

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

Date of report (Date of earliest event reported): October 10, 2003

Eastman Kodak Company
(Exact name of registrant as specified in its charter)

New Jersey	1-87	16-0417150
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(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

343 State Street,
Rochester, New York 14650
(Address of Principal Executive Office) (Zip Code)

Registrant's telephone number, including area code (585) 724-4000

Item 5. Other Events and Regulation FD Disclosure.

On October 10, 2003, the Registrant completed the private placement of \$575 million of 3.375% Convertible Senior Notes due 2033 (the "Securities") to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933. The Securities were issued under an Indenture dated as of January 1, 1988 between the Registrant and The Bank of New York, as trustee (the "Trustee"), as supplemented by a First Supplemental Indenture thereto dated as of September 6, 1991, a Second Supplemental Indenture thereto dated as of September 20, 1991, a Third Supplemental Indenture thereto dated as of January 26, 1993, a Fourth Supplemental Indenture thereto dated as of March 1, 1993 and a Fifth Supplemental Indenture thereto dated as of October 10, 2003 (as so supplemented, the "Indenture"). The Registrant is filing as exhibits to this Current Report on Form 8-K certain agreements and instruments related to the foregoing transactions, which documents are listed on the exhibit list under Item 7 of this Form 8-K.

Item 7. Financial Statements and Exhibits

Exhibit No.

- (1) Purchase Agreement, dated October 7, 2003, between Eastman Kodak Company and Citigroup Global Markets Inc. and Lehman Brothers Inc., as initial purchasers and representatives of the several initial purchasers named in Schedule I thereto, relating to the issue and sale of the Securities.

- (4) I. Resolutions of the Committee of the Board of Directors of Eastman Kodak Company, adopted on October 7, 2003, establishing the terms of the Securities.

J. Fifth Supplemental Indenture, dated October 10, 2003, between Eastman Kodak Company and The Bank of New York, as Trustee.

- (99) Press release, dated October 8, 2003, announcing the pricing of the Securities.

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.

EASTMAN KODAK COMPANY

By: /s/ James M. Quinn

Name: James M. Quinn

Title: Assistant General
Counsel, Secretary

Date: October 10, 2003

EASTMAN KODAK COMPANY

\$500,000,000
3.375% Convertible Senior Notes Due 2033

PURCHASE AGREEMENT

New York, New York
October 7, 2003

Citigroup Global Markets Inc.
Lehman Brothers Inc.
as Representatives of the Initial Purchasers

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, NY 10013

c/o Lehman Brothers Inc.
399 Park Avenue
New York, NY 10022

Ladies and Gentlemen:

Eastman Kodak Company, a corporation organized under the laws of the State of New Jersey (the "Company"), proposes to issue and sell to the several initial purchasers named in Schedule I hereto (the "Initial Purchasers"), for whom you (the "Representatives") are acting as representatives, the respective principal amounts set forth in Schedule I hereto of its \$500,000,000 aggregate principal amount of 3.375% Convertible Senior Notes due 2033 (the "Firm Securities"). The Company also proposes to grant to the several Initial Purchasers an option to purchase up to an additional \$75,000,000 aggregate principal amount of such 3.375% Convertible Senior Notes due 2033 to cover over-allotments, if any (the "Option Securities" and, together with the Firm Securities, the "Securities"). The Securities will be issued pursuant to the Indenture dated as of January 1, 1988 (as heretofore supplemented, the "Base Indenture") between the Company and The Bank of New York, as trustee (the "Trustee"), as amended and supplemented by the Fifth Supplemental Indenture, to be dated as of October 10, 2003, between the Company and the Trustee (the "Fifth Supplemental Indenture" and, together with the Base Indenture, the "Indenture"). The Securities will be convertible into shares of the Company's common stock, par value \$2.50 per share (the "Common Stock"), in accordance with the terms of the Securities and the Indenture, at the initial conversion rate set forth in the Fifth Supplemental Indenture. The Securities have the benefit of a registration rights agreement (the "Registration Rights Agreement"), to be dated as of October 10, 2003, between the Company and the Initial Purchasers, pursuant to which the Company has agreed to register the Securities under the Securities Act of 1933, as amended (the "1933 Act"), subject to the terms and conditions therein specified. As used in this Agreement, the term "Operative Documents" means this Agreement, the Indenture, the Securities and the Registration Rights Agreement.

To the extent there are no additional parties listed on Schedule I other than you, the term Representatives as used herein shall mean you as the Initial Purchasers, and the terms Representatives and Initial Purchasers shall mean either the singular or plural as the context requires. The use of the neuter in this Agreement shall include the feminine and masculine wherever appropriate.

The sale of the Securities to the Initial Purchasers will be made without registration of the

Securities under the 1933 Act, in reliance upon exemptions from the registration requirements of the 1933 Act.

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum, dated October 6, 2003 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference therein, the "Preliminary Memorandum"), and a final offering memorandum, dated October 7, 2003 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference therein, the "Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company and the Securities. The Company hereby confirms that it has authorized the use of the Preliminary Memorandum and the Final Memorandum, and any amendment or supplement thereto, in connection with the offer and sale of the Securities by the Initial Purchasers. Unless otherwise stated to the contrary, any references herein to the terms "amend," "amendment" or "supplement" with respect to the Final Memorandum shall be deemed to refer to and include any information filed under the Securities Exchange Act of 1934, as amended (the "1934 Act"), subsequent to the date hereof which is incorporated by reference therein.

SECTION 1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Initial Purchaser as of the date hereof, as of the Closing Time (as defined below) and as of each Date of Delivery (as defined below), if any, as follows:

(a) The Preliminary Memorandum, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. At the date hereof and at the Closing Time (and, if any Option Securities are purchased, at the Date of Delivery), the Final Memorandum did not, and will not (and any amendment or supplement thereto, at the date thereof, at the Closing Time and at each Date of Delivery, if any, will not), contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty as to the information contained in or omitted from the Preliminary Memorandum or the Final Memorandum, or any amendment or supplement thereto, in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Initial Purchasers through the Representatives specifically for inclusion therein.

(b) Neither the Company, nor any of its Affiliates, as such term is defined in Rule 501(b) of Regulation D under the 1933 Act (an "Affiliate"), nor any person acting on its or their behalf has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, which is or will be integrated with the sale of the Securities under circumstances that would require the registration of the Securities under the 1933 Act or the qualification of the Indenture under the Trust Indenture Act of 1939 (the "1939 Act").

(c) Neither the Company, nor any of its Affiliates, nor any person acting on its or their behalf has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(d) The Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the 1933 Act.

(e) The Company is subject to and in full compliance with the reporting requirements of Section 13 or Section 15(d) of the 1934 Act.

(f) The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the Company (except with respect to commercial paper, ordinary course bank borrowings and with respect to the Company's 7.25% Senior Notes due 2013 and as contemplated by this Agreement).

(g) The Company has not taken, directly or indirectly, any action designed to cause or which has constituted or which might reasonably be expected to cause or result, under the 1934 Act or otherwise, in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(h) The information provided by the Company pursuant to Section 4(h) hereof will not, at the date thereof, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The documents incorporated or deemed to be incorporated by reference in the Final Memorandum, at the time they were or hereafter are filed with the Securities and Exchange Commission (the "Commission"), complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder, and, when read together with the other information in the Final Memorandum, at the time the Final Memorandum was issued and at the Closing Time (and, if any Option Securities are purchased, at the Date of Delivery), did not 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.

(j) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New Jersey with full corporate power and authority to own or lease, as the case may be, and to operate its properties and to conduct its business as described in the Final Memorandum, and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction which requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the condition (financial or other), business, properties, net worth or results of operations of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect"); each "significant subsidiary" of the Company, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the 1933 Act (each, a "Significant Subsidiary"), has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction in which it was chartered or organized with full power and authority (corporate or other) to own or lease, as the case may be, and to operate its properties and to conduct its business as described in the Final Memorandum, and is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction which requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect.

(k) The Company's authorized equity capitalization is as set forth in the Final Memorandum, and the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Memorandum; the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable; all the outstanding shares of capital stock or other interests of the Significant Subsidiaries held by the Company, directly or indirectly through other subsidiaries, have been duly and validly authorized and issued and, if applicable, are fully paid and non-assessable, and are owned of record by the Company or a subsidiary free and clear of any security interest, claim, lien or encumbrance.

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

(m) The Indenture has been duly authorized by the Company and, assuming due authorization, execution and delivery thereof by the Trustee, when executed and delivered by the Company, will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by

(i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is

considered in a proceeding at law or in equity), and will conform in all material respects to the description thereof in the Final Memorandum.

(n) The Registration Rights Agreement has been duly authorized by the Company and, when executed and delivered by the Company and the Initial Purchasers, will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity) and except as the indemnification or contribution obligations thereunder may be limited under applicable laws.

(o) The Securities have been duly authorized by the Company and, when executed and authenticated in accordance with the provisions of the Indenture and delivered and paid for by the Initial Purchasers, will have been duly executed and delivered by the Company and will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity), and will conform in all material respects to the description thereof in the Final Memorandum; and the Securities will be in the form contemplated by the Indenture and each registered holder thereof will be entitled to the benefits of the Indenture and the Registration Rights Agreement.

(p) Upon issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible at the option of the holder thereof into shares of Common Stock in accordance with the terms of the Securities and the Indenture. The shares of Common Stock issuable upon such conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action and such shares, when issued upon such conversion in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable. No holder of Common Stock will be subject to personal liability by reason of being such a holder, and the issuance of such shares upon such conversion or purchases will not be subject to the preemptive or other similar rights of any security holder of the Company.

(q) None of the Company and its subsidiaries is or, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Memorandum, will be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(r) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated herein or in the other Operative Documents, except such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Initial Purchasers in the manner contemplated herein and in the Final Memorandum and except as may be required under the 1933 Act or the 1939 Act in connection with the transactions contemplated by the Registration Rights Agreement.

(s) None of the issuance and sale of the Securities pursuant hereto, the issuance and sale of the shares of Common Stock issuable upon the conversion of the Securities, the execution and delivery by the Company of, and performance by the Company of its obligations under, the Operative Documents and the consummation of the transactions contemplated herein and in the Final Memorandum (including the use of the proceeds from the sale of the Securities as described in the Final Memorandum under the caption "Use of Proceeds"), will conflict with, result in a breach or violation of or constitute a default under or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to

(i) the charter or by-laws (or other similar documents) of the Company or any subsidiary, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any subsidiary is a party or is bound or to which their property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any subsidiary of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any subsidiary or any of their properties, except in the cases of clauses (ii) and (iii) above for any such conflict, breach, violation or default that would not reasonably be expected to have a Material Adverse Effect.

(t) Neither the Company nor any subsidiary is in violation or default of (i) any provision of its charter or bylaws (or other similar document), (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or such subsidiary or any of its properties, as applicable, except in the cases of clauses (ii) and (iii) above for any such violation or default that would not result in a Material Adverse Effect.

(u) No holders of securities of the Company have rights to the registration of such securities under the Shelf Registration Statement (as defined in the Registration Rights Agreement) or otherwise.

(v) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries or its or their property is pending or, to the best knowledge of the Company, threatened that (i) could reasonably be expected to have a Material Adverse Effect on the performance of this Agreement, the Indenture or the Registration Rights Agreement, or the consummation of any of the transactions contemplated hereby or thereby; or (ii) could reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the Final Memorandum (exclusive of any amendment or supplement thereto).

(w) The consolidated financial statements and schedules of the Company and its consolidated subsidiaries included in the Final Memorandum present fairly in all material respects the financial condition, results of operations and cash flows of the Company as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the 1933 Act and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as otherwise noted therein); the summary financial data set forth under the caption "Summary Consolidated Financial Information" in the Final Memorandum fairly present in all material respects, on the basis stated in the Final Memorandum, the information included therein.

(x) PricewaterhouseCoopers, LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries and delivered their report with respect to the audited consolidated financial statements and schedule incorporated by reference in the Final Memorandum, are independent public accountants with respect to the Company within the meaning of the 1933 Act and the rules and regulations of the Commission thereunder.

(y) No Significant Subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Significant Subsidiary's capital stock, from repaying to the Company any loans or advances to such Significant Subsidiary from the Company or from transferring any of such Significant Subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in or contemplated by the Final Memorandum (exclusive of any amendment or supplement thereto).

(z) The Company and each of its Significant Subsidiaries has fulfilled its obligations, if any, under the minimum funding standards of Section 302 and the regulations and published interpretations thereunder of the United States Employee Retirement Income Security Act of 1974, as amended ("ERISA"), with respect to each "pension plan" (as defined in Section 3(2) of ERISA and such regulations and published interpretations) in which employees of the Company and its Significant Subsidiaries are eligible to participate and, except as described in the Final Memorandum, each such plan is in compliance in all material respects with the presently applicable provisions of ERISA and such regulations and published interpretations; the Company and its Significant Subsidiaries have not incurred any unpaid liability to the Pension Benefit Guaranty Corporation (other than for the payment of premiums in the ordinary course) or to any such plan under Title IV of ERISA.

(aa) There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with the provisions of the Sarbanes-Oxley Act of 2002 and the Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act of 2002.

SECTION 2. Sale and Delivery to Initial Purchasers; Closing.

(a) Firm Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Initial Purchaser, severally and not jointly, and each Initial Purchaser, severally and not jointly, agrees to purchase from the Company, the principal amount of Securities set forth in Schedule I opposite the name of such Initial Purchaser, plus any additional principal amount of Securities which such Initial Purchaser may become obligated to purchase pursuant to the provisions of Section 8 hereof, at a purchase price equal to 97.50% of the principal amount of the Firm Securities, plus, accrued interest, if any, from October 10, 2003 to the Closing Time.

(b) Option Securities. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Initial Purchasers, severally and not jointly, to purchase the Option Securities at the same purchase price as the Initial Purchasers are to pay for the Firm Securities, plus accrued interest, if any, from October 10, 2003 to the Date of Delivery. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part from time to time upon notice by the Representatives to the Company setting forth the amount of Option Securities as to which the several Initial Purchasers are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Initial Purchasers, acting severally and not jointly, will purchase that proportion of the total amount of Option Securities then being purchased which the principal amount of Firm Securities set forth in Schedule I opposite the name of such Initial Purchaser bears to the total principal amount of Firm Securities, subject in each case to such adjustments as the Representatives in their discretion shall make to eliminate any sales or purchases of fractional securities.

(c) Payment. Payment of the purchase price for, and delivery of certificates for, the Securities shall be made at the offices of Sidley Austin Brown & Wood LLP, 787 Seventh Avenue, New York, NY 10019, or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 a.m. (Eastern time) on the third (fourth, if the pricing occurs after 4:30 p.m. (Eastern time) on any given day) business day after the date hereof (unless postponed in accordance with the provisions of Section 8), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Initial

Purchasers, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Representatives for the respective accounts of the Initial Purchasers of certificates for the Securities to be purchased by them. Delivery of the Securities shall be made through the facilities of The Depository Trust Company ("DTC") unless the Representatives shall otherwise instruct.

(d) Denominations; Registration. Certificates for the Securities shall be in global form and shall be in such denominations (\$1,000 or integral multiples thereof) and registered in such names as the Representatives may request in writing at least one full business day before the Closing Time or the relevant Date of Delivery, as the case may be. The global certificates for the Firm Securities and the Option Securities, if any, will be made available for examination and packaging by the Representatives in The City of New York not later than 10:00 a.m. (Eastern time) on the business day prior to the Closing Time or the relevant Date of Delivery, as the case may be.

SECTION 3. Offering by Initial Purchasers. Each Initial Purchaser, severally and not jointly, represents and warrants to and agrees with the Company that:

(a) Such Initial Purchaser is a qualified institutional buyer (as defined in Rule 144A under the 1933 Act)(a "QIB") with such knowledge and experience in financial and business matters as is necessary in order to evaluate the merits and risks of and investment in the Securities.

(b) It has not offered or sold, and will not offer or sell, any Securities except to those it reasonably believes to be QIBs and that, in connection with each such sale, it has taken or will take reasonable steps to ensure that the purchaser of such Securities is aware that such sale is being made in reliance on Rule 144A.

(c) Neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D) in the United States.

SECTION 4. Agreements. The Company agrees with each Initial Purchaser that:

(a) The Company will furnish to each Initial Purchaser and to Sidley Austin Brown & Wood llp, counsel for the Initial Purchasers, without charge, during the period referred to in paragraph (c) below, as many copies of the Final Memorandum and any amendments and supplements thereto as they may reasonably request.

(b) Prior to the completion of the distribution of the Securities by the Initial Purchasers, the Company will not amend or supplement the Final Memorandum unless the Company has furnished to the Representatives a copy of such proposed amendment or supplement for their review and will not effect any such proposed amendment or supplement to which the Representatives may reasonably object. The Company will promptly advise the Representatives when any document filed under the 1934 Act that is incorporated by reference in the Final Memorandum shall have been filed with the Commission.

(c) If at any time prior to the completion of the sale of the Securities by the Initial Purchasers (as determined by the Representatives), any event occurs as a result of which the Final Memorandum, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or

if it should be necessary to amend or supplement the Final Memorandum to comply with applicable law, the Company promptly (i) will notify the Representatives of any such event; (ii) subject to the requirements of paragraph (b) of this Section 4, will prepare an amendment or supplement that will correct such statement or omission or effect such compliance; and (iii) will supply any supplemented or amended Final Memorandum to the several Initial Purchasers and counsel for the Initial Purchasers without charge in such quantities as they may reasonably request.

(d) The Company will arrange, if necessary, for the qualification of the Securities for sale by the Initial Purchasers under the laws of such jurisdictions as the Initial Purchasers may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject. The Company will promptly advise the Representatives of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(e) During a period of two years after the latest date of original issuance of the Securities, the Company will not, and will not permit any of its Affiliates to, resell any Securities that have been acquired by any of them; provided that after the expiration of such two-year period, any Affiliate reselling Securities that have been acquired by it shall comply with Rule 144 under the 1933 Act in connection with such sale.

(f) Neither the Company, nor any of its Affiliates, nor any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security that would be integrated with the sale of the Securities to the Initial Purchasers in a manner that would require the registration of any such sale of the Securities under the 1933 Act.

(g) Neither the Company, nor any of its Affiliates, nor any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(h) So long as any of the Securities are "restricted securities" within the meaning of Rule 144(a)(3) under the 1933 Act, the Company will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the 1934 Act, provide to each holder of such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the 1933 Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(i) The Company will cooperate with the Representatives and use its best efforts to permit the Securities to be eligible for clearance and settlement through DTC.

(j) During the period of ninety (90) days from the date of this Agreement, the Company will not, without the prior written consent of the Representatives, (A) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option for the sale of, or otherwise transfer or dispose of, any shares of Common Stock or any security convertible into or exercisable or exchangeable for or repayable with shares of Common Stock; or (B) directly or indirectly, enter into any swap or any other agreement or any transaction that transfers, in whole or in part, the economic equivalent of ownership of any shares of Common Stock, any security convertible into or exercisable or exchangeable for or repayable with shares of Common Stock whether any such swap or transaction is to be settled by delivery of Securities, shares of Common Stock or other securities, in case or otherwise. The foregoing sentence shall not affect the ability of the Company to take any action in

connection with: (i) the issuance and sale of the Securities; (ii) the issuance of shares of Common Stock upon the conversion of the Securities; (iii) the issuance of shares of Common Stock or securities convertible or exchangeable for Common Stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof; or (iv) the issuance of shares of Common Stock or securities convertible into or exchangeable for shares of Common Stock under the Company's employee or director compensation plans or shareholder investment plans in place on the date hereof.

(k) The Company will not take, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result, under the 1934 Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(l) In connection with the offering, until the completion of the sale of the Securities by the Initial Purchasers, neither the Company nor any of its Affiliates has or will, either alone or with one or more persons, bid for or purchase for any account in which it or any of its Affiliates has a beneficial interest, any Securities or attempt to induce any person to purchase any Securities; and neither it nor any of its Affiliates will make bids or purchases for the purpose of creating actual or apparent active trading in, or of raising the price of, the Securities.

(m) The Company shall take all reasonable action necessary to enable Standard & Poor's Rating Services, a division of McGraw Hill, Inc., and Moody's Investors Service, Inc. to provide their respective credit ratings of the Securities.

(n) The Company agrees to pay the costs and expenses relating to the following matters: (i) the fees of the Trustee; (ii) the preparation, printing or reproduction of the Preliminary Memorandum and Final Memorandum and each amendment or supplement to either of them; (iii) the printing or reproduction and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the Preliminary Memorandum and Final Memorandum, and all amendments or supplements to either of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Securities; (iv) the preparation, printing, authentication, issuance and delivery of certificates for the Securities, including any stamp or transfer taxes in connection with the original issuance and sale of the Securities; (v) the printing or reproduction and delivery of the Operative Documents, any blue sky memorandum and all other agreements or documents printed or reproduced and delivered in connection with the offering of the Securities; (vi) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states (including filing fees and the reasonable fees and expenses of counsel for the Initial Purchasers relating to such registration and qualification); (vii) the transportation and other expenses incurred by or on behalf of Company representatives in connection with presentations to prospective purchasers of the Securities; (viii) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company; (ix) any fees payable to rating agencies in connection with the rating of the Securities; and (x) all other costs and expenses incident to the performance by the Company of its obligations hereunder.

(o) The Company will reserve and keep available at all times, free of preemptive or other similar rights and liens and adverse claims, sufficient shares of Common Stock to satisfy its obligations to issue shares of Common Stock upon conversion of the Securities.

SECTION 5. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Firm Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the date hereof, at the Closing Time and on any Date of Delivery pursuant to Section 2 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to

the following additional conditions:

(a) Since the time of execution of this Agreement, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the 1933 Act) or any additional notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(b) The Company shall have requested and caused Gary P. Van Graafeiland, Esq., Senior Vice President and General Counsel of the Company, to have furnished to the Representatives his opinion, dated the Closing Time and addressed to the Initial Purchasers, to the effect that:

(i) the Company and each of its subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and is duly qualified to conduct business and is in good standing in each jurisdiction or place where the nature of its properties or the conduct of its business requires such registration or qualification, except where the failure so to register or qualify does not have a Material Adverse Effect;

(ii) except as set forth in the Final Memorandum, the Company has full corporate power and authority, and all necessary governmental authorizations, approvals, orders, licenses, certificates, franchises and permits of and from all governmental regulatory officials and bodies (except where the failure so to have any such authorizations, approvals, orders, licenses, certificates, franchises or permits, individually or in the aggregate, would not have a Material Adverse Effect), to own its properties and to conduct its business as now being conducted, as described in the Final Memorandum;

(iii) other than as described or contemplated in the documents incorporated by reference in the Final Memorandum, there are no legal or governmental proceedings pending or threatened against the Company or any of its subsidiaries, or to which the Company or any of its subsidiaries, or any of their property, is subject, that are not so described as required;

(iv) there are no agreements, contracts, indentures, leases or other instruments that are required to be described in the documents incorporated by reference in the Final Memorandum that are not so described as required;

(v) neither the Company nor any of its subsidiaries is in violation in any material respect of any applicable law, ordinance, administrative or governmental rule or regulation, or of any decree of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries;

(vi) there is no holder of any security of the Company who has the right to require registration under the 1933 Act of any shares of common stock or other securities of the Company under the Shelf Registration Statement or otherwise;

(vii) the Company has the corporate power and authority necessary to execute and deliver the Operative Documents;

(viii) this Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered by the Company, and each such agreement constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as rights to indemnity and contribution hereunder and thereunder may be limited by public policy considerations;

(ix) the Indenture has been duly and validly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms;

(x) the Securities are in the form contemplated by the Indenture and have been duly and validly authorized by all necessary action for issuance and sale, the terms of the Securities have been duly established in accordance with the Indenture and this Agreement in a manner that does not violate any applicable law or agreement

or instrument then binding on the Company, and the Securities have been duly executed and, when authenticated as specified in the Indenture and delivered against payment therefor in accordance with this Agreement, will be legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and entitled to the benefits of the Indenture;

(xi) all the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and nonassessable; the shares of Common Stock issuable upon conversion of the Securities have been duly authorized and reserved for issuance by the Company and, when issued and delivered by the Company upon conversion of the Securities in accordance with the terms of the Securities and the Indenture, will be validly issued, fully paid and non-assessable; and the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities pursuant to the Company's certificate of incorporation or the New Jersey Business Corporation Act;

(xii) the Company's authorized equity capitalization is as set forth in the Final Memorandum; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Memorandum;

(xiii) none of the offer, issuance, sale and delivery of the Securities pursuant hereto, the offer, issuance, sale and delivery of the shares of Common Stock issuable upon the conversion of the Securities, the execution, delivery and performance by the Company of the Operative Documents, compliance by the Company with the provisions hereof or thereof, incurrence by the Company of the obligations herein or therein contemplated, and consummation by the Company of the transactions contemplated hereby or thereby or in the Final Memorandum (including the use of the proceeds from the sale of the Securities as described in the Final Memorandum under the caption "Use of Proceeds") conflicts or will conflict with or constitutes or will constitute a breach of, or a default under, the certificate of incorporation, by-laws or other charter documents of the Company or any material agreement, indenture, lease or other instrument known to such counsel to which the Company is a party or by which it or any of its property is bound, nor will any such action result in any violation of any existing law, regulation, ruling (assuming compliance with all applicable state securities laws), judgment, injunction, order, decree or regulation known to such counsel to be applicable to the Company or any of its properties;

(xiv) assuming (A) the accuracy of the representations and warranties of the Company and the Initial Purchasers and compliance by the Company and the Initial Purchasers with the agreements contained herein and (B) the compliance by the Initial Purchasers with the offering and transfer procedures and restrictions described in the Final Memorandum, no registration of the Securities under the 1933 Act, and no qualification of the Indenture under the 1939 Act, is required for the offer and sale by the Initial Purchasers of the Securities in the manner contemplated by this Agreement;

(xv) no consent, approval, authorization or other order of, or registration or filing with, any court, regulatory body, administrative agency or other governmental body, agency or official is required to be made or obtained by the Company pursuant to the New Jersey Business Corporation Act or the laws, rules or regulations of the State of New York or of the United States of America in connection with the transactions contemplated herein and in the other Operative Documents, except such as will be required under the 1933 Act and the 1939 Act in connection with the Company's obligations pursuant to the Registration Rights Agreement and such as may be required under state securities laws governing the purchase and distribution of the Securities;

(xvi) the statements in the Final Memorandum and in the documents incorporated by reference therein, insofar as they are descriptions of contracts, agreements or other legal documents, or refer to statements of law or legal conclusions, constitute fair summaries thereof;

(xvii) such counsel is not aware of anything that has caused such counsel to believe that the Final Memorandum, at the date

thereof, or any amendment thereto or supplement thereof, or the documents incorporated by reference therein, as of each of their respective dates, and in each case as of the Closing Time and as of any Date of Delivery, 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, in the light of the circumstances under which they were made, not misleading (it being understood that such counsel need express no opinion with respect to the financial statements and the notes thereto and the schedules and other financial and statistical data included in the Final Memorandum or included in the documents incorporated by reference therein);

(xviii) the documents incorporated by reference in the Final Memorandum (except that no opinion need be expressed as to the financial statements and the notes thereto and the schedules and other financial and statistical data contained therein) comply as to form in all material respects with the applicable requirements of the 1934 Act;

(xix) such counsel is not aware of any contracts or other documents which are required to be filed by the 1934 Act or the rules and regulations of the Commission thereunder as exhibits to any document incorporated by reference in the Final Memorandum, which have not been filed as exhibits to such document or incorporated therein by reference as permitted by the 1934 Act or the rules and regulations of the Commission thereunder; and

(xx) the Company is not and, after giving effect to the issue 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 opinions set forth in paragraphs (viii), (ix) and (x) above may be given subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and to general equitable principles, including an implied covenant of good faith and fair dealing (regardless of whether enforceability is considered in a proceeding in equity or at law).

The opinion shall be rendered as of the Closing Time and may state that it shall be rendered solely for the benefit of the Initial Purchasers, and may not be relied upon by any other person without such counsel's prior written consent.

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of New York or the United States, to the extent deemed proper and specified in such opinion, upon the opinion of other counsel of good standing believed to be reliable and who are satisfactory to counsel for the Initial Purchasers; and (B) as to matters of fact, to the extent deemed proper, on certificates of responsible officers of the Company and public officials.

(c) The Representatives shall have received from Sidley Austin Brown & Wood llp, counsel for the Initial Purchasers, such opinion or opinions, dated the Closing Time and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Final Memorandum (together with any supplement thereto), the Operative Documents and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(d) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board, its President or any Vice President and the Controller, Treasurer or the principal financial or accounting officer of the Company, dated the Closing Time, stating that:

(i) the representations, warranties and agreements of the Company in this Agreement are true and correct on and as of the Closing Time; the Company has complied with all its agreements contained herein; and all conditions on its part to be performed or satisfied as a condition to the obligation of the Initial Purchasers to market the Securities set forth in this Agreement have been fulfilled; and

(ii) they have examined the Final Memorandum and, to their knowledge, (A) the Final Memorandum does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (B) since the date of the most recent financial statements included or incorporated by reference in the Final Memorandum, there has been no material adverse change in the condition (financial or otherwise), business, properties, net worth or earnings of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth or contemplated in the Final Memorandum.

(e) The Company shall have requested and caused PricewaterhouseCoopers, LLP to have furnished to the Representatives, at the date hereof and at the Closing Time, letters, dated respectively as of the date hereof and as of the Closing Time, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letters for each of the other Initial Purchasers containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Final Memorandum and the documents incorporated by reference therein.

(f) The Securities shall be eligible for clearance and settlement through DTC.

(g) Prior to the Closing Time, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

(h) Conditions to Purchase of Option Securities. In the event that the Initial Purchasers exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificate furnished by the Company or any subsidiary of the Company hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) A certificate, dated such Date of Delivery, signed by the Chairman of the Board, its President or any Vice President and the Controller, Treasurer or the principal financial or accounting officer of the Company confirming that the certificate delivered at Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) The opinion of Gary P. Van Graafeiland, Esq., Senior Vice President and General Counsel of the Company, in form and substance satisfactory to counsel for the Initial Purchasers, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iii) The opinion of Sidley Austin Brown & Wood llp, counsel for the Initial Purchasers, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) A letter from PricewaterhouseCoopers, LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(f) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than five days prior to such Date of Delivery.

If any of the conditions specified in this Section 5 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Initial Purchasers, this Agreement and all obligations of the Initial Purchasers hereunder may be canceled at, or at any time prior to, the Closing Time by the Representatives. Notice of such

cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

SECTION 6. Reimbursement of Initial Purchasers' Expenses. If this Agreement shall be terminated by the Initial Purchasers or any of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Initial Purchasers or such Initial Purchasers as have so terminated this Agreement, with respect to themselves, severally, for all out-of-pocket expenses (including the reasonable fees and disbursements of their counsel) reasonably incurred by such Initial Purchasers in connection with the Securities.

SECTION 7. Indemnification and Contribution.

(a) The Company shall indemnify and hold harmless each Initial Purchaser, and each of its directors and officers, and each person, if any, who controls such Initial Purchaser within the meaning of the 1933 Act or the 1934 Act from and against any loss, claim, damage or liability, joint or several, and any action in respect thereof, to which such Initial Purchaser or any such director, officer or controlling person may become subject, under the 1933 Act, the 1934 Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement of a material fact contained in the Final Memorandum (as amended or supplemented), or arises out of, or is 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 shall reimburse each Initial Purchaser or any such director, officer or controlling person for any legal and other expenses (including reasonable fees and disbursements of counsel) reasonably incurred by such Initial Purchaser, director, officer or controlling person in investigating or defending or preparing to defend against any such loss, claim, damage, liability or action, including any amounts paid in settlement of any litigation, investigation or proceeding; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in the Final Memorandum (as amended or supplemented) in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Initial Purchaser through the Representatives specifically for inclusion therein; provided, further, that as to the Preliminary Memorandum, this indemnity agreement shall not inure to the benefit of any Initial Purchaser on account of any loss, claim, damage, liability or action arising from the sale of Securities to any person by that Initial Purchaser if that Initial Purchaser failed to send or give a copy of the Final Memorandum, as the same may be amended or supplemented, to that person within the time required by the Securities Act, and the untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact in such Preliminary Memorandum was corrected in the Final Memorandum, unless such failure resulted from non-compliance by the Company with Section 4. The foregoing indemnity agreement is in addition to any liability which the Company may otherwise have to any Initial Purchaser, director, officer or controlling person.

(b) Each Initial Purchaser shall indemnify and hold harmless the Company, each of its directors and officers and any person who controls the Company within the meaning of the 1933 Act or the 1934 Act from and against any loss, claim, damage or liability, joint or several, and any action in respect thereof, to which the Company or any such director, officer or controlling person may become subject, under the 1933 Act, the 1934 Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement of a material fact contained in the Final Memorandum (as amended or supplemented), or arises out of, or is 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, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or

alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Initial Purchaser through the Representatives specifically for inclusion therein, and shall reimburse the Company or any such director, officer or controlling person for any legal and other expenses reasonably incurred by such indemnified party in investigating or defending or preparing to defend against any such loss, claim, damage, liability or action. The foregoing indemnity agreement is in addition to any liability which any Initial Purchaser may otherwise have to the Company or any of its directors, officers or controlling persons. The Company acknowledges that the statements set forth in the last paragraph of the cover page and the third paragraph, the fourth sentence of the eighth paragraph, and the ninth and tenth paragraphs under the heading "Plan of Distribution" in the Final Memorandum constitute the only information furnished in writing by or on behalf of the Initial Purchasers for inclusion in the documents referred to in the foregoing indemnity.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 7, notify the indemnifying party in writing of the claim or the commencement of that action; provided, however, that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this Section 7. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein, and, to the extent that it wishes, jointly with any other singularly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party; provided, however, that the Initial Purchasers shall have the right to employ separate counsel to represent the Initial Purchasers who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Initial Purchasers against the Company under this Section 7 if, in the reasonable judgment of the Initial Purchasers, it is advisable for the Initial Purchasers to be represented by separate counsel, and in that event the reasonable fees and expenses of such counsel shall be paid by the Company. Upon receipt of notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action and approval by the indemnified party of counsel, the indemnifying party shall not be liable to the indemnified party under this Section 7 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation unless (i) the indemnified party shall have employed separate counsel in connection with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel, approved by the Initial Purchasers in the case of paragraph (a) of this Section 7, representing the indemnified parties under such paragraph (a) who are parties to such action), (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 or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that, if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. 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, 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 and (ii) 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

of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) If the indemnification provided for in this Section 7 shall for any reason be unavailable to an indemnified party under paragraphs (a) or (b) hereof in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and any Initial Purchasers on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and any Initial Purchasers on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and any Initial Purchasers on the other with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Securities (before deducting expenses) received by the Company bears to the total commissions received by such Initial Purchaser with respect to such offering. The relative fault shall be determined by reference to whether the 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 any Initial Purchaser, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Initial Purchasers agree that it would not be just and equitable if contributions pursuant to this paragraph (d) were to be determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this paragraph (d) shall be deemed to include, for purposes of this paragraph (d), 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 paragraph (d), no Initial Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Securities sold through such Initial Purchaser and distributed to the public were offered to the public exceeds the amount of any damages which such Initial Purchaser has otherwise paid or become liable to pay by reason of any 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. The obligations of the Initial Purchasers in this paragraph (d) to contribute are several in proportion to the respective principal amounts of Securities they have purchased hereunder, and not joint.

(e) The respective indemnities, agreements, representations, warranties and other statements of the Company and the Initial Purchasers contained in this Agreement, or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain operative and in full force and effect, regardless of any termination of this Agreement, any investigation made by or on behalf of any Initial Purchaser, its directors or officers or any person controlling such Initial Purchaser or by or on behalf of the Company, its directors or officers or any person controlling the Company and shall survive delivery of and payment for any of the Securities.

SECTION 8. Default by an Initial Purchaser. If one or more of the Initial Purchasers shall fail at Closing Time or a Date of Delivery to purchase the Securities which it or they are

obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Initial Purchasers, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(a) if the principal amount of Defaulted Securities does not exceed 10% of the principal amount of Securities to be purchased on such date, the non-defaulting Initial Purchasers shall be obligated, each severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Initial Purchasers, or

(b) if the principal amount of Defaulted Securities exceeds 10% of the principal amount of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Initial Purchasers to purchase and of the Company to sell the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Initial Purchaser.

No action taken pursuant to this Section shall relieve any defaulting Initial Purchaser from liability in respect of its default.

In the event of any such default which does not result in termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Initial Purchasers to purchase and the Company to sell the relevant Option Securities, as the case may be, either the Representatives or the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Final Memorandum or in any other documents or arrangements. As used herein, the term "Initial Purchaser" includes any person substituted for an Initial Purchaser under this Section 8.

SECTION 9. Termination. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to Closing Time, if there shall have occurred (i) 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, stockholders' equity, business, properties, condition (financial or other), results of operations or prospects of the Company and its subsidiaries, taken as a whole, which, in the opinion of the Representatives, materially impairs the investment quality of the Securities; (ii) a suspension or material limitation in trading in the securities of the Company by the Commission or the New York Stock Exchange, or a suspension or material limitation in trading in securities generally on the New York Stock Exchange, the American Stock Exchange or the over-the-counter market or the establishment of minimum prices on such exchanges or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction; (iii) a general moratorium on commercial banking activities declared by Federal or New York State authorities; (iv) any major disruption of settlements of securities; (v) any downgrading in the rating accorded the Company's debt securities or preferred stock by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities or preferred stock of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (vi) any outbreak or escalation of major hostilities in which the United States is involved, any declaration of war by Congress or any other substantial national calamity or emergency; or (vii) any material adverse change in the existing financial, political or economic conditions in the United States, including any effect of international conditions on the financial markets in the United States, that in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering or the delivery of the Securities as contemplated by the

SECTION 10. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Initial Purchaser or the Company or any of the officers, directors or controlling persons referred to in Section 7 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 6 and 7 hereof shall survive the termination or cancellation of this Agreement.

SECTION 11. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to Citigroup Global Markets Inc., Attention: General Counsel, 388 Greenwich Street, New York, New York 10013 (Fax Number: (212) 816-7912), and to Lehman Brothers Inc., Attention: General Counsel and Syndicate Registration, 399 Park Avenue, New York, New York 10022 (Fax Number: (212) 526-0943), or, if sent to the Company, will be mailed, delivered or telefaxed to Eastman Kodak Company, 343 State Street, Rochester, New York 14650-0218, Attention: Office of the Corporate Secretary (Fax No: (585) 724-9549).

SECTION 12. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7 hereof, and, except as expressly set forth in Section 4(h) hereof, no other person will have any right or obligation hereunder.

SECTION 13. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

SECTION 14. Waiver of Tax Confidentiality. Notwithstanding anything herein to the contrary, purchasers of the Securities (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U. S. tax structure of any transaction contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to the purchasers of the Securities relating to such U.S. tax treatment and U.S. tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

SECTION 15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SECTION 16. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

[SIGNATURE PAGES FOLLOW]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Initial Purchasers.

Very truly yours,

EASTMAN KODAK COMPANY

By:

Name: Daniel A. Carp
Title: Chairman of the Board
of Directors and
Chief Executive Officer

The foregoing Purchase Agreement is hereby confirmed and accepted as of the date first above written.

CITIGROUP GLOBAL MARKETS INC.

By: _____

Name:

Title:

LEHMAN BROTHERS INC.

By: _____

Name:

Title:

For themselves and the other several Initial Purchasers named in Schedule I hereto.

SCHEDULE I

AMOUNT OF SECURITIES TO BE PURCHASED

Initial Purchaser	Principal Amount of Securities to be Purchased
Citigroup Global Markets Inc.	\$ 200,000,000
Lehman Brothers Inc.	200,000,000
Scotia Capital (USA) Inc.	15,625,000
BNP Paribas Securities Corp.	15,625,000
HSBC Securities (USA) Inc.	8,750,000
Morgan Stanley & Co. Incorporated	8,750,000
Deutsche Bank Securities Inc.	8,750,000
Mizuho International plc	6,875,000
ABN AMRO Rothschild LLC	6,250,000
ING Financial Markets LLC	5,000,000
Daiwa Securities SMBC Europe Limited	5,000,000
Santander Central Hispano Investment Securities Inc.	3,750,000
UFJ International plc	3,750,000
BNY Capital Markets, Inc.	2,500,000
McDonald Investments Inc., a Keycorp Company	2,500,000
PNC Capital Markets, Inc.	2,500,000
Wells Fargo Securities, LLC	2,500,000
Barclays Capital Inc.	1,875,000
TOTAL:	\$ 500,000,000

RESOLUTIONS
OF THE COMMITTEE OF THE BOARD OF DIRECTORS OF
EASTMAN KODAK COMPANY
FOR THE PRIVATE PLACEMENT OF CONVERTIBLE NOTES

October 7, 2003

RESOLUTIONS AUTHORIZING PRIVATE PLACEMENT

I, Daniel A. Carp, being the Chief Executive Officer of Eastman Kodak Company (the "Company"), a corporation duly organized and existing under the laws of the State of New Jersey, and the sole member of the Committee of the Board of Directors of the Company appointed to exercise all authority of the Board of Directors respecting the creation, issuance and sale of up to \$600,000,000 aggregate principal amount of debt securities of the Company, such debt securities to be convertible into shares of common stock of the Company (the "Common Stock"), do hereby adopt the resolution set forth below:

1. Authorization of Fifth Supplemental Indenture and the Notes.

RESOLVED, that, upon receipt of the purchase price therefor hereinafter specified, the Company issue, sell and deliver \$500,000,000 aggregate principal amount of its 3.375% Convertible Senior Notes due 2033 (the "Firm Securities") and such additional aggregate principal amount of its 3.375% Convertible Senior Notes due 2033, not to exceed \$75,000,000, as the Initial Purchasers hereinafter referred to shall exercise their option to purchase pursuant to the Purchase Agreement hereinafter referred to (the "Option Securities" and, together with the Firm Securities, the "Notes"), all such Notes to be issued pursuant to the indenture dated as of January 1, 1988 (the "Original Indenture") between the Company and The Bank of New York, as trustee (the "Trustee"), as supplemented by a first supplemental indenture dated as of September 6, 1991, a second supplemental indenture dated as of September 20, 1991, a third supplemental indenture dated as of January 28, 1993 and a fourth supplemental indenture dated as of March 1, 1993 and to be further supplemented by a fifth supplemental indenture (the "Fifth Supplemental Indenture" and, together with the Original Indenture and the other supplemental indentures referred to above, the "Indenture"); and be it

FURTHER RESOLVED, that the form, terms and provisions of the Fifth Supplemental Indenture attached hereto as Exhibit A, and the form, terms and provisions of the Notes attached thereto as Exhibit A, including, without limitation, the interest rate, record dates, interest payment dates, and maturity date of the Notes and the redemption, repurchase and conversion provisions of the Notes contained therein, be, and they hereby are, approved; and be it

FURTHER RESOLVED, that all references in the definitions in the Indenture to the terms "Security" or "Securities" shall be deemed to and shall include the Notes; and be it

FURTHER RESOLVED, that pursuant to Section 205 of the Indenture, the Notes are to be issuable in permanent global form without coupons and that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges; and be it

2. Officers' Certificate and Company Order.

FURTHER RESOLVED, that the Chairman of the Board, the President or any Vice President and the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company be, and they hereby are, authorized and empowered, in the name and on behalf of the Company, to execute, seal, acknowledge and deliver

an Officers' Certificate relating to the Notes pursuant to Sections 102 and 301 of the Indenture, in such forms and in such number of counterparts as the officers so acting shall approve, the approval of such officers to be conclusively evidenced by their execution and delivery thereof; and be it

FURTHER RESOLVED, that the Chairman of the Board, the President or any Vice President and the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company be, and they hereby are, authorized and empowered, in the name and on behalf of the Company, to execute, seal, acknowledge and deliver a Company Order relating to the Notes pursuant to Section 303 of the Indenture, in such forms and in such number of counterparts as the officers so acting shall approve, the approval of such officers to be conclusively evidenced by their execution and delivery thereof; and be it

3. Paying Agent and Conversion Agent.

FURTHER RESOLVED, that The Bank of New York be, and it hereby is, designated and appointed Paying Agent with respect to the Notes pursuant to Section 1002 of the Indenture and Conversion Agent with respect to the Notes pursuant to the Fifth Supplemental Indenture; and be it

4. Purchase Agreement.

FURTHER RESOLVED, that the form, terms and provisions of the Purchase Agreement attached hereto as Exhibit B to be entered into between the Company and Citigroup Global Markets Inc. and Lehman Brothers Inc., as representatives of the Initial Purchasers named in Schedule I thereto, relating to the Notes, including, without limitation, the purchase price of 97.50% of the principal amount of the Firm Securities to be purchased by the Initial Purchasers and the purchase price of 97.50% of the principal amount of any Option Securities which may be purchased by the Initial Purchasers in accordance with the terms of the Purchase Agreement, plus, in each case, accrued interest, if any, from October 10, 2003 to the Closing Time (as defined therein), be, and they hereby are, approved; and be it

5. Registration Rights Agreement.

FURTHER RESOLVED, that the form, terms and provisions of the Registration Rights Agreement attached hereto as Exhibit C, be, and they hereby are, approved; and be it

6. Blanket Letter of Representations.

FURTHER RESOLVED, that the form, terms and provisions of the Blanket Letter of Representations, including the relevant riders thereto relating to certain matters arising in connection with the issuance of the Notes (together, the "Letter of Representations"), between the Company and The Depository Trust Company, copies of which Letter of Representations were submitted to this Committee, be and they hereby are, approved, and the Authorized Officers be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Company, to execute and deliver, in such number of counterparts as the officer so acting deems advisable, the Letter of Representations in substantially the form presented to this meeting, with such changes therein, additions thereto and deletions therefrom as the officer executing the same shall approve, such approval to be conclusively evidenced by his execution and delivery thereof; and be it

7. Miscellaneous.

FURTHER RESOLVED, that the officers of the Company referenced above be, and each of them acting alone hereby is, authorized and empowered, in the name and on behalf of the Company, to take, or cause to be taken,

any and all action which such officer may deem necessary or desirable to carry out the purposes and intent of the foregoing resolutions, including, without limitation, the execution and delivery of all documents and instruments approved herein and all other documents and instruments in connection therewith, and to perform, or cause to be performed, the obligations of the Company under the Notes, the Indenture, the Letter of Representations and the Purchase Agreement relating to the Notes.

The foregoing resolution was adopted by the undersigned pursuant to delegated authority of the Board of Directors of Eastman Kodak Company on October 7, 2003, and the undersigned consents to this record of the adoption of the foregoing resolution being entered into the corporate minute book of the Company as evidence of the official action taken by this Committee on such date.

Name: Daniel A. Carp
Title: Chief Executive Officer

CERTIFICATION:

WITNESS my hand and the corporate seal of Eastman Kodak Company in the City of Rochester, New York, this 7th day of October, 2003.

Name:
Title:

EXECUTION COPY

EASTMAN KODAK COMPANY

TO

THE BANK OF NEW YORK

Trustee

FIFTH SUPPLEMENTAL INDENTURE
Dated as of October 10, 2003

to

INDENTURE
Dated as of January 1, 1988

3.375% Convertible Senior Notes due 2033

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EASTMAN KODAK COMPANY

FIFTH SUPPLEMENTAL INDENTURE

FIFTH SUPPLEMENTAL INDENTURE, dated as of October 10, 2003, between EASTMAN KODAK COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey (the "Company"), having its principal office at 343 State Street, Rochester, New York 14650, and THE BANK OF NEW YORK, a corporation duly organized and existing under the laws of the State of New York, as Trustee (the "Trustee").

RECITALS

WHEREAS the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of January 1, 1988, as supplemented by the First Supplemental Indenture thereto dated as of September 6, 1991, the Second Supplemental Indenture thereto dated as of September 20, 1991, the Third Supplemental Indenture thereto dated as of January 26, 1993 and the Fourth Supplemental Indenture thereto dated as of March 1, 1993 (as so supplemented, the "Base Indenture", and as hereby supplemented and amended, the "Indenture"), providing for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein and therein called the "Securities"), to be issued in one or more series as provided in the Base Indenture.

WHEREAS pursuant to the terms of the Indenture, the Company desires to provide for the establishment of one new series of its Securities to be designated as the "3.375% Convertible Senior Notes due 2033" (the "Notes"), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Base Indenture and this Fifth Supplemental Indenture.

WHEREAS, Section 901(9) of the Base Indenture provides that, 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 to the Base Indenture for the purpose of curing any ambiguity, correcting or supplementing any provision in the Base Indenture which may be inconsistent with any other provision therein, or making any other provisions with respect to matters or questions arising under the Base Indenture, provided such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

WHEREAS, the Company, pursuant to the foregoing authority, proposes in and by this Fifth Supplemental Indenture to amend and supplement the Base Indenture in certain respects as set forth herein.

WHEREAS, the Company has requested that the Trustee execute and deliver this Fifth Supplemental Indenture and all requirements necessary to make this Fifth Supplemental Indenture a valid, binding and enforceable instrument in accordance with its terms, and to make the Notes, when executed, authenticated and delivered by the Company, the valid, binding and enforceable obligations of the Company, have been done and performed, and the execution and delivery of this Fifth Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, in consideration of the mutual promises provided herein and the purchase and acceptance of the Securities by the Holders thereof, and for the purpose of setting forth, as provided in the Base Indenture, the form and terms of the Notes, and amending the Base Indenture, the Company covenants and agrees with the Trustee as follows:

ARTICLE I

Relation to Indenture; Additional Definitions

Section 1.01 Relation to Indenture. This Fifth Supplemental Indenture constitutes an integral part of the Base Indenture.

Section 1.02 Definitions. (a) For all purposes of this Fifth Supplemental Indenture:

(1) Capitalized terms used herein without definition shall have the meaning specified in the Base Indenture;

(2) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Fifth Supplemental Indenture; and

(3) The terms "hereof", "herein", "hereby", "hereto", "hereunder", "herewith" and other words of similar import refer to this Fifth Supplemental Indenture.

(b) For all purposes of this Fifth Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

"Additional Amounts" has the meaning set forth in Section 2.04(f) hereof;

"Base Indenture" has the meaning set forth in the first paragraph of the Recitals hereof;

"Beneficial Owner" shall be determined in accordance with Rule 13d-3 promulgated by the Commission under the Exchange Act;

"Bid Solicitation Agent" has the meaning set forth in Section 2.12 hereof;

"Business Day" means, with respect to any Place of Payment for the Notes, each Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in such Place of Payment are authorized or obligated by law to close. If any Interest Payment Date, Maturity Date, Redemption Date, Purchase Date or Fundamental Change Purchase Date of a Note falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day with the same force and effect as if made on the relevant date that the payment was due and no interest will accrue on such payment for the period from and after the Interest Payment Date, Maturity Date, Redemption Date, Purchase Date or Fundamental Change Purchase Date, as the case may be, to the date of that payment on the next succeeding Business Day.

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

"Common Equity" of any Person means capital stock of such Person that is generally entitled to (1) vote generally in the election of directors of such Person or (2) if such Person is not a corporation, vote or otherwise participate generally in the selection of the governing body, partners, managers or others that will control the management or policies of such Person;

"Common Stock" means the common stock, par value \$2.50 per share, of the Company;

"Company Notice" has the meaning provided in Section 6.01 hereof;

"Company Notice Date" has the meaning provided in Section 6.01 hereof;

"Continuing Director" means a director who either was a member of the Board of Directors on October 7, 2003 or who becomes a member of the Board of Directors subsequent to that date and whose appointment, election or nomination for election by the Company's stockholders is duly approved by a majority of the Continuing Directors on the Board of Directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the Board of Directors in which such individual is named as nominee for director;

"Conversion Agent" means the office or agency designated by the Company where Notes may be presented for conversion;

"Conversion Date" has the meaning provided in Section 7.02 hereof;

"Conversion Price" means \$1,000 divided by the Conversion Rate;

"Conversion Rate" has the meaning provided in Section 7.01 hereof;

"Conversion Value" means the product of the last reported sale price for a share of the Common Stock on a given day multiplied by the then-current Conversion Rate.

"Distributed Assets or Securities" has the meaning provided in Section 7.06(c) hereof;

"Dividend Threshold Amount" has the meaning provided in Section 7.06(d) hereof;

"Equity Interests" means any capital stock, partnership, joint venture, member or limited liability or unlimited liability company interest, beneficial interest in a trust or similar entity or other equity interest or investment of whatever nature;

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

"ex-date" has the meaning provided in the definition of Spin-off Market Price;

"Expiration Time" has the meaning provided in Section 7.06(f) hereof;

"Fair Market Value" means the amount which a willing buyer would pay a willing seller in an arm's length transaction;

A "Fundamental Change" shall be deemed to have occurred at such time after the original issuance of the Notes as any of the following occurs: (a) the Common Stock or other common stock into which the Notes are convertible is neither listed for trading on a United States national securities exchange nor approved for trading on the Nasdaq National Market or another established automated over-the-counter trading market in the United States; (b) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, any Subsidiary of the Company or any employee benefit plan of the Company or any such Subsidiary, files a Schedule TO or any other schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate Beneficial Owner of Common Equity of the Company representing more than 50% of the voting power of the Company's Common Equity; (c) consummation of any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer (in one transaction or a series of transactions) of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than the Company or one or more of the Company's Subsidiaries); provided, however, that a transaction where the holders of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of the aggregate voting power of all classes of Common Equity of the continuing or surviving corporation or transferee immediately after such event shall not be a Fundamental Change; or (d) Continuing Directors cease to constitute at least a majority of the Board of Directors; provided, however, that a Fundamental Change shall not be deemed to have occurred in respect of any of the foregoing if either (i) the Last Reported Sale Price per share of Common Stock for any five Trading Days within the period of 10 consecutive Trading Days ending immediately before the later of the Fundamental Change or the public announcement thereof shall equal or exceed 105% of the Conversion Price of the Notes in effect immediately before the Fundamental Change or the public announcement thereof; or (ii) at least 90% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Fundamental Change consists of

shares of capital stock traded on a national securities exchange or quoted on the NASDAQ National Market (or which shall be so traded or quoted when issued or exchanged in connection with such Fundamental Change) (such securities being referred to as "Publicly Traded Securities") and as a result of such transaction or transactions the Notes become convertible into such Publicly Traded Securities (excluding cash payments for fractional shares). For purposes of the foregoing proviso, the term "capital stock" of any Person means any and all shares (including ordinary shares or American Depositary Shares), interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person;

"Fundamental Change Purchase Date" has the meaning provided in Section 4.01 hereof;

"Fundamental Change Purchase Notice" has the meaning provided in Section 4.03 hereof;

"Fundamental Change Purchase Price" has the meaning provided in Section 4.01 hereof;

"Global Notes" has the meaning set forth in Section 2.08(a) hereof;

The term "Indebtedness" as applied to any Person, means bonds, debentures, notes and other instruments or arrangements representing obligations created or assumed by any such Person, in respect of: (i) obligations for money borrowed (other than unamortized debt discount or premium); (ii) obligations evidenced by a note or similar instrument given in connection with the acquisition of any business, properties or assets of any kind; (iii) obligations as lessee under a Capital Lease; and (iv) any amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligations listed in clause (i), (ii) or (iii) above. All indebtedness secured by a lien upon property owned by such Person of such type, although such Person has not assumed or become liable for the payment of such indebtedness, shall for all purposes hereof be deemed to be indebtedness of such Person. All indebtedness for borrowed money incurred by any other Persons which is directly guaranteed as to payment of principal by such Person shall for all purposes hereof be deemed to be indebtedness of any such Person, but no other contingent obligation of such Person in respect of indebtedness incurred by any other Persons shall for any purpose be deemed to be indebtedness of such Person;

"Initial Purchasers" means the initial purchasers of the Notes listed on Schedule I to the Purchase Agreement, for which Citigroup Global Markets Inc. and Lehman Brothers Inc. acted as Representatives;

"Interest Payment Date" has the meaning set forth in Section 2.04(a) hereof;

"Last Reported Sale Price" of 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 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 Common Stock is traded or, if the Common Stock is not listed on a U.S. national or regional securities exchange, as reported by the Nasdaq National Market. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange and not reported by the Nasdaq National Market on the relevant date, the "last reported sale price" shall be the last quoted bid price for 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 independent investment banking firms selected by the Company for this purpose;

"Market Price" means the average of the Last Reported Sale Prices of Common Stock for the 20 Consecutive Trading Day period ending on the applicable date of determination (if the applicable date of determination is a Trading Day or, if not, then on the last Trading Day prior to such applicable date of determination), appropriately adjusted to take into account the occurrence, during the period commencing on the first of the Trading Days during such 20 Consecutive Trading Day period and ending on the applicable date of determination, of any event that would result in an adjustment of the Conversion Rate under this Fifth Supplemental Indenture;

"Maturity Date" has the meaning set forth in Section 2.03 hereof;

"Notes" has the meaning set forth in the second paragraph of the Recitals hereof;

"Option Issue Date" means each settlement date for the issuance of Option Securities (as such term is defined in the Purchase Agreement);

"Original Issue Date" has the meaning provided in Section 2.04(a) hereof;

"Purchase Agreement" means that certain Purchase Agreement, dated October 7, 2003, by and among the Company and the Initial Purchasers listed in Schedule I thereto which provides for the sale by the Company to the Initial Purchasers of the Notes;

"Purchase Date" has the meaning provided in Section 5.01(a) hereof;

"Purchase Notice" has the meaning provided in Section 5.01(a)(i) hereof;

"Purchase Price" has the meaning provided in paragraph 7 of the Notes;

"Purchased Shares" has the meaning provided in Section 7.06(f) hereof;

"Qualified Institutional Buyer" has the meaning assigned to such term in Rule 144A under the Securities Act;

"Redemption Price" has the meaning set forth in paragraph 5 of the Notes;

"Registrable Securities" has the meaning assigned to such term in the Registration Rights Agreement;

"Registration Default" has the meaning assigned to such term in the Registration Rights Agreement;

"Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of October 10, 2003, by and among the Company and the Initial Purchasers;

"Regular Record Date" has the meaning set forth in Section 2.04(a) hereof;

"Restricted Common Stock Legend" means the legend labeled as such, substantially in the form set forth in Exhibit G hereof;

"Shelf Registration Statement" has the meaning assigned to such term in the Registration Rights Agreement;

"Spin-off Market Price" per share of Common Stock of the Company or the Equity Interests in a Subsidiary or other business unit of the Company on any day means the average of the daily Last Reported Sale Price for the 10 consecutive Trading Days commencing on and including the fifth Trading Day after the "ex-date" with respect to the issuance or distribution requiring such computations. As used herein, the term "ex-date," when used with respect to any issuance or

distribution, shall mean the first date on which the security trades regular way on the New York Stock Exchange or such other national regional exchange or market in which the security trades without the right to receive such issuance or distribution;

"Trading Day" means (a) if the applicable security is listed, admitted for trading or quoted on the New York Stock Exchange, the NASDAQ National Market or another national security exchange, a day on which the New York Stock Exchange, the NASDAQ National Market or another national security exchange is open for business or (b) if the applicable security is not so listed, admitted for trading or quoted, any Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in the State of New York are authorized or obligated by law to close;

"Trading Price" of the Notes on any date of determination means the average of the secondary market bid quotations per \$1,000 principal amount of Notes obtained by the Bid Solicitation Agent for \$10 million principal amount of Notes at approximately 4:00 p.m., New York City time, on such determination date from three unaffiliated, nationally recognized securities dealers the Company selects, provided that if: (i) at least three such bids are not obtained by the Bid Solicitation Agent, or (ii) in the Company's reasonable judgment, the bid quotations are not indicative of the secondary market value of the Notes, then the Trading Price of the Notes on such date of determination will equal (a) the then applicable Conversion Rate of the Notes multiplied by (b) the average Last Reported Sale Price of Common Stock for the five Trading Days ending on such determination date, appropriately adjusted to take into account the occurrence, during the period commencing on the first of such Trading Days during such five Trading Day period and ending on such determination date, of any event described in Section 7.06 of this Fifth Supplemental Indenture;

"Transfer Restricted Securities" means the Registrable Securities under the Registration Rights Agreement.

ARTICLE II

The Series of Securities

Section 2.01 Title of the Securities. The Notes shall be designated as the "3.375% Convertible Senior Notes due 2033." The Notes shall be treated for all purposes under the Indenture as a single class or series of Securities.

Section 2.02 Limitation on Aggregate Principal Amount. The Trustee shall authenticate and deliver Notes for original issue on the Original Issue Date in the aggregate principal amount of \$500,000,000 upon a Company Order for the authentication and delivery thereof and satisfaction of Section 303 of the Base Indenture. Such order shall specify the amount of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated and the name or names of the initial Holder or Holders. The Trustee shall authenticate and deliver Notes for original issue on each Option Issue Date in the aggregate principal amount of up to \$75,000,000 upon a Company Order for the authentication and delivery thereof and satisfaction of Section 303 of the Base Indenture. Such order shall specify the amount of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated and the name or names of the initial Holder or Holders. The aggregate principal amount of Notes that may be outstanding shall not exceed \$575,000,000, subject to Section 301 of the Base Indenture as amended by Section 9.02(b)(ii) of this Fifth Supplemental Indenture.

Section 2.03 Stated Maturity. The Stated Maturity of the Notes shall be October 15, 2033 (the "Maturity Date"). The principal amount of the Notes shall be payable on the Maturity Date unless the Notes are earlier redeemed, purchased or converted in accordance with the terms of the Indenture.

Section 2.04 Interest and Interest Rates.

(a) The Notes shall bear interest at a rate of 3.375% per year, from October 10, 2003 (the "Original Issue Date") or from the

most recent Interest Payment Date to which payment has been made or duly provided for, payable semiannually in arrears on April 15 and October 15 of each year, beginning April 15, 2004 (each an "Interest Payment Date") to the persons in whose names the Notes are registered at the close of business on the April 1 and October 1 (each a "Regular Record Date") (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

(b) Holders of Notes at the close of business on a Regular Record Date will receive payment of interest payable on the corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the close of business on such Regular Record Date. Notes surrendered for conversion by a Holder during the period from the close of business on any Regular Record Date to the opening of business on the immediately following Interest Payment Date must be accompanied by payment of an amount equal to the interest that the Holder is to receive on the Notes; provided, however, that no such payment need be made if (1) the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the immediately following Interest Payment Date, (2) the Company has specified a Purchase Date following a Fundamental Change that is during such period or (3) any overdue interest exists at the time of conversion with respect to such Notes to the extent of such overdue interest. The Holders of the Notes and any Common Stock issuable upon conversion thereof will continue to be entitled to receive Additional Amounts in accordance with the Registration Rights Agreement.

(c) Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and shall either (i) be paid to the Person in whose name such Note (or one or more Predecessor Securities) is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of the Notes not less than 10 days prior to such Special Record Date, or (ii) be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or traded, and upon such notice as may be required by such exchange or automated quotation system, all as more fully provided in the Indenture.

(d) The amount of interest payable for any period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of interest payable for any partial period shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, in the case of an incomplete month, the actual number of days elapsed. In the event that any date on which interest is payable on a Note is not a Business Day, then a payment of the interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay) with the same force and effect as if made on the date the payment was originally payable.

(e) If any principal of the Notes or any portion of such principal is not paid when due (whether upon acceleration, upon the date set for payment of the Redemption Price pursuant to paragraph 5 of the Notes, upon the date set for payment of a Purchase Price or Fundamental Change Purchase Price pursuant to paragraph 7 of the Notes or upon the Stated Maturity) or if interest due on the Notes or any portion of such interest is not paid when due in accordance with paragraph 1 or paragraph 9 of the Notes, then in each such case the overdue amount shall bear interest at the rate of 3.375% per annum, compounded semiannually (to the extent that the payment of such interest shall be legally enforceable), which interest shall accrue from the date such overdue amount was due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

(f) The interest rate borne by the Registrable Securities will be increased by .25% per annum upon the occurrence of a Registration Default, which rate will increase by an additional .25% per annum if such Registration Default has not been cured within 90 days after the occurrence thereof ("Additional Amounts"); provided that the aggregate amount of any such increase in the interest rate on the Registrable Securities shall in no event exceed .50% per annum. All accrued Additional

Amounts shall be paid to Holders of Registrable Securities in the same manner and at the same time as regular payments of interest on the Registrable Securities. Following the cure of all Registration Defaults, the accrual of Additional Amounts shall cease and the interest rate on the Registrable Securities will revert to 3.375% per annum.

Section 2.05 Paying Agent and Conversion Agent; Place of Payment. The Trustee shall initially serve as the Paying Agent and Conversion Agent for the Notes. The Company may appoint and change any Paying Agent or Conversion Agent or approve a change in the office through which any Paying Agent acts 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 or Conversion Agent. The Place of Payment where the Notes may be presented or surrendered for payment shall be the Corporate Trust Office of the Trustee.

Section 2.06 Place of Registration or Exchange; Notices and Demands With Respect to the Notes. The place where the Holders of the Notes may present the Notes for registration of transfer or exchange and may make notices and demands to or upon the Company in respect of the Notes shall be the Corporate Trust Office of the Trustee.

Section 2.07 Percentage of Principal Amount. The Notes shall be initially issued at 100% of their principal amount plus accrued interest, if any, from October 10, 2003.

Section 2.08 Global Notes.

(a) The Notes are being offered and sold to Qualified Institutional Buyers as defined in Rule 144A in reliance on Rule 144A under the Securities Act and shall be issued initially in the form of one or more permanent Global Securities in definitive, fully registered, book-entry form, without interest coupons (collectively, the "Global Notes").

(b) Each of the Global Notes shall represent such of the Notes as shall be specified therein and shall each provide that it shall represent the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, purchases or conversions. Any endorsement of a Global Note to reflect the amount, or any increase or decrease in the aggregate principal amount, of Notes represented thereby shall be reflected by the Trustee on Schedule A attached to the Note and made by the Trustee in accordance with written instructions or such other written form of customary instructions from the Depository or its nominee.

(c) The Depository Trust Company shall initially serve as Depository with respect to the Global Notes. Such Global Notes shall bear the legends set forth in the form of Security attached as Exhibit A hereto.

Section 2.09 Form of Securities. The Global Notes shall be substantially in the form attached as Exhibit A hereto.

Section 2.10 Security Registrar. The Trustee shall initially serve as the Security Registrar for the Notes.

Section 2.11 Sinking Fund Obligations. The Company shall have no obligation to redeem or purchase any Notes pursuant to any sinking fund or analogous requirement.

Section 2.12 Bid Solicitation Agent. The Trustee shall initially serve as the bid solicitation agent (the "Bid Solicitation Agent") for purposes of obtaining secondary market bid quotations for determining Trading Prices. The Company may change the Bid Solicitation Agent at any time; provided, however, that the Bid Solicitation Agent shall not be an Affiliate of the Company. The Bid Solicitation Agent shall solicit bids from nationally recognized securities dealers that are believed by the Company to be willing to bid for the Notes.

Section 2.13 Defeasance and Discharge. The Notes issued hereby will not be subject to any defeasance provisions.

Optional Redemption of the Notes

Section 3.01 Right to Redeem; Notice to Trustee, Paying Agent and Holders. On or after October 15, 2010, the Company may, at its option, redeem the Notes in whole, or at any time in part, in accordance with the provisions of paragraph 5 of the Notes. If the Company elects to redeem Notes pursuant to paragraph 5 of the Notes, it shall notify in writing the Trustee, the Paying Agent and each Holder of Notes to be redeemed, as provided in Section 1104 of the Base Indenture and Section 3.04 hereof.

Section 3.02 Fewer Than All Outstanding Notes to Be Redeemed. If fewer than all of the outstanding Notes are to be redeemed, the Trustee shall select the Notes to be redeemed in principal amounts of \$1,000 or integral multiples thereof. In the case that the Trustee shall select the Notes to be redeemed, the Trustee may effectuate such selection by lot, pro rata, or by any other method that the Trustee considers fair and appropriate. The Trustee will make such selection promptly following receipt of the notice of redemption from the Company provided pursuant to Section 3.04 hereof.

Section 3.03 Selection of Notes to Be Redeemed. If any Notes selected for partial redemption are thereafter surrendered for conversion in part before termination of the conversion right with respect to the portion of the Notes so selected, the converted portion of such Notes shall be deemed (so far as may be), to be the portion selected for redemption. Notes which have been converted during a selection of Notes to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection. Nothing in this Section 3.03 shall affect the right of any Holder to convert any Notes pursuant to Article VII hereof before the termination of the conversion right with respect thereto.

Section 3.04 Notice of Redemption. In addition to those matters set forth in Section 1104 of the Base Indenture, a notice of redemption sent to Holders of Notes shall state:

- (a) the then current Conversion Rate;
- (b) the name and address of the Paying Agent and the Conversion Agent;
- (c) that the Notes called for redemption may be converted at any time before the close of business on the Business Day immediately preceding the Redemption Date; and
- (d) that Holders who wish to convert Notes must comply with the procedures in paragraph 8 of the Notes.

Section 3.05 Effect of Notice of Redemption. Once notice of redemption is mailed, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price, except for Notes that are converted in accordance with the provisions of Article VII hereof and paragraph 8 of the Notes. Upon presentation and surrender to the Paying Agent, Notes called for redemption shall be paid at the Redemption Price as defined in paragraph 5 of the Notes.

Section 3.06 Deposit of Redemption Price. On or before 10:00 a.m. (New York City time) on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust) an amount of money sufficient to pay the aggregate Redemption Price of all the Notes to be redeemed on that date other than the Notes or portions thereof called for redemption which on or prior thereto have been delivered by the Company to the Security Registrar for cancellation or have been converted. The Trustee and Paying Agent shall, as promptly as practicable, return to the Company any money not required for that purpose because of conversion of the Notes in accordance with the provisions of Article VII hereof. If such money is then held by the Company or a Subsidiary in trust and is not required for such purpose, it shall be discharged from such trust.

ARTICLE IV

Purchase Upon a Fundamental Change

Section 4.01 Purchase at the Option of the Holder upon a Fundamental Change. If a Fundamental Change shall occur at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to purchase all or any portion of such Holder's Notes for cash on a date specified by the Company that is no later than 35 days after the date of the Company Notice of the occurrence of such Fundamental Change (subject to extension to comply with applicable law, as provided in Section 6.04) (the "Fundamental Change Purchase Date"). The Notes shall be repurchased in integral multiples of \$1,000 of the principal amount. The Company shall purchase such Notes at a price (the "Fundamental Change Purchase Price") equal to 100% of the principal amount of the Notes to be purchased plus accrued and unpaid interest, including Additional Amounts, if any, to, but excluding, the Fundamental Change Purchase Date. No Notes may be purchased at the option of the Holders upon a Fundamental Change if there has occurred and is continuing an Event of Default (other than an Event of Default that is cured by the payment of the Fundamental Change Purchase Price of the Notes).

Section 4.02 Notice of Fundamental Change. The Company, or at its request (which must be received by the Paying Agent at least three Business Days (or such lesser period as agreed to by the Paying Agent) prior to the date the Paying Agent is requested to give such notice as described below), the Paying Agent in the name of and at the expense of the Company, shall mail to all Holders and the Trustee a Company Notice of the occurrence of a Fundamental Change and of the purchase right arising as a result thereof, including the information required by Section 6.01 hereof, on or before the 30th day after the occurrence of such Fundamental Change.

Section 4.03 Exercise of Option. For a Note to be so purchased at the option of the Holder, the Paying Agent must receive such Note duly endorsed for transfer, together with a written notice of purchase (a "Fundamental Change Purchase Notice") and the form entitled "Form of Fundamental Change Purchase Notice" on the reverse thereof duly completed, on or before the 35th day after the date of the Company Notice of the occurrence of such Fundamental Change, subject to extension to comply with applicable law. The Fundamental Change Purchase Notice shall state:

(a) if certificated, the certificate numbers of the Notes which the Holder shall deliver to be purchased, or, if not certificated, the Fundamental Change Purchase Notice must comply with appropriate Depository procedures;

(b) the portion of the principal amount of the Notes which the Holder shall deliver to be purchased, which portion must be \$1,000 in principal amount or an integral multiple thereof; and

(c) that such Notes shall be purchased as of the Fundamental Change Purchase Date pursuant to the terms and conditions specified in paragraph 7 of the Notes and in this Supplemental Indenture.

Section 4.04 Procedures. The Company shall purchase from a Holder, pursuant to Article IV hereof, Notes if the principal amount of such Notes is \$1,000 or a multiple of \$1,000 if so requested by such Holder.

Any purchase by the Company contemplated pursuant to the provisions of Article IV hereof shall be consummated by the delivery of the Fundamental Change Purchase Price to be received by the Holder promptly following the later of the Fundamental Change Purchase Date or the time of book-entry transfer or delivery of the Notes.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by Section 4.03 shall have the right at any time prior to the close of business on the Business Day prior to the Fundamental Change Purchase Date to withdraw such Fundamental Change Purchase Notice (in whole or in part) by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 6.02.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice

or written notice of withdrawal thereof.

On or before 10:00 a.m. (New York City time) on the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust) money sufficient to pay the aggregate Fundamental Change Purchase Price of the Notes to be purchased pursuant to Article IV hereof. Payment by the Paying Agent of the Fundamental Change Purchase Price for such Notes shall be made promptly following the later of the Fundamental Change Purchase Date or the time of book-entry transfer or delivery of such Notes. If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Fundamental Change Purchase Price of such Notes on the Business Day following the Fundamental Change Purchase Date, then, on and after such date, such Notes shall cease to be outstanding and interest (including Additional Amounts, if any) on such Notes shall cease to accrue, whether or not book-entry transfer of such Notes is made or such Notes are delivered to 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 or transfer of the Notes). Nothing herein shall preclude any withholding tax required by law.

The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of the Fundamental Change Purchase Price and shall notify the Trustee of any default by the Company in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to deliver all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon doing so, the Paying Agent shall have no further liability for the cash delivered to the Trustee.

All questions as to the validity, eligibility (including time of receipt) and acceptance of any Notes for purchase shall be determined by the Company, whose determination shall be final and binding.

ARTICLE V

Optional Purchase

Section 5.01 Purchase of Notes by the Company at the Option of the Holder.

(a) On each of October 15, 2010, October 15, 2013, October 15, 2018, October 15, 2023 and October 15, 2028 (each, a "Purchase Date"), Holders shall have the option to require the Company to purchase all or any portion of their Notes at the Purchase Price specified in paragraph 7 of the Notes, upon:

(i) delivery to the Paying Agent by the Holder of a written notice of purchase (a "Purchase Notice") at any time from the opening of business on the date that is 20 Business Days prior to the relevant Purchase Date until the close of business on the Business Day prior to such Purchase Date, stating:

- (1) if certificated, the certificate numbers of the Notes which the Holder will deliver to be purchased, or, if not certificated, the Purchase Notice must comply with appropriate Depository procedures;
- (2) the portion of the principal amount of the Notes which the Holder will deliver to be purchased, which portion must be \$1,000 in principal amount or an integral multiple thereof; and
- (3) that such Notes shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in paragraph 7 of the Notes and in this Supplemental Indenture; and

(ii) delivery or book-entry transfer of such Notes to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such

delivery or transfer being a condition to receipt by the Holder of the Purchase Price therefor; provided, however, that such Purchase Price shall be so paid pursuant to this Section 5.01 only if the Notes so delivered or transferred to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice.

(b) The Company shall purchase from a Holder, pursuant to the terms of this Section 5.01, Notes if the principal amount of such Notes is \$1,000 or a multiple of \$1,000 if so requested by such Holder.

(c) Any purchase by the Company contemplated pursuant to the provisions of this Section 5.01 shall be consummated by the delivery of the Purchase Price to be received by the Holder promptly following the later of the Purchase Date or the time of book-entry transfer or delivery of the Notes.

(d) Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Purchase Notice contemplated by this Section 5.01 shall have the right at any time prior to the close of business on the Business Day prior to the Purchase Date to withdraw such Purchase Notice (in whole or in part) by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 6.02.

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

(f) On or before 10:00 a.m. (New York City time) on the Purchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust) money sufficient to pay the aggregate Purchase Price of the Notes to be purchased pursuant to this Section 5.01. Payment by the Paying Agent of the Purchase Price for such Notes shall be made promptly following the later of the Purchase Date or the time of book-entry transfer or delivery of such Notes. If the Paying Agent holds, in accordance with the terms of the Indenture, money sufficient to pay the Purchase Price of such Notes on the Business Day following the Purchase Date, then, on and after such date, such Notes shall cease to be outstanding and interest (including Additional Amounts, if any) on such Notes shall cease to accrue, whether or not book-entry transfer of such Notes is made or such Notes are delivered to the Paying Agent, and all other rights of the Holder shall terminate (other than the right to receive the Purchase Price upon delivery or transfer of the Notes).

(g) The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of the Purchase Price and shall notify the Trustee of any default by the Company in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to deliver all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon doing so, the Paying Agent shall have no further liability for the cash delivered to the Trustee.

(h) All questions as to the validity, eligibility (including time of receipt) and acceptance of any Notes for purchase shall be determined by the Company, whose determination shall be final.

ARTICLE VI

Conditions and Procedures for Purchases at Option of Holders

Section 6.01 Notice of Purchase Date or Fundamental Change. The Company shall send notices (each, a "Company Notice") to the Holders (and to beneficial owners as required by applicable law) at their addresses shown in the Security Register maintained by the Security Registrar, and delivered to the Trustee and Paying Agent, not less than 20 Business Days prior to each Purchase Date, or on or before the 30th day after the occurrence of the Fundamental Change, as the case may be (each such date of delivery, a "Company Notice Date"). Each Company Notice shall include a form of Purchase Notice or Fundamental Change Purchase

Notice to be completed by a Holder and shall state:

(a) the applicable Purchase Price or Fundamental Change Purchase Price, excluding accrued and unpaid interest, Conversion Rate at the time of such notice (and any adjustments to the Conversion Rate) and, to the extent known at the time of such notice, the amount of interest (including Additional Amounts, if any), if any, that will be payable with respect to the Notes on the applicable Purchase Date or Fundamental Change Purchase Date;

(b) if the notice relates to a Fundamental Change, the events causing the Fundamental Change and the date of the Fundamental Change;

(c) the Purchase Date or Fundamental Change Purchase Date;

(d) the last date on which a Holder may exercise its purchase right;

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

(f) that Notes must be surrendered to the Paying Agent to collect payment of the Purchase Price or Fundamental Change Purchase Price;

(g) that Notes as to which a Purchase Notice or Fundamental Change Purchase Notice has been given may be converted only if the applicable Purchase Notice or Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Supplemental Indenture;

(h) that the Purchase Price or Fundamental Change Purchase Price for any Notes as to which a Purchase Notice or a Fundamental Change Purchase Notice, as applicable, has been given and not withdrawn shall be paid by the Paying Agent promptly following the later of the Purchase Date or Fundamental Change Purchase Date, as applicable, or the time of book-entry transfer or delivery of such Notes;

(i) the procedures the Holder must follow under Article IV or V hereof, as applicable, and Article VI hereof;

(j) briefly, the conversion rights of the Notes;

(k) that, unless the Company defaults in making payment of such Purchase Price or Fundamental Change Purchase Price on Notes covered by any Purchase Notice or Fundamental Change Purchase Notice, as applicable, interest (including Additional Amounts, if any) will cease to accrue on and after the Purchase Date or Fundamental Change Purchase Date, as applicable;

(l) the CUSIP or ISIN number of the Notes; and

(m) the procedures for withdrawing a Purchase Notice or Fundamental Change Purchase Notice.

In connection with providing such Company Notice, the Company will issue a press release and publish a notice containing the information in such Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company's then existing Web site or through such other public medium as the Company may use at the time.

At the Company's request, made at least five Business Days prior to the date upon which such notice is to be mailed, and at the Company's expense, the Paying Agent shall give the Company Notice to the Holders in the Company's name; provided, however, that, in all cases, the text of the Company Notice shall be prepared by the Company.

Section 6.02 Effect of Purchase Notice or Fundamental Change Purchase Notice; Effect of Event of Default. Upon receipt by the Company of the Purchase Notice or Fundamental Change Purchase Notice specified in Section 5.01 or Section 4.03, as applicable, the Holder of the Notes in respect of which such Purchase Notice or Fundamental Change Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase

Price or Fundamental Change Purchase Price with respect to such Notes. Such Purchase Price or Fundamental Change Purchase Price shall be paid by the Paying Agent to such Holder promptly following the later of (x) the Purchase Date or the Fundamental Change Purchase Date, as the case may be, with respect to such Notes (provided the conditions in Section 5.01 or Section 4.03, as applicable, have been satisfied) and (y) the time of delivery or book-entry transfer of such Notes to the Paying Agent by the Holder thereof in the manner required by Section 5.01 or Section 4.03, as applicable. Notes in respect of which a Purchase Notice or Fundamental Change Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted for shares of Common Stock on or after the date of the delivery of such Purchase Notice or Fundamental Change Purchase Notice, as the case may be, unless such Purchase Notice or Fundamental Change Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Purchase Notice or Fundamental Change Purchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent at any time prior to 5:00 p.m. New York City time on the Business Day prior to the Purchase Date or the Fundamental Change Purchase Date, as the case may be, to which it relates specifying:

- (a) if certificated, the certificate number of the Notes in respect of which such notice of withdrawal is being submitted, or, if not certificated, the written notice of withdrawal must comply with appropriate Depositary procedures;
- (b) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted; and
- (c) the principal amount, if any, of such Notes which remains subject to the original Purchase Notice or Fundamental Change Purchase Notice, as the case may be, and which has been or shall be delivered for purchase by the Company.

There shall be no purchase of any Notes pursuant to Article IV or Article V hereof if an Event of Default has occurred and is continuing (other than a default that is cured by the payment of the Purchase Price or Fundamental Change Purchase Price, as the case may be). The Paying Agent shall promptly return to the respective Holders thereof any Notes (x) with respect to which a Purchase Notice or Fundamental Change Purchase Notice, as the case may be, has been withdrawn in compliance with this Supplemental Indenture, or (y) held by it during the continuance of an Event of Default (other than a default that is cured by the payment of the Purchase Price or Fundamental Change Purchase Price, as the case may be) in which case, upon such return, the Purchase Notice or Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 6.03 Notes Purchased in Part. Any Notes that are 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 or the Authenticating Agent shall authenticate and deliver to the Holder of such Notes, without service charge, a new Note or Notes, 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 Notes so surrendered which is not purchased or redeemed.

Section 6.04 Covenant to Comply with Securities Laws upon Purchase of Notes. In connection with any offer to purchase Notes under Article IV or Article V hereof, the Company shall, to the extent applicable, (a) comply with Rules 13e-4 and 14e-1 (and any successor provisions thereto) under the Exchange Act, if applicable; (b) file the related Schedule T0 (or any successor schedule, form or report) under the Exchange Act, if applicable; and (c) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under Article IV or Article V hereof to be exercised in the time and in the manner specified in Article IV or Article V hereof.

Section 6.05 Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash or property that remains unclaimed as provided in paragraph 12 of the Notes, together with interest that the Trustee or Paying Agent, as the case may be, has agreed to pay, if any, held by them for the payment of a Purchase Price or Fundamental Change Purchase Price, as the case may be; provided, however, that to the extent that the aggregate amount of cash or property deposited by the Company pursuant to Section 4.04 or 5.01(f), as applicable, exceeds the aggregate Purchase Price or Fundamental Change Purchase Price, as the case may be, of the Notes or portions thereof which the Company is obligated to purchase as of the Purchase Date or Fundamental Change Purchase Date, as the case may be, then promptly on and after the Business Day following the Purchase Date or Fundamental Change Purchase Date, as the case may be, the Trustee and the Paying Agent shall return any such excess to the Company together with interest that the Trustee or Paying Agent, as the case may be, has agreed to pay, if any.

Section 6.06 Officers' Certificate. At least five Business Days before the Company Notice Date, the Company shall deliver an Officers' Certificate to the Trustee (provided, that at the Company's option, the matters to be addressed in such Officers' Certificate may be divided among two such certificates) specifying:

- (a) the manner of payment selected by the Company; and
- (b) whether the Company desires the Trustee to give the Company Notice to the Holders required by Section 6.01 herein.

ARTICLE VII

Conversion of Notes

Section 7.01 Right to Convert. A Holder may convert its Notes for Common Stock, in whole or in part, at any time during which the conditions stated in paragraph 8 of the Notes are met. The number of shares of Common Stock issuable upon conversion of a Note per \$1,000 principal amount (the "Conversion Rate") shall be that set forth in paragraph 8 in the Notes, subject to adjustment as herein set forth. The initial Conversion Rate is 32.2373 shares of Common Stock issuable upon conversion of a Convertible Note per \$1,000 principal amount.

A Holder may convert a portion of the principal amount of Notes if the portion is \$1,000 or a multiple of \$1,000.

Section 7.02 Conversion Procedures. To convert Notes, a Holder must satisfy the requirements in this Section 7.02 and in paragraph 8 of the Notes. The date on which the Holder satisfies all those requirements is the conversion date (the "Conversion Date"). As soon as practicable, but in no event later than the fifth Business Day following the Conversion Date, the Company shall deliver to the Holder, through the Conversion Agent, a certificate for the number of full shares of Common Stock issuable upon the conversion and cash in lieu of any fractional share determined pursuant to Section 7.03. The Person in whose name the certificate is registered shall be treated as a stockholder of record on and after the Conversion Date; provided, however, that no surrender of Notes on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the Person or Persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; such conversion shall be at the Conversion Rate in effect on the date that such Notes shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of Notes, such Person shall no longer be a Holder of such Notes.

No payment or adjustment shall be made for dividends on or other distributions with respect to any Common Stock except as provided in Section 7.06 or as otherwise provided in this Indenture.

On conversion of Notes, that portion of accrued interest

with respect to the converted Notes shall not be canceled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Notes being converted pursuant to the provisions hereof, and the Fair Market Value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for interest accrued and unpaid through the Conversion Date, and the balance, if any, of such Fair Market Value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the principal amount of the Notes being converted pursuant to the provisions hereof. Notwithstanding conversion of any Notes, the Holders of the Notes and any Common Stock issuable upon conversion thereof will continue to be entitled to receive Additional Amounts in accordance with the Registration Rights Agreement.

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

Upon surrender of a Note that is converted in part, the Company shall execute, and the Trustee or the Authenticating Agent 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.

If the last day on which Notes may be converted is a legal holiday in a place where a Conversion Agent is located, the Notes may be surrendered to that Conversion Agent on the next succeeding day that it is not a legal holiday.

Section 7.03 Cash Payments in Lieu of Fractional Shares. The Company shall not issue a fractional share of Common Stock upon conversion of Notes. Instead the Company shall deliver cash for the current market value of the fractional share. The current market value of a fractional share shall be determined to the nearest 1/10,000th of a share by multiplying the Last Reported Sale Price of a full share of Common Stock on the Trading Day immediately preceding the Conversion Date by the fractional amount and rounding the product to the nearest whole cent.

Section 7.04 Taxes on Conversion. If a Holder converts Notes, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of 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 shall be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any withholding tax required by law.

Section 7.05 Covenants of the Company. The Company shall, prior to issuance of any Notes hereunder, and from time to time as may be necessary, reserve out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion of the Notes.

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

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

Section 7.06 Adjustments to Conversion Rate. The Conversion Rate shall be adjusted from time to time, without duplication, as follows:

(a) In case the Company shall (i) pay a dividend or make a distribution on its Common Stock exclusively in shares of its Common Stock; (ii) subdivide its outstanding Common Stock into a greater number of shares; or (iii) combine its outstanding Common Stock into a smaller number of shares, the Conversion Rate in effect immediately prior to the record date or effective date, as the case may be, for the adjustment pursuant to this Section 7.06(a) as described below, shall be adjusted so that the Holder of any Notes thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock of the Company which such Holder would have owned or have been entitled to receive after the happening of any of the events described above had such Notes been converted immediately prior to such record date or effective date, as the case may be. An adjustment made pursuant to this Section 7.06(a) shall become effective immediately after the applicable record date in the case of a dividend or distribution and shall become effective immediately after the applicable effective date in the case of subdivision or combination of the Company's Common Stock. If any dividend or distribution of the type described in clause (i) above is not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of the Common Stock entitling them (for a period expiring within 60 days after the date of issuance of such rights or warrants) to subscribe for or purchase Common Stock at a price per share less than the Market Price per share of Common Stock on the record date fixed for determination of stockholders entitled to receive such rights or warrants, the Conversion Rate in effect immediately after such record date shall be adjusted so that the same shall equal the Conversion Rate determined by multiplying the Conversion Rate in effect immediately after such record date by a fraction of which (i) the numerator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered for subscription or purchase, and (ii) the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at the Market Price per share of Common Stock on the earlier of such record date or the Trading Day immediately preceding the ex-date for such issuance of rights or warrants. Such adjustment shall be made successively whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the record date for the determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration 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 delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such record date for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case the Company shall, by dividend or otherwise, distribute to all holders of Common Stock any assets, debt securities, shares of any class of capital stock of the Company or rights or warrants to purchase any of its securities (excluding (i) any dividend, distribution or issuance covered by those referred to in Section 7.06(a) or 7.06(b) hereof and (ii) any dividend or distribution paid exclusively in cash) (any of the foregoing hereinafter in this Section 7.06(c) called the "Distributed Assets or Securities"), then, in each case, the Conversion Rate shall be adjusted (unless Section 7.06(e) applies, in which case the adjustment shall be made as provided therein) so that the same shall equal the Conversion Rate determined by multiplying the Conversion Rate in effect

immediately prior to the close of business on the record date mentioned below by a fraction of which (A) the numerator shall be the Market Price per share of the Common Stock on the earlier of the record date or the Trading Day immediately preceding the ex-date for such dividend or distribution, and (B) the denominator shall be (1) the Market Price per share of the Common Stock on the earlier of such record date or the Trading Day immediately preceding the ex-date for such dividend or distribution less (2) the Fair Market Value on the earlier of such record date or the Trading Day immediately preceding the ex-date for such dividend or distribution (as determined by the Board of Directors, whose determination shall be conclusive, and described in a certificate filed with the Trustee and the Conversion Agent) of the Distributed Assets or Securities so distributed applicable to one share of Common Stock. Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution; provided, however, that, if (i) the Fair Market Value of the portion of the Distributed Assets or Securities so distributed applicable to one share of Common Stock is equal to or greater than the Market Price of the Common Stock on the record date for the determination of stockholders entitled to receive such distribution or (ii) the Market Price of the Common Stock on the record date for the determination of stockholders entitled to receive such distribution is greater than the Fair Market Value per share of such Distributed Assets or Securities by less than \$1.00, then, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion, in addition to the shares of Common Stock, the kind and amount of assets, debt securities, shares of our capital stock or rights or warrants comprising the Distributed Assets or Securities the Holder would have received had such Holder converted such Notes immediately prior to the record date for the determination of stockholders entitled to receive such distribution. In the event that such distribution is not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such distribution had not been declared.

(d) In case the Company shall make any distributions, by dividend or otherwise, consisting exclusively of cash to all holders of Common Stock, other than cash dividends on Common Stock in amounts up to \$0.25 aggregate cash dividends per share of Common Stock in any six month period (the "Dividend Threshold Amount"), then, in such case, the Conversion Rate shall be adjusted so that the same shall equal the Conversion Rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive such distribution by a fraction of which (A) the numerator shall be the Market Price per share of the Common Stock on the earlier of such record date or the Trading Day immediately preceding the ex-date for such dividend or distribution and (B) the denominator shall be (1) the Market Price per share of Common Stock on the earlier of such record date or the Trading Day immediately preceding the ex-date for such dividend or distribution less (2) the amount of cash so distributed applicable to one share of Common Stock (in the case of cash dividends, that amount in excess of the Dividend Threshold Amount).

Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution; provided that if (i) the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Market Price of the Common Stock on the record date for the determination of stockholders entitled to receive such distribution or (ii) the Market Price of the Common Stock on the record date for the determination of stockholders entitled to receive such distribution is greater than the portion of the cash so distributed applicable to one share of Common Stock by less than \$1.00, then, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion, in addition to the shares of Common Stock, the amount of cash such Holder would have received had such Holder converted such Notes immediately prior to the record date for the determination of stockholders entitled to receive such distribution. In the event

that such distribution is not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such distribution had not been declared. If any adjustment is required to be made by this Section 7.06(d) as a result of a distribution of a dividend in any six month period that exceeds the Dividend Threshold Amount, such adjustment shall be based upon the amount by which such distribution exceeds the Dividend Threshold Amount. If an adjustment is otherwise required to be made by this Section 7.06(d), such adjustment shall be based upon the full amount of the distribution.

(e) With respect to Section 7.06(c) above, in the event that the Company makes any distribution to all holders of Common Stock for which an adjustment is required by Section 7.06(c) consisting of Equity Interests in a Subsidiary or other business unit of the Company, the Conversion Rate shall be adjusted so that the same shall equal the Conversion Rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive such distribution by a fraction of which (i) the numerator shall be (x) the Spin-off Market Price per share of the Common Stock on such record date plus (y) the Spin-off Market Price per Equity Interest of the Subsidiary or other business unit of the Company on such record date and (ii) the denominator shall be the Spin-off Market Price per share of the Common Stock on such record date, such adjustment to become effective immediately after the effective date of such distribution of Equity Interests in a Subsidiary or other business unit of the Company.

(f) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a certificate filed with the Trustee and the Conversion Agent) that as of the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Last Reported Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be adjusted so that the same shall equal the Conversion Rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction, of which (i) the numerator shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Last Reported Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and (ii) the denominator shall be the product of the number of shares of Common Stock outstanding (including any Purchased Shares) at the Expiration Time and the Last Reported Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time.

Such adjustment shall become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) Upon conversion of the Notes, the Holders shall receive, in addition to the Common Stock issuable upon such conversion, the rights issued under any future shareholder rights plan the Company implements (notwithstanding the occurrence of an event causing such rights to separate from the Common Stock at or prior to the time of conversion) unless, prior to conversion, such

rights have expired, terminated or been redeemed or exchanged in accordance with such future shareholders rights plan. If, and only if, the Holders of Notes receive rights under such shareholder rights plan as described in the preceding sentence upon conversion of their Notes, then no other adjustment pursuant to this Section 7.06 shall be made in connection with such shareholder rights plan, but an adjustment to the Conversion Rate shall be made pursuant to Section 7.06(c) hereof upon the separation of the rights from the Common Stock.

(h) For purposes of this Section 7.06, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(i) Notwithstanding the foregoing, in no event shall the Conversion Rate exceed the maximum conversion rate specified under this Section 7.06(i) (the "Maximum Conversion Rate") as a result of an adjustment pursuant to Section 7.06(d) and Section 7.06(f) hereof. The Maximum Conversion Rate shall initially be 47.3934. The Maximum Conversion Rate is subject to the same proportional adjustments made to the Conversion Rate pursuant to Section 7.06(a), (b), (c) or (e) hereof.

(j) If any adjustment or readjustment is made to the Conversion Rate pursuant to this Section 7.06 (other than pursuant to Section 7.06(d)), the same proportional adjustment shall be made to the Dividend Threshold Amount; provided that the Dividend Threshold Amount shall be decreased whenever the Conversion Rate is increased and increased whenever the Conversion Rate is decreased.

Section 7.07 Calculation Methodology. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% in the Conversion Rate then in effect, provided that any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as stated in this Article VII, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing. Any adjustments that are made shall be carried forward and taken into account in any subsequent adjustment. All calculations under Article VII, Section 7.06 and this Section 7.07 shall be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be.

Section 7.08 When No Adjustment Required. No adjustment to the Conversion Rate need be made:

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

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

(c) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security not described in paragraph (b) above and outstanding as of the date of this Supplemental Indenture;

(d) for a change in the par value or no par value of the Common Stock; or

(e) for accrued and unpaid interest (including Additional Amounts, if any).

To the extent the Notes become convertible into cash, assets, or property (other than capital stock of the Company or securities to which Section 7.12 applies), no adjustment shall be made thereafter as to the cash, assets or property. Interest shall not accrue on such cash.

Section 7.09 Notice of Adjustment. Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Holders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice. The certificate shall, absent manifest error, 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 7.10 Voluntary Increase. The Company may make such increases in the Conversion Rate, in addition to those required by Section 7.06, 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. To the extent permitted by applicable law, the Company may from time to time increase the Conversion Rate by any amount for any period of time if the period is at least 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 so increased, the Company shall mail to Holders and file with the Trustee and the Conversion Agent a notice of such increase. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such notice except to exhibit the same to any Holder desiring inspection thereof. The Company shall mail the notice at least 15 days before the date the increased Conversion Rate takes effect. The notice shall state the increased Conversion Rate and the period it shall be in effect.

Section 7.11 Notice to Holders Prior to Certain Actions. In case:

(a) The Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 7.06;

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

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

(d) Of the voluntary or involuntary dissolution, liquidation or winding-up of the Company, the Company shall cause to be filed with the Trustee and to be mailed to each Holder at its address appearing on the Security Register, as promptly as possible but in any event at least 15 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, or rights or warrants are to be determined or (y) the date on which such reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

Section 7.12 Effect of Reclassification, Consolidation, Merger,

Binding Share Exchange or Sale. If any of the following events occur, namely (a) any reclassification or change of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination); (b) any consolidation, merger, combination or binding share exchange of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock; or (c) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a Supplemental Indenture, providing that each Note shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, binding share exchange, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Note immediately prior to such reclassification, change, consolidation, merger, combination, binding share exchange, sale or conveyance. Such Supplemental Indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7.12.

The Company shall cause notice of the execution of such Supplemental Indenture to be mailed to each Holder, at its address appearing on the Security Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, binding share exchanges, sales and conveyances.

If this Section 7.12 applies to any event or occurrence, Section 7.06 shall not apply.

Section 7.13 Responsibility of Trustee. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to either calculate the Conversion Rate or determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same and shall be protected in relying upon an Officers' Certificate with respect to the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Notes and the Trustee and any other Conversion Agent make no representations with respect thereto. Subject to the provisions of Article Six of the Base Indenture, neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Section. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any Supplemental Indenture entered into pursuant to Article VII hereof relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 7.12 or to any adjustment to be made with respect thereto, but, subject to the provisions of Article Six of the Base Indenture, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 7.14 Simultaneous Adjustments. In the event that Section 7.06 requires adjustments to the Conversion Rate under more than one of Sections 7.06(a), (b), (c), (d) or (f), and the Record Dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 7.06(c), second, the provisions of Section 7.06(a), third, the provisions of Section 7.06(b), fourth, the provisions of section 7.06(d) and fifth, the provisions of Section 7.06(f).

Section 7.15 Successive Adjustments. After an adjustment to the Conversion Rate under Section 7.06, any subsequent event requiring an adjustment under Section 7.06 shall cause an adjustment to the Conversion Rate as so adjusted.

Section 7.16 General Considerations. Whenever successive adjustments to the Conversion Rate are called for pursuant to Article VII hereof, such adjustments shall be made to the Market Price as may be necessary or appropriate to effectuate the intent of Article VII hereof and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

ARTICLE VIII

Restrictions on Transfer

Section 8.01 Transfer and Exchange.

(a) Transfer and Exchange of Notes in Definitive Form. In addition to the requirements set forth in Section 305 of the Base Indenture, Notes in definitive form that are Transfer Restricted Securities presented or surrendered for registration of transfer or exchange pursuant to Section 305 of the Base Indenture shall be accompanied by the following additional information and documents, as applicable, upon which the Security Registrar may conclusively rely:

(i) if such Transfer Restricted Securities are being delivered to the Security Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect (in substantially the form of Exhibit B hereto); or

(ii) if such Transfer Restricted Securities are being transferred (1) to a Qualified Institutional Buyer in accordance with Rule 144A under the Securities Act or (2) pursuant to an exemption from registration in accordance with Rule 144 under the Securities Act (and based upon an opinion of counsel if the Company or the Trustee so requests) or (3) pursuant to an effective registration statement under the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B hereto); or

(iii) if such Transfer Restricted Securities are being transferred in reliance on and in compliance with another exemption from the registration requirements of the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B hereto) and an opinion of counsel to that effect if the Company or the Trustee so requests.

(b) Transfer and Exchange of the Notes.

(i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depositary, in accordance with Section 305 of the Base Indenture and Article VIII hereof (including the restrictions on transfer set forth therein and herein) and the rules and procedures of the Depositary therefor, which shall include restrictions on transfer comparable to those set forth therein and herein to the extent required by the Securities Act.

(ii) The transfer and exchange of Global Notes or beneficial interests therein for certificated notes (or vice versa) shall be effected through the Trustee and the Depositary, as the case may be, in accordance with Section 305 of the Base Indenture and Article VIII hereof (including the restrictions on transfer set forth therein and herein) and the rules and procedures of the Depositary therefor, which shall include restrictions on transfer comparable to those set forth therein and herein to the extent

required by the Securities Act.

Section 8.02 Legends.

(a) Except as permitted by Section 8.02(b) hereof, each certificate evidencing the Global Notes or certificated notes in definitive form (and all Notes issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

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

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

THE HOLDER OF THIS SECURITY IS SUBJECT TO, AND ENTITLED TO THE BENEFITS OF, A REGISTRATION RIGHTS AGREEMENT, DATED AS OF OCTOBER 10, 2003 ENTERED INTO BY THE COMPANY FOR THE BENEFIT OF CERTAIN HOLDERS OF SECURITIES FROM TIME TO TIME.

Each certificate evidencing the Global Notes also shall bear the legend specified for Global Notes in the form of Note attached hereto as Exhibit A.

(b) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by a Global Note) pursuant to Rule 144 under the Securities Act or an effective registration statement under the Securities Act, which shall be certified to the Trustee and Security Registrar upon which each may conclusively rely:

(i) in the case of any Transfer Restricted Security represented by a certificated note, the Security Registrar shall permit the Holder thereof to exchange such Transfer Restricted Security for a certificated note that does not bear the legend set forth in Section 8.02(a) hereof and rescind any restriction on the transfer of such Transfer Restricted Security; and

(ii) in the case of any Transfer Restricted Security represented by a Global Note, such Transfer Restricted Security shall not be required to bear the legend set forth in Section 8.02(a) hereof if all other interests in such Global Note have been or are concurrently being sold or transferred pursuant to Rule 144 under the Securities Act or pursuant to an effective registration statement under the Securities Act.

Section 8.03 Registration Rights Agreement.

The Company shall perform its obligations under the Registration Rights Agreement and shall comply in all material respects with the terms and conditions contained therein including, without limitation, the payment of Additional Amounts.

Section 8.04 Restriction on Common Stock Issuable Upon Conversion.

(a) Shares of Common Stock to be issued upon conversion of Notes prior to the effectiveness of a Shelf Registration Statement shall be physically delivered in certificated form to the Holders converting such Notes and the certificate representing such shares of Common Stock shall bear the Restricted Common Stock Legend unless removed in accordance with Section 8.04(c).

(b) If (i) shares of Common Stock to be issued upon conversion of Notes prior to the effectiveness of a Shelf Registration Statement are to be registered in a name other than that of the Holder of such Notes or (ii) shares of Common Stock represented by a certificate bearing the Restricted Common Stock Legend are transferred subsequently by such Holder, then, unless the Shelf Registration Statement has become effective and such shares are being transferred pursuant to the Shelf Registration Statement, the Holder must deliver to the transfer agent for the Common Stock and to the Company a certificate in substantially the form of Exhibit H as to compliance with the restrictions on transfer applicable to such shares of Common Stock and neither the transfer agent nor the registrar for the Common Stock shall be required to register any transfer of such Common Stock not so accompanied by a properly completed certificate.

(c) Except in connection with a Shelf Registration Statement, if certificates representing shares of Common Stock are issued upon the registration of transfer, exchange or replacement of any other certificate representing shares of Common Stock bearing the Restricted Common Stock Legend, or if a request is made to remove such Restricted Common Stock Legend from certificates representing shares of Common Stock, the certificates so issued shall bear the Restricted Common Stock Legend, or the Restricted Common Stock Legend shall not be removed, as the case may be, unless there is delivered to the Company such reasonably satisfactory evidence, which, in the case of a transfer made pursuant to Rule 144 under the Securities Act of 1933, may include an opinion of counsel, as may be reasonably required by the Company, that neither the legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act of 1933 and that such shares of Common Stock are securities that are not "restricted" within the meaning of Rule 144 under the Securities Act of 1933. Upon provision to the Company of such reasonably satisfactory evidence, the Company shall cause the transfer agent for the Common Stock to countersign and deliver certificates representing shares of Common Stock that do not bear the legend.

Section 8.05 Delivery of Certain Information. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any beneficial holder of Notes or shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any beneficial holder of Notes or holder of shares of Common Stock issued upon conversion of Notes, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act.

ARTICLE IX

Remedies; Modification and Waiver

Section 9.01 Additional Events of Default; Acceleration of Maturity. Solely with respect to the Notes issued hereby, Section 501(a) of the Base Indenture is hereby deleted in its entirety, and the following is substituted in lieu thereof as an

Event of Default in addition to the other events set forth in Section 501 of the Base Indenture:

"(a) default in the payment of any interest upon any Security of that series, including Additional Amounts, if any, when it becomes due and payable, and continuance of such default for a period of 30 days;"

Section 9.02 Modification and Waiver.

(a) In addition to those matters set forth in Section 902 of the Base Indenture (including the terms and conditions of the Notes set forth herein), and solely with respect to the Notes issued hereby, no amendment or Supplemental Indenture shall without the consent of the Holder of each Note affected thereby:

(i) Reduce the Redemption Price, Purchase Price or Fundamental Change Purchase Price of the Notes; or

(ii) Alter the manner of calculation or rate of Additional Amounts payable on any Note or extend the time for payment of any such amount.

The references to "interest" in Sections 513(1) and 1001 of the Base Indenture shall include Additional Amounts, if any.

(b) Amendments to the Base Indenture. The following amendments apply to the Notes issued hereby and all other Securities issued under the Base Indenture from and after the date of this Fifth Supplemental Indenture, including the Company's 7.25% Senior Notes due 2013.

(i) The first paragraph of Section 502 of the Base Indenture is hereby deleted in its entirety and replaced with the following paragraph:

"If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, other than under clause (6) or (7) of Section 501, 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 (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all of the Securities of that series 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 clause (6) or (7) of Section 501 occurs with respect to Securities of any series at the time Outstanding, all unpaid principal of and accrued interest on the Outstanding Securities of that series shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of any Security of that series."

(ii) The following paragraph is added to the end of Section 301 of the Base Indenture:

"All Securities of any series need not be issued at the same time and, unless otherwise so provided, a series may be reopened for issuance of additional Securities of such series."

ARTICLE X

Miscellaneous Provisions

Section 10.01 The Indenture, as supplemented and amended by this Fifth Supplemental Indenture, is in all respects hereby adopted, ratified and confirmed.

Section 10.02 This Fifth Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.03 THIS FIFTH SUPPLEMENTAL INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW).

Section 10.04 If any provision in this Fifth Supplemental Indenture limits, qualifies or conflicts with another provision hereof which is required to be included herein by any provisions of the Trust Indenture Act, such required provision shall control.

Section 10.05 In case any provision in this Fifth Supplemental Indenture or the Notes 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 10.06 The recitals contained herein shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Fifth Supplemental Indenture.

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

EASTMAN KODAK COMPANY

By:

Name: Daniel A. Carp
Title: Chairman of the
Board and
Chief Executive
Officer

Attest:

Name:
Title:

(SEAL)

THE BANK OF NEW YORK, as
Trustee

By:

Name:
Title:

(SEAL)

Exhibit A

[FORM OF FACE OF NOTE]

[Global Note]
[Certificated Note]

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

NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY.

[For as long as this Global Security is deposited with or on behalf of The Depository Trust Company it shall bear the following legend.] Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Eastman Kodak Company or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

EASTMAN KODAK COMPANY

3.375% Convertible Senior Notes due 2033

No. _____ \$ _____ *
CUSIP No. _____

EASTMAN KODAK COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey (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 October 15, 2033. This Note shall bear interest as specified on the other side of this Note. This Note is convertible and is subject to redemption at the option of the Company and to purchase by the Company at the option of the Holder as specified on the other side of this Note.

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

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

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

THE HOLDER OF THIS SECURITY AGREES THAT SUCH HOLDER WILL NOT ENGAGE IN HEDGING TRANSACTIONS INVOLVING THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

THIS SECURITY AND ANY RELATED DOCUMENTATION MAY BE

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

THE HOLDER OF THIS SECURITY IS SUBJECT TO, AND ENTITLED TO THE BENEFITS OF, A REGISTRATION RIGHTS AGREEMENT, DATED AS OF OCTOBER 10, 2003 ENTERED INTO BY THE COMPANY FOR THE BENEFIT OF CERTAIN HOLDERS OF SECURITIES FROM TIME TO TIME.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note 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 under its corporate seal.

Dated: EASTMAN KODAK COMPANY

By:
Name: Daniel A. Carp
Title: Chairman of the Board
of Directors and
Chief Executive Officer

(SEAL)

Attest:

Name:
Title:

(Trustee's Certificate of Authentication)

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

Date of Authentication: _____

By:
Authorized Signatory

[FORM OF REVERSE SIDE OF NOTE]

EASTMAN KODAK COMPANY

3.375% CONVERTIBLE SENIOR NOTES DUE 2033

1. INTEREST

This Note shall bear interest at a rate of 3.375% per year on the principal hereof, from October 10, 2003 or from the most recent Interest Payment Date (as defined below) to which payment has been made or duly provided for, payable semiannually in arrears on April 15 and October 15 of each year, beginning April 15, 2004 (each an "Interest Payment Date") to the persons in whose names the Notes are registered at the close of business on the April 1 and October 1 (each a "Regular Record Date") (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date. The amount of interest payable for any period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of interest payable for any partial period shall be computed on the basis of a 360-day year of twelve 30-day months and the days elapsed in any partial month.

Holders of Notes at the close of business on a Regular Record Date will receive payment of interest payable on the

corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the close of business on such Regular Record Date. Notes surrendered for conversion by a Holder during the period from the close of business on any Regular Record Date to the opening of business on the immediately following Interest Payment Date must be accompanied by payment of an amount equal to the interest that the Holder is to receive on the Notes; provided, however, that no such payment need be made if (1) the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the immediately following Interest Payment Date, (2) the Company has specified a Purchase Date following a Fundamental Change that is during such period or (3) any overdue interest exists at the time of conversion with respect to such Notes to the extent of such overdue interest. The Holders of the Notes and any Common Stock issuable upon conversion thereof will continue to be entitled to receive Additional Amounts in accordance with the Registration Rights Agreement.

If the principal hereof or any portion of such principal is not paid when due (whether upon acceleration, upon the date set for payment of the Redemption Price pursuant to paragraph 5 hereof, upon the date set for payment of a Purchase Price or Fundamental Change Purchase Price pursuant to paragraph 7 hereof or upon the Stated Maturity of this Note) or if interest due hereon or any portion of such interest is not paid when due in accordance with this paragraph or paragraph 9 hereof, then in each such case the overdue amount shall bear interest at the rate of 3.375% per annum, compounded semiannually (to the extent that the payment of such interest shall be legally enforceable), which interest shall accrue from the date such overdue amount was due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

2. METHOD OF PAYMENT

Payment of the principal of (and premium, if any) and any such interest on this Note will be made at the 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; provided, however, that at the option of the Company payment of interest may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) by wire transfer in immediately available funds at such place and to such account as may be designated in writing by the Person entitled thereto as specified in the Security Register.

3. PAYING AGENT, CONVERSION AGENT AND SECURITY REGISTRAR

Initially, the Trustee shall act as Paying Agent, Conversion Agent and Security Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Security Registrar or co-registrar or approve a change in the office through which any Paying Agent or Conversion Agent acts 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, Security Registrar or co-registrar.

4. INDENTURE

This Note is one of a duly authorized issue of securities of the Company, issued and to be issued in one or more series under an Indenture, dated as of January 1, 1988, as supplemented by the First Supplemental Indenture thereto, dated as of September 6, 1991, the Second Supplemental Indenture thereto, dated as of September 20, 1991, the Third Supplemental Indenture thereto, dated as of January 26, 1993 and the Fourth Supplemental Indenture thereto, dated as of March 1, 1993 (the "Base Indenture"), as supplemented by the Fifth Supplemental Indenture thereto, dated as of October 10, 2003 (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), between the Company and the Trustee. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. Reference is hereby made to the Indenture for a statement of

the respective rights thereunder of the Company, the Trustee and the Holders and the terms upon which the Notes are to be authenticated and delivered. The terms, conditions and provisions of the Notes are those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended, and those set forth in the Notes.

The Notes are general unsecured obligations of the Company limited to \$575,000,000 aggregate principal amount.

5. REDEMPTION AT THE OPTION OF THE COMPANY

No sinking fund is provided for the Notes. The Notes are redeemable for cash at any time in whole, or from time to time in part, on or after October 15, 2010 at the option of the Company at a redemption price ("Redemption Price") equal to 100% of the principal amount of the Notes to be redeemed plus any accrued and unpaid interest (including Additional Amounts, if any) to, but excluding, the Redemption Date.

6. NOTICE OF REDEMPTION AT THE OPTION OF THE COMPANY

Notice of redemption at the option of the Company shall be mailed at least 30 days but not more than 60 days before a Redemption Date to the Trustee, the Paying Agent and each Holder of Notes to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Notes (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, on and after the Redemption Date interest (including Additional Amounts, if any), if any, shall cease to accrue on such Notes or portions thereof. Notes in denominations larger than \$1,000 principal amount may be redeemed in part but only in integral multiples of \$1,000 principal amount.

7. PURCHASE BY THE COMPANY AT THE OPTION OF THE HOLDER; PURCHASE AT THE OPTION OF THE HOLDER UPON A FUNDAMENTAL CHANGE

(a) Subject to the terms and conditions of the Indenture, a Holder shall have the option to require the Company to purchase all or any portion of the Notes held by such Holder on October 15, 2010, October 15, 2013, October 15, 2018, October 15, 2023 and October 15, 2028 (each, a "Purchase Date") at a purchase price (the "Purchase Price") equal to 100% of the principal amount of the Notes to be purchased plus any accrued and unpaid interest (including Additional Amounts, if any) to, but excluding, such Purchase Date, upon delivery of a Purchase Notice containing the information set forth in the Indenture, from the opening of business on the date that is 20 Business Days prior to such Purchase Date until the close of business on the Business Day prior to such Purchase Date and upon delivery of the Notes to the Paying Agent by the Holder as set forth in the Indenture. The Company will pay the Purchase Price in cash.

Notes in denominations larger than \$1,000 principal amount may be purchased in part, but only in integral multiples of \$1,000 principal amount.

(b) If a Fundamental Change shall occur at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option and subject to the terms and conditions of the Indenture, to require the Company to purchase all of such Holder's Notes or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000 on the day that is 35 days after the date of the Company Notice of the occurrence of the Fundamental Change (subject to extension to comply with applicable law) for a Fundamental Change Purchase Price equal to 100% of the principal amount of Notes purchased plus accrued and unpaid interest (including Additional Amounts, if any) to, but excluding, the Fundamental Change Purchase Date, which Fundamental Change Purchase Price shall be paid by the Company in cash, as set forth in the Indenture.

(c) Holders have the right to withdraw any Purchase Notice or Fundamental Change Purchase Notice, as the case may be, by delivery to the Paying Agent of a written notice of withdrawal in accordance with the provisions of the

Indenture.

(d) If cash sufficient to pay a Fundamental Change Purchase Price or Purchase Price, as the case may be, of all Notes or portions thereof to be purchased as of the Purchase Date or the Fundamental Change Purchase Date, as the case may be, is deposited with the Paying Agent on the Business Day following the Purchase Date or the Fundamental Change Purchase Date, as the case may be, interest (including Additional Amounts, if any) shall cease to accrue on such Notes (or portions thereof) on and after such date, and the Holder thereof shall have no other rights as such (other than the right to receive the Purchase Price or Fundamental Change Purchase Price, as the case may be, upon surrender of such Note).

8. CONVERSION

Subject to the procedures set forth in the Indenture, a Holder may convert Notes into Common Stock, in whole or in part (but only those called for redemption in the case of paragraph 8(e) below), on or before the close of business on October 15, 2033 during the periods and upon satisfaction of at least one of the conditions set forth below:

(a) in any calendar quarter (and only during such calendar quarter), beginning with the calendar quarter ending March 31, 2004, if the Last Reported Sale Price for Common Stock for at least 20 Trading Days during the period of 30 consecutive Trading Days ending on the last Trading Day of the previous calendar quarter is greater than or equal to 120% of the Conversion Price per share of Common Stock on such last Trading Day;

(b) during any period in which either (A) the credit rating assigned to the Notes by Moody's Investors Service, Inc. is lower than Ba2 or (B) the credit rating assigned to the Notes by Standard & Poors Rating Services is lower than BB;

(c) during any period in which the Notes no longer are assigned credit ratings by at least one of Moody's Investors Services, Inc. and Standard & Poor's Ratings Services or their successors;

(d) during any five consecutive Trading Day period following any 10 consecutive Trading Day period in which (1) the Trading Price of a Note for each day of such period was less than 105% of the Conversion Value, and (2) the Conversion Value for each day of such period was less than 95% of the principal amount of a Note;

(e) in the event that the Company issues a notice pursuant to Section 1102 of the Base Indenture that it intends to call the Notes for redemption, at any time prior to the close of business on the second Business Day immediately preceding the Redemption Date (but only those Notes called for redemption may be converted); or

(f) the Company becomes a party to a consolidation, merger or binding share exchange pursuant to which the Common Stock would be converted into cash, property or securities, in which case a Holder may surrender Notes for conversion at any time from and after the date which is 15 days prior to the anticipated effective date for the transaction until 15 days after the actual effective date of such transaction (or the close of business of the Business Day immediately preceding the date on which the Company announces that the transaction will not take place) and, at the effective time of the transaction, the right to convert a Note into shares of Common Stock shall be changed into a right to convert such Note into the kind and amount of cash, property or securities of the Company or another person that the Holder would have received if the Holder had converted the Note immediately prior to the transaction as set forth in Section 7.12 of the Fifth Supplemental Indenture; or

(g) the Company elects to (i) distribute to all holders of Common Stock assets, debt securities or

rights to purchase securities of the Company, which distribution has a per share value as determined by the Board of Directors exceeding 5% of the Last Reported Sale Price of a share of Common Stock on the Trading Day immediately preceding the declaration date for such distribution, or (ii) distribute to all holders of Common Stock rights entitling them to purchase, for a period expiring within 60 days after the date of such distribution, shares of Common Stock at less than the Last Reported Sale Price of Common Stock on the Trading Day immediately preceding the declaration date of the distribution. In the case of the foregoing clauses (i) and (ii), the Company must notify the Holders at least 20 Business Days immediately prior to the ex date for such distribution. Once the Company has given such notice, Holders may surrender their Notes for conversion, in whole or in part, at any time thereafter until the earlier of the close of business on the Business Day immediately prior to the ex date and the date of the Company's announcement that such distribution will not take place; provided, however, that a Holder may not exercise this right to convert if the Holder may participate in the distribution without conversion. As used herein, the term "ex date," when used with respect to any issuance or distribution, shall mean the first date on which the Common Stock trades regular way on such exchange or in such market without the right to receive such issuance or distribution.

Notes in respect of which a Holder has delivered a notice of exercise of the option to require the Company to purchase such Notes pursuant to Articles IV or V of the Supplemental Indenture may be converted only if the notice of exercise is withdrawn in accordance with the terms of the Supplemental Indenture.

The initial Conversion Rate is 32.2373 shares of Common Stock per \$1,000 principal amount, subject to adjustment in certain events described in the Indenture. The Company shall deliver cash or a check in lieu of any fractional share of Common Stock.

Holders of Notes at the close of business on a Regular Record Date will receive payment of interest payable on the corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the close of business on such Regular Record Date. Notes surrendered for conversion by a Holder during the period from the close of business on any Regular Record Date to the opening of business on the immediately following Interest Payment Date must be accompanied by payment of an amount equal to the interest that the Holder is to receive on the Notes; provided, however, that no such payment need be made if (1) the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the immediately following Interest Payment Date, (2) the Company has specified a Purchase Date following a Fundamental Change that is during such period or (3) any overdue interest exists at the time of conversion with respect to such Notes to the extent of such overdue interest. The Holders of the Notes and any Common Stock issuable upon conversion thereof will continue to be entitled to receive Additional Amounts in accordance with the Registration Rights Agreement.

To convert the Notes a Holder must (1) complete and manually sign the irrevocable conversion notice on the back of the Notes (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent at the office maintained by the Conversion Agent for such purpose, (2) surrender the Notes to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

A Holder may convert a portion of the Notes only if the principal amount of such portion is \$1,000 or a multiple of \$1,000. No payment or adjustment shall be made for dividends on the Common Stock except as provided in the Indenture. On conversion of the Notes, that portion of accrued and unpaid interest attributable to the period from the Original Issue Date to the Conversion Date with respect to the converted

portion of the Notes shall not be canceled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through the delivery of the Common Stock (together with any cash payment in lieu of fractional shares) in exchange for the portion of the Notes being converted pursuant to the terms hereof; and the Fair Market Value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for interest accrued and unpaid through the Conversion Date, and the balance, if any, of such Fair Market Value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the principal amount of the Notes being converted pursuant to the provisions hereof. Notwithstanding the conversion of any Notes, the Holders of the Notes and any Common Stock issuable upon conversion thereof will continue to be entitled to receive Additional Amounts in accordance with the Registration Rights Agreement.

9. DEFAULTED INTEREST

Except as otherwise specified with respect to the Notes, any Defaulted Interest on any Note shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date or accrual date, as the case may be, by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 2.04 of the Supplemental Indenture.

10. DENOMINATIONS; TRANSFER; EXCHANGE

The Notes are in registered form, without coupons, in denominations of \$1,000 principal amount and multiples of \$1,000. A Holder may transfer or convert Notes in accordance with the Indenture. The Security Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. In the event of any redemption or purchase in part, the Security Registrar need not register the transfer of or exchange any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes in respect of which a Purchase Notice or Fundamental Change Purchase Notice has been given and not withdrawn (except, in the case of a Note to be purchased in part, the portion of the Note not to be purchased) for a period of 15 days before the mailing of a Redemption Notice, Purchase Notice or Fundamental Change Purchase Notice.

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 PROPERTY

The Trustee and the Paying Agent shall return to the Company upon written request any money or property held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, provided, however, that the Trustee or such Paying Agent, before being required to make any such return, shall at the expense of the Company cause to be published once in a newspaper of general circulation in The City of New York or mail to each such Holder notice that such money or property remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed money or property then remaining shall be returned to the Company. After return to the Company, Holders entitled to the money or property must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person.

13. AMENDMENT; WAIVER

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Notes may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes at the time Outstanding and (ii) certain defaults or noncompliance with certain provisions may be waived with the written consent of

the Holders of a majority in aggregate principal amount of the Notes at the time Outstanding. The Indenture or the Notes may be amended without the consent of any Holders under circumstances set forth in Section 901 of the Base Indenture. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note 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 Note.

14. DEFAULTS AND REMEDIES

If an Event of Default occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding, may declare the principal amount of all the Notes to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which shall result in the principal amount of, and any accrued and unpaid interest on (including Additional Amounts, if any), the Notes becoming due and payable immediately upon the occurrence of such Events of Default.

Events of Default in respect of the Notes are set forth in Section 9.01 of the Supplemental Indenture and Section 501 of the Base Indenture. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives reasonable indemnity or security. Subject to certain limitations, conditions and exceptions, Holders of a majority in aggregate principal amount of the Notes at the time Outstanding may direct the Trustee in its exercise of any trust or power, including the annulment of a declaration of acceleration. The Trustee may withhold from Holders notice of any continuing default (except a default in payment on any Notes) if it determines that withholding notice is in their interests.

15. CONSOLIDATION, MERGER, AND SALE OF ASSETS

In the event of a consolidation, merger, or sale of assets to convey, transfer or lease all or substantially all of Company's property or assets as described in Article VIII of the Base Indenture, the successor corporation to the Company shall succeed to and be substituted for the Company, and may exercise the Company's rights and powers under this Indenture, and thereafter, except in the case of a lease, the Company shall be relieved of all obligations and covenants under the Indenture and the Notes.

16. TRUSTEE AND AGENT DEALINGS WITH THE COMPANY

The Trustee, Paying Agent, Conversion Agent and Security Registrar under the Indenture, each 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, Paying Agent, Conversion Agent or Security Registrar.

17. CALCULATIONS IN RESPECT OF THE NOTES

The Company will be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determination of the market prices for the Common Stock, accrued interest payable on the Notes and the Conversion Price of the Notes. The Company will make these calculations in good faith and, absent manifest error, these calculations will be final and binding on the Holders. The Company will provide to each of the Trustee and the Conversion Agent a schedule of its calculations and each of the Trustee and the Conversion Agent is entitled to rely upon the accuracy of such calculations without independent verification. The Trustee will forward the Company's calculations to any Holder upon the request of such Holder.

18. NO RECOURSE AGAINST OTHERS

A director, officer or employee, as such, of the Company or any Subsidiary of the Company or any 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 Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

19. AUTHENTICATION

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

20. ABBREVIATIONS

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

21. GOVERNING LAW

The Indenture and this Note shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law rules of said State.

SCHEDULE A

SCHEDULE OF ADJUSTMENTS

The initial aggregate principal amount of Securities evidenced by the Certificate to which this Schedule is attached is _____. The notations on the following table evidence decreases and increases in the aggregate principal amount of Securities evidenced by such Certificate.

Date of Adjust-ment	Decrease in Aggregate Principal Amount of Securities	Increase in Aggregate Principal Amount of Securities	Aggregate Principal Amount of Securities Remaining After Such Decrease or Increase	Notation by Security Registrar
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Exhibit B

FORM OF CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFER OF SECURITIES

Re: 3.375% Convertible Senior Notes due 2033 of Eastman Kodak Company (the "Company")

This Certificate relates to \$_____ principal amount of Notes held in *_____ book-entry or *_____ definitive form by _____ (the "Transferor").

The Transferor has requested the Trustee by written order to exchange or register the transfer of a Note or Notes.

In connection with such request and in respect of each such Note, the Transferor does hereby certify that the Transferor is familiar with the Indenture, dated as of January 1, 1988, as supplemented by the First Supplemental Indenture thereto, dated as of September 6, 1991, the Second Supplemental Indenture thereto, dated as of September 20, 1991, the Third Supplemental Indenture thereto, dated as of January 26, 1993, the Fourth Supplemental Indenture thereto, dated as of March 1, 1993 and the Fifth Supplemental Indenture thereto, dated as of October 10, 2003 (as amended or supplemented to date, the "Indenture"), between the Company and The Bank of New York (the "Trustee"), relating to the above-captioned Notes and that the transfer of this Note does not require registration under the Securities Act (as

defined below) because:*

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

Such Note is being transferred (i) to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act")), in accordance with Rule 144A under the Securities Act.

Such Note is being transferred (i) pursuant to an exemption from registration in accordance with Rule 144 under the Securities Act (and based upon an opinion of counsel if the Company or the Trustee so requests) or (ii) pursuant to an effective registration statement under the Securities Act.

Such Note is being transferred in reliance on and in compliance with another exemption from the registration requirements of the Securities Act (and based upon an opinion of counsel if the Company or the Trustee so requests).

You are entitled to rely upon this certificate and you are irrevocably authorized to produce this certificate or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

[INSERT NAME OF TRANSFEROR]

By:

Name:
Title:
Address:

Date: _____

Exhibit C

FORM OF CONVERSION NOTICE

To: Eastman Kodak Company

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

This notice shall be deemed to be an irrevocable exercise of the option to convert this Note.

Dated:

Signature(s)

Signature(s) must be guaranteed by a commercial bank or trust company or a member firm of a major stock exchange if shares of Common Stock are to be issued, or Notes to be delivered, other than to or in the name of the registered holder.

Signature Guarantee

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

(Name) Principal Amount to be converted (if less than all):

(Street Address) \$_____,000

(City, state and zip code) Social Security or Other Taxpayer Number

Please print name and address

Exhibit D

FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE

To: Eastman Kodak Company

The undersigned registered holder of this Note hereby acknowledges receipt of a notice from Eastman Kodak Company (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repurchase this Note, or the portion hereof (which is \$1,000 principal amount or a integral multiple thereof) designated below, in accordance with the terms of the Supplemental Indenture referred to in this Note and directs that the check of the Company, in payment for this Note or the portion thereof and any Notes representing any unreurchased principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Note not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated: Signature(s)

Signature(s) must be guaranteed by a commercial bank or trust company or a member firm of a major stock exchange if Notes are to be delivered other than to or in the name of the registered holder.

Signature Guarantee

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

(Name)

(Street Address)

(City, state and zip code)

Please print name and address

Principal Amount to be purchased (if less than all): \$_____,000

Social Security or Other Taxpayer Number

Exhibit E

FORM OF PURCHASE NOTICE

To: Eastman Kodak Company

The undersigned registered holder of this Note hereby acknowledges receipt of a notice from Eastman Kodak Company (the "Company") as to the holder's option to require the Company to repurchase this Note and requests and instructs the Company to repurchase this Note, or the portion hereof (which is \$1,000 principal amount or an integral multiple thereof) designated below, in accordance with the terms of the Supplemental Indenture referred to in this Note and directs that the check of the Company in payment for this Note or the portion thereof and any Notes representing any unredeemed principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Note not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

Signature(s)

Signature(s) must be guaranteed by a commercial bank or trust company or a member firm of a major stock exchange if Notes are to be delivered other than to or in the name of the registered holder.

Signature Guarantee

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

(Name)

(Street Address)

(City, state and zip code)

Please print name and address

Principal Amount to be purchased (if less than _____ all): \$_____, 000

Social Security or Other Taxpayer Number

Exhibit F

ASSIGNMENT FORM

For value received _____ hereby sell(s), assign(s) and transfer(s) unto

(Please insert social security or other Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints

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

Dated:

Signature(s)

Signature(s) must be

guaranteed by a commercial bank or trust company or a member firm of a major stock exchange if Notes are to be delivered other than to or in the name of the registered holder.

Signature Guarantee

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit G

FORM OF RESTRICTED COMMON STOCK LEGEND

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (III) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

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

THE HOLDER OF THIS SECURITY IS SUBJECT TO, AND ENTITLED TO THE BENEFITS OF, A REGISTRATION RIGHTS AGREEMENT, DATED AS OF OCTOBER 10, 2003 ENTERED INTO BY THE COMPANY FOR THE BENEFIT OF CERTAIN HOLDERS OF SECURITIES FROM TIME TO TIME.

Exhibit H

FORM OF TRANSFER CERTIFICATE FOR TRANSFER
OF RESTRICTED COMMON STOCK

(Transfers pursuant to Section 8.04(b) of the Supplemental Indenture)

[NAME AND ADDRESS OF COMMON STOCK TRANSFER AGENT]

Re:Eastman Kodak Company 3.375% Convertible Senior
Notes Due 2033 (the "Notes")

Reference is hereby made to the Indenture, dated as of January 1, 1988, as supplemented by the First Supplemental Indenture thereto, dated as of September 6, 1991, the Second Supplemental Indenture thereto, dated as of September 20, 1991, the Third Supplemental Indenture thereto, dated as of January 26, 1993, the Fourth Supplemental Indenture thereto, dated as of March 1, 1993, and the Fifth Supplemental Indenture thereto, dated as of October 10, 2003, between the Company and the Trustee (collectively, the "Indenture"). Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

This letter relates to _____ shares of Common Stock represented by the accompanying certificate(s) that were issued upon conversion of Notes and which are held in the name of _____ [name of transferor] (the "Transferor") to effect the transfer of such Common Stock.

In connection with the transfer of such shares of Common Stock, the undersigned confirms that such shares of Common Stock are being transferred:

CHECK ONE BOX BELOW

- (1) to the Company; or
- (2) to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) in accordance with Rule 144A under the Securities Act of 1933; or
- (3) 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 transfer agent will refuse to register any of the Common Stock 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 transfer agent may require, prior to registering any such transfer of the Common Stock, such certifications and other information as the Company has reasonably requested in writing, by delivery to the transfer agent 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.

[Name of Transferor],

By:
Name:
Title:

Dated:

* Reference is made to Schedule A attached hereto with respect to decreases and increases in the aggregate principal amount of Notes evidenced by this Certificate.

* Fill in blank or check appropriate box, as applicable.

Media Contacts:

Gerard Meuchner	Anthony Sanzio
585-724-4513	585-781-5481
gerard.meuchner@kodak.com	anthony.sanzio@kodak.com

Kodak Prices \$500 Million of 3.375% Convertible Senior Notes

ROCHESTER, N.Y., Oct. 8 - Eastman Kodak Company announced that it has priced \$500 million of 3.375% convertible senior notes to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933.

These notes, which pay interest each April and October, have a term of 30 years, with a right by the company to call them on or after seven years, and a right by holders to put their notes at various times on or after seven years.

The notes are convertible into Kodak common stock at a price of \$31.02, equal to a conversion premium of approximately 47% based on the closing price of \$21.10 on Oct. 7.

The terms of the offering include an option exercisable by the initial purchasers to purchase up to an additional \$75 million in aggregate principal amount of the notes. These notes will be senior unsecured obligations of the company.

The proceeds from this offering will be used to repay a portion of Kodak's commercial paper borrowings and to partially fund Kodak's previously announced acquisition of PracticeWorks, Inc.

This press release does not constitute an offer to sell or the solicitation of an offer to buy securities. The offering was made only to qualified institutional buyers. The convertible senior notes have not been registered under the Securities Act of 1933 or state securities laws and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements.

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Editor's Note: For additional information about Kodak, visit our web site on the Internet at www.kodak.com

2003