTRUCTION OF CERTAIN PHRASES.

(a) For purposes of this Agreement, references to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an

employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

11. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

12. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns.

13. ATTORNEYS' FEES. In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made

in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action were made in bad faith or were frivolous.

14. NOTICE. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

15. CONSENT TO JURISDICTION. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

16. CHOICE OF LAW. This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware without regard to the conflict of law principles thereof.

17. PERIOD OF LIMITATIONS. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

18. SUBROGATION. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

19. AMENDMENT AND TERMINATION. No amendment, modification, termination or

cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

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20. INTEGRATION AND ENTIRE AGREEMENT. This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto, including, but not limited to that certain Indemnification Agreement dated June 30, 1987, entered into between the Company and certain directors of the Company.

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

SUN MICROSYSTEMS, INC.

By:

Print Name and Title

AGREED TO AND ACCEPTED:

INDEMNITEE:

_____
Signature

_____
Print Name and Title

Address: _____

_____

_____

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EX-10.1 3 rrd214780_25338.htm CHIEF EXECUTIVE OFFICER BONUS TERMS FOR FY09

Chief Executive Officer Bonus Terms for FY09 Under the Section 162(m) Executive Officer Performance-Based Bonus Plan

Plan Objective

The Chief Executive Officer Bonus Terms for fiscal year 2009 under the Sun Microsystems, Inc. ("Sun" or the "Company") Section 162(m) Executive Officer Performance-Based Bonus Plan (the "Plan") are designed to compensate the Chief Executive Officer (the "CEO") for contributions to Sun during the Company's fiscal year 2009. The Plan provides for annual cash bonus compensation based on achievement of objectively determinable performance goals against the Plan measures. The Plan is intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code (the "Code").

Plan Year/Performance Period

The Plan year is the Company's fiscal year 2009. The performance period is the Company's fiscal year 2009.

Eligibility

These terms apply to the person serving as the CEO as of July 1, 2008. In order to receive a bonus payment with respect to the Plan year, the participant must be serving as the CEO as of the last business day of the fiscal year, except as provided below.

If the CEO retires, terminates employment due to disability, or dies during the performance period, the CEO may receive a prorated bonus (subject to the sole discretion of the Leadership Development and Compensation Committee (the "LDCC")) for the achievement of the performance goals for the portion of the performance period that the CEO provided services to Sun. If the CEO leaves Sun prior to the end of the fiscal year for any other reason, including but not limited to a reduction in force, voluntary resignation, or termination by Sun, the CEO will be ineligible for a bonus payment with respect to the performance period.

Annual Bonus Funding Percentage and Annual Maximum Bonus Funding Pool

The annual bonus funding percentage (the "Bonus Funding Percentage") under the Plan is 200% of the CEO's Annual Base Salary (as defined below) for fiscal year 2009 for each Company Performance Measure (as defined below), as follows:

Fiscal Year	Company Performance Measure	Bonus Funding Percentage
FY09	Revenue	200%
FY09	Operating Income	200%

The Plan funding is based on Company performance goals against the following equally weighted, independently measured, and independently funded financial measures (the "Company Performance Measures"):

1. Fiscal Year 2009 Revenue Achievement (weighted 50%): If the threshold for the fiscal year 2009 Revenue Plan is achieved, the Plan funds at the Bonus Funding Percentage of 200% multiplied by the CEO's Annual Base Salary (capped at $2 million);

2. Fiscal Year 2009 Operating Income Achievement (weighted 50%): If the threshold for the fiscal year 2009 Operating Income Plan is achieved, the Plan funds at the Bonus Funding Percentage of 200% multiplied by the

CEO's Annual Base Salary (capped at $2 million).

Calculating Maximum Available Bonus Pool

Company Performance Measure	Amount funded if thresholds are achieved
FY09 Revenue	200% of Annual Base Salary, capped at $2 million
FY09 Operating Income	200% of Annual Base Salary, capped at $2 million

* Total maximum bonus funding under the Plan is capped at $4 million (the "Maximum Funded Amount").

Company Performance Measures Definition

Revenue: For purposes of calculating the bonus payment under the fiscal year 2009 Plan, "Revenue" is defined as net revenue as reported in the Company's consolidated operations analysis, adjusted to exclude certain items set forth in a schedule approved by the LDCC, as applicable.

Operating Income: For purposes of calculating the bonus payment under the fiscal year 2009 Plan, "Operating Income" is defined as operating income, calculated on a GAAP basis, adjusted to exclude certain items set forth in a schedule approved by the LDCC, as applicable.

Annual Strategic Goals for FY09: The annual strategic goals for FY09 are set forth in a schedule approved by the LDCC.

Annual Base Salary

Annual Base Salary with respect to fiscal year 2009 ("Annual Base Salary") will be the gross annual base salary as approved by the LDCC during the first fiscal quarter of the fiscal year relating to the Plan.

Annual Base Salary excludes expense reimbursements, car/transportation allowances, expatriate allowances, or other commissions and bonuses paid during fiscal year 2009.

Actual Bonus Awards

Upon conclusion of the performance period, the actual performance of the Company Performance Measures will be assessed against the thresholds for each Company Performance Measure. If the threshold level of performance is achieved for one or both of the Company Performance Measures, the bonus pool will fund accordingly up to the Maximum Funded Amount. The maximum bonus award that CEO may receive under the Plan for fiscal year 2009 is capped at $4,000,000.

The actual bonus award payable to the CEO is subject to the review by the LDCC of the CEO's overall performance for the respective performance period. In determining the CEO's actual bonus award, the LDCC, in its sole discretion, will review the performance against the Company Performance Measures and the Annual Strategic Goals, as well as consider other factors deemed appropriate for assessing the performance of the CEO, including individual and development goals established for the CEO by the LDCC.

The CEO's annual bonus target percentage for fiscal year 2009 if 50% of the Maximum Funded Amount (the "Bonus Target Percentage"). However, the LDCC, in its sole discretion and based on the CEO's performance, may award an actual bonus to the CEO in an amount between 0 - 100% of the Maximum Funded Amount. The Maximum Funded Amount is subject to reduction by negative discretion of the LDCC resulting in a decrease of the Maximum Funded Amount. In no event may the Maximum Funded Amount be increased.

Factors which the LDCC may consider in determining the actual bonus award may include, but are not limited to:

- **Company Performance Measures;**
- **Annual Strategic Goals for Fiscal Year 2009; and**
- **Individual goals and other development goals as noted by the LDCC in the FY08 CEO review**

Annual Strategic Goals for FY09 and individual and other development goals are set forth in a schedule approved by the LDCC.

Bonus Payment

The CEO bonus under the Plan is measured and paid on an annual basis. In the U.S., bonus awards are taxable income, and will generally be paid within two and one-half (2.5) months after the close of the fiscal year and, in any case, within the qualifying Short-term Deferral Period pursuant to Code Section 409A. Bonuses are paid in accordance with local payroll schedules in countries outside the U.S and are subject to local and regional tax provisions.

Sample Bonus Calculation

For purposes of this calculation, assume Annual Base Salary is $1,000,000 and the Bonus Target Percentage is 50%. Also assume the 100% achievement of the threshold for each of the Company Performance Measures has been satisfied. As a result, the total Bonus Funding Percentage is assumed to be 400%.

Total Bonus Funding Percentage		400%
Annual Base Salary	X	$1,000,000
Total Bonus Funding Available	=	$4,000,000
Bonus Target Percentage	X	50%
Actual Bonus Payment	=	$2,000,000

Communication of Results

With respect to the performance period during fiscal year 2009, results will be communicated as soon as administratively feasible after the Company's fiscal year financial results are publicly announced.

Administration of the Plan

The LDCC administers the Plan. Members of the LDCC must qualify as outside directors under Section 162(m) of the Code. The LDCC determines the performance goals that must be achieved before the actual bonus awards are paid. After the end of the performance period, the LDCC certifies in writing the extent to which the pre-established performance goals actually were achieved.

General Provisions and Plan Governance

This Plan is in all respects subject to the terms, definitions and provisions of Sun's Section 162(m) Executive Officer Performance-Based Bonus Plan, which is incorporated herein by reference.

EX-10.3 4 dex103.htm CHANGES TO NAMED EXECUTIVE OFFICER FISCAL 2007 BASE SALARY AND BONUS TARGETS

Exhibit 10.3

Sun Microsystems, Inc.

Changes to Named Executive Officer Base Salary and Bonus Targets

Fiscal Year 2007

Approved by the Leadership Development and Compensation Committee on November 2, 2006

Name	Title	Base Salary	Bonus Target*
Crawford W. Beveridge**	Executive Vice President, Global Government Strategy	$567,000	85%
Michael A. Dillon	Executive Vice President, General Counsel and Secretary	$450,000	85%
William N. MacGowan	Chief Human Resources Officer and Executive Vice President, People and Places	$475,000	85%

* Expressed as a percentage of the Named Executive Officer's base salary.
** Mr. Beveridge is not currently an Executive Officer of the Company.

EX-10.20 14 dex1020.htm COMPENSATION TERMS FOR JONATHAN SCHWARTZ

Exhibit 10.20

Compensation Terms for Jonathan Schwartz

Mr. Schwartz will receive an annual base salary of $1,000,000 and his annual bonus target under Sun's 162(m) Executive Officer Performance-Based Bonus Plan (the "Bonus Plan") will be 200% of his annual base salary. Mr. Schwartz will also be granted, effective April 27, 2006, the following equity-based compensation under Sun's 1990 Long-Term Equity Incentive Plan (the "1990 Plan"):

- an option to purchase 2,000,000 shares of Sun Common Stock at an exercise price equal to the per-share fair market value on the date of grant, which shall vest at a rate of 20% per year over five years;
- 800,000 restricted stock units, all of which shall vest pursuant to certain performance criteria; and
- 1,500,000 restricted stock units, which shall vest on the one-year anniversary of the date of grant.

Mr. Schwartz will continue to participate in Sun's employee benefit programs, including Sun's Amended and Restated U.S. Vice President Severance Plan (the "VP Severance Plan").

Mr. Schwartz will also enter into Sun's standard form of Chief Executive Officer Change of Control Agreement, pursuant to which Mr. Schwartz will be eligible to receive three times his annual compensation in the event of a change of control, and shall continue to be a party to Sun's standard form of Indemnification Agreement.

Sun will cover reasonable expenses for personal security for Mr. Schwartz. The expense of such personal security will be imputed as income to Mr. Schwartz, for which Sun will provide a tax gross-up. Finally, Sun will provide Mr. Schwartz with private jet access for business and reasonable personal use. The expense of any personal private jet use will be imputed as income to Mr. Schwartz and he will be personally responsible for the associated taxes.

EX-10.19 13 dex1019.htm COMPENSATION TERMS FOR SCOTT MCNEALY

Exhibit 10.19

Compensation Terms for Scott McNealy

Mr. McNealy will continue to receive his current annual base salary and shall continue to be subject to his current bonus terms under the Bonus Plan through the remainder of fiscal year 2006. Effective on the first day of Sun's fiscal 2007, July 1, 2006, Mr. McNealy will receive an annual base salary of $1,000,000 and his annual bonus target under the Bonus Plan will be 150% of his annual base salary.

Mr. McNealy will also be granted, effective April 27, 2006, the following equity-based compensation under the 1990 Plan:

- an option to purchase 2,100,000 shares of Sun Common Stock at an exercise price equal to the per-share fair market value on the date of grant, which shall vest at a rate of 20% per year over five years; and
- 350,000 restricted stock units, which shall vest pursuant to certain performance criteria.

Mr. McNealy will continue to participate in Sun's employee benefit programs, including the VP Severance Plan. Mr. McNealy will also continue to be a party to Sun's standard forms of Chief Executive Officer Change of Control Agreement and Indemnification Agreement.

Mr. McNealy shall continue to be eligible for the Amended FY04 Officer Bonus Plan for the Chief Executive Officer. Under this plan, Mr. McNealy will receive a bonus of $625,000 for fiscal 2004 if Sun achieves three consecutive quarters of operating profitability and year over year revenue growth on or by the end of fiscal 2007.

Finally, Sun will continue to provide Mr. McNealy with private jet access for business use.

EX-10.1 2 dex101.htm AMENDMENT TO FY07 COMPENSATION TERMS - SCHWARTZ

Exhibit 10.1

Sun Microsystems, Inc.

Amendment to Compensation Terms for Jonathan I. Schwartz

Fiscal Year 2007

Approved by the Leadership Development and Compensation Committee on November 2, 2006

The expense of any personal private jet use will be imputed as income to Mr. Schwartz, for which Sun will provide a tax gross-up.

EX-10.2 3 dex102.htm AMENDMENT TO FY07 COMPENSATION TERMS - MCNEALY

Exhibit 10.2

Sun Microsystems, Inc.

Amendment to Compensation Terms for Scott G. McNealy

Fiscal Year 2007

Approved by the Leadership Development and Compensation Committee on November 2, 2006

Sun will provide Mr. McNealy with private jet access for business and reasonable personal use. The expense of any personal private jet use will be imputed as income to Mr. McNealy, for which Sun will provide a tax gross-up.