

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

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

NOVATEL WIRELESS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

86-0824673
(I.R.S. Employer
Identification Number)

9645 Scranton Road
San Diego, California 92121
(858) 320-8800
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Catherine F. Ratcliffe
Senior V.P., Business Affairs, General Counsel and Secretary
Novatel Wireless, Inc.
9645 Scranton Road
San Diego, California 92121
(858) 320-8800
(Name, address, including zip code, and telephone number, including area code of agent for service)

With a copy to:
James E. O'Bannon
Jones Day
2727 N. Harwood
Dallas, Texas 75201
(214) 220-3939

**Approximate date of commencement of proposed sale to the public:
From time to time after the effective date of this registration statement.**

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum aggregate offering price (1)(2)	Amount of registration fee (1)(2)
Debt Securities			
Common Stock, par value \$.001 per share			
Preferred Stock, par value \$.001 per share			
Subscription Rights			
Depository Shares (3)			
Warrants			
Purchase Contracts			
Units (4)			
Total	\$125,000,000	\$125,000,000	\$6,975

(1) An indeterminate number of the securities of each identified class is being registered as may from time to time be offered for sale at indeterminate prices. Separate consideration may or may not be received for securities that are issuable upon exercise, conversion or exchange of other securities or that are issued in units or represented by depository shares.

(2) Estimated solely for the purpose of calculating the registration fee for a primary offering pursuant to Rule 457(o) under the Securities Act of 1933. Pursuant to such Rule 457(o) and General Instruction II.D of Form S-3, which permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed for the primary offering, the table does not specify by each class information as to the amount to be registered or the proposed maximum offering price per unit.

(3) Each depository share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred stock and will be evidenced by a depository receipt.

(4) Each unit will be issued under a unit agreement or indenture and will represent an interest in a combination of any two or more of the securities being registered hereby or debt obligations of third parties, including U.S. Treasury securities.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 21, 2009

PROSPECTUS

\$125,000,000



NOVATEL WIRELESS, INC.

Debt Securities
Common Stock
Preferred Stock
Subscription Rights
Depositary Shares
Warrants
Purchase Contracts
Units

We may offer from time to time to sell up to \$125,000,000 of debt securities, common stock, preferred stock, depositary shares representing preferred stock, subscription rights, warrants, purchase contracts and units consisting of any of these securities or securities of other entities. These securities may be offered and sold by us in one or more offerings. The debt securities, preferred stock, subscription rights, warrants and purchase contracts may be convertible into or exercisable or exchangeable for common or preferred stock or other of our securities or securities of one or more other entities. Shares of our common stock are traded on The Nasdaq Global Select Market under the symbol "NVTL."

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

This prospectus describes some of the general terms that may apply to these securities. The specific terms of any securities to be offered will be described in a supplement to this prospectus.

Investing in these securities involves certain risks. See "Risk Factors" in our most recent annual report on Form 10-K, which is incorporated by reference herein and, if applicable, our subsequent quarterly or current reports and the accompanying prospectus supplement.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2009

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The registration statement containing this prospectus, including the exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. The registration statement, including the exhibits and the documents incorporated herein by reference, can be read on the website of the Securities and Exchange Commission or at the offices of the Securities and Exchange Commission mentioned under the heading “Where You Can Find More Information.”

Except as otherwise indicated or required by the context, references in this prospectus to the “Company,” “we,” “us,” “our” and “Novatel” refer to Novatel Wireless, Inc. and its wholly owned subsidiaries.

ABOUT THIS PROSPECTUS

We may from time to time sell the securities in one or more offerings. This prospectus provides you with a general description of the securities. Each time we offer the securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also supplement, modify or supersede other information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the information incorporated by reference as described below under the heading "Incorporation by Reference."

You should rely only on the information provided in this prospectus and in any prospectus supplement, including the information incorporated by reference. We have not authorized anyone to provide you with different information. We are not offering the securities in any state where the offer is not permitted. You should not assume that the information in this prospectus, or any supplement to this prospectus, is accurate at any date other than the date indicated on the cover page of these documents.

NOVATEL WIRELESS, INC.

We are a provider of wireless broadband access solutions for the worldwide mobile communications market. Our broad range of products includes third generation, or 3G, wireless PC card and ExpressCard modems, embedded modems, USB modems and other fixed-mobile convergence, solutions and communications software for wireless network operators, infrastructure providers, distributors, original equipment manufacturers and vertical markets worldwide. Through the integration of our hardware and software, our products are designed to operate on a majority of wireless networks in the world and provide mobile subscribers with secure and convenient high-speed access to corporate, public and personal information through the Internet and enterprise networks. We also offer software engineering, integration and design services to our customers to facilitate the use of our products.

We were incorporated in 1996 under the laws of the State of Delaware. Our executive offices are located at 9645 Scranton Road, San Diego, California 92121. Our telephone number at this location is (858) 320-8800.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission, or SEC. Our SEC filings are available to the public from the SEC's website at www.sec.gov. You may also read and copy any document we file at the SEC's public reference room in Washington, D.C., located at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room.

INCORPORATION BY REFERENCE

The SEC allows us to "incorporate by reference" in this prospectus the information in the documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus. Any information that is part of this prospectus or any prospectus supplement that speaks as of a later date than any other information that is part of this prospectus or any prospectus supplement updates or supersedes such other information. We incorporate by reference in this prospectus the documents listed below and any documents or portions thereof that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or the Exchange Act, until we sell all of the securities that may be offered by this prospectus.

- Our Annual Report on Form 10-K for the year ended December 31, 2008;
- Our Quarterly Reports on Form 10-Q for the periods ended March 31, 2009 and June 30, 2009; and

- Our Current Reports on Form 8-K filed on May 20, 2009, June 9, 2009, June 24, 2009, July 24, 2009 and September 3, 2009.

We maintain an Internet website at www.novatelwireless.com. The information contained on our website or that can be accessed through our website does not constitute a part of this report. We make available, free of charge, through our Internet website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. You may also obtain, free of charge, a copy of any of these documents (other than exhibits to these documents unless the exhibits are specifically incorporated by reference into these documents or referred to in this prospectus) by writing or calling us at the following address and telephone number:

Corporate Secretary
Novatel Wireless, Inc.
9645 Scranton Road
San Diego, California 92121
(858) 320-8800

FORWARD-LOOKING STATEMENTS

Certain statements contained in this prospectus, the documents we incorporate by reference and other materials we file with the SEC, or in other written or oral statements made or to be made by us, other than statements of historical fact, are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. You should not place undue reliance on these statements. These forward-looking statements include statements that reflect the views of our senior management with respect to our current expectations, assumptions, estimates and projections about Novatel and our industry. Statements that include the words “may,” “could,” “should,” “would,” “estimate,” “anticipate,” “believe,” “expect,” “preliminary,” “intend,” “plan,” “project,” “outlook,” “will” and similar words and phrases identify forward-looking statements. Forward-looking statements address matters that involve risks and uncertainties that could cause actual results to differ materially from those anticipated in these forward-looking statements as of the date of this prospectus. We believe that these factors include the following:

- the impact of uncertain global economic conditions on the demand for our products;
- our ability to compete in the market for wireless broadband data access products;
- our ability to introduce and sell new products that comply with evolving industry standards, including 3G standards;
- our ability to develop and maintain strategic relationships to expand into new markets;
- our dependence on a small number of customers for a substantial portion of our revenues;
- demand for broadband wireless access to enterprise networks and the Internet;
- the outcome of pending or future litigation, including the current class action securities litigation and intellectual property litigation;
- the impact of the current global credit crisis on the value and liquidity of the securities in our investment portfolio;
- our ability to properly manage the growth of our business to avoid significant strains on our management and operations and disruptions to our business;
- our reliance on third parties to manufacture our products;
- our ability to accurately forecast customer demand and order sufficient product quantities;

- our reliance on sole source suppliers for some components used in our products;
- infringement claims with respect to intellectual property contained in our products;
- our continued ability to license necessary third-party technology for the development of our products;
- risks associated with doing business abroad, including foreign currency risks;
- our ability to hire, retain and manage additional qualified personnel to maintain and expand our business; and
- our ability to timely comply with public reporting obligations and maintain the listing of our common stock on The Nasdaq Global Select Market.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this and other reports we file with the SEC, including the information in “Item 1A. Risk Factors” in Part I of our Annual Report on Form 10-K for the year ended December 31, 2008. If one or more events related to these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from what we anticipate.

USE OF PROCEEDS

Unless otherwise indicated in a prospectus supplement, the net proceeds from the sale of the securities will be used for general corporate purposes, which may include working capital and capital expenditures.

DESCRIPTION OF DEBT SECURITIES

General

The debt securities that we may offer by this prospectus consist of notes, debentures, or other evidences of indebtedness of Novatel, which we refer to as “debt securities.” All debt securities of any one series need not be issued at the same time, and unless otherwise provided, a series of debt securities may be reopened, with the required consent of the holders of outstanding debt securities, for issuance of additional debt securities of that series or to establish additional terms of that series of debt securities (with such additional terms applicable only to unissued or additional debt securities of that series). A copy of the form of indenture, which is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part, is incorporated herein by reference. Except as otherwise defined in this prospectus, capitalized terms used in this prospectus have the meanings given to them in the indenture.

The provisions of the indenture will generally be applicable to all of the debt securities. Selected provisions of the indenture are described in this prospectus. Additional or different provisions that are applicable to a particular series of debt securities will, if material, be described in a prospectus supplement relating to the offering of debt securities of that series. These provisions may include, among other things and to the extent applicable, the following:

- the title of the debt securities, including, as applicable, whether the debt securities will be issued as senior debt securities, senior subordinated debt securities or subordinated debt securities, any subordination provisions particular to the series of debt securities and whether the debt securities are convertible or exchangeable for other securities;
- any limit on the aggregate principal amount of the debt securities;
- if other than 100% of the aggregate principal amount, the percentage of the aggregate principal amount at which we will sell the debt securities;
- the date or dates, whether fixed or extendable, on which the principal of the debt securities will be payable;

- the rate or rates, which may be fixed or variable, at which the debt securities will bear interest, if any, the date or dates from which any such interest will accrue, the interest payment dates on which we will pay any such interest, the basis upon which interest will be calculated if other than that of a 360-day year consisting of twelve 30-day months, and, in the case of registered securities, the record dates for the determination of holders to whom interest is payable;
- any provisions relating to the issuance of the debt securities at an original issue discount;
- the place or places where the principal of and any premium or interest on the debt securities will be payable and where the debt securities may be surrendered for conversion or exchange;
- whether we may, at our option, redeem the debt securities, and if so, the price or prices at which, the period or periods within which, and the terms and conditions upon which we may redeem the debt securities, in whole or in part, pursuant to any sinking fund or otherwise;
- if other than 100% of the aggregate principal amount thereof, the portion of the principal amount of the debt securities which will be payable upon declaration of acceleration of the maturity date thereof or provable in bankruptcy, or, if applicable, which is convertible or exchangeable;
- any obligation we may have to redeem, purchase or repay the debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder of debt securities, and the price or prices at which, the currency in which and the period or periods within which, and the terms and conditions upon which, the debt securities will be redeemed, purchased or repaid, in whole or in part, pursuant to any such obligation, and any provision for the remarketing of the debt securities;
- the issuance of debt securities as registered securities or unregistered securities or both, and the rights of the holders of the debt securities to exchange unregistered securities for registered securities, or vice versa, and the circumstances under which any such exchanges, if permitted, may be made;
- the denominations, which may be in U.S. Dollars or in any foreign currency, in which the debt securities will be issued, if other than denominations of \$1,000 and any integral multiple thereof;
- whether the debt securities will be issued in the form of certificated debt securities, and if so, the form of the debt securities (or forms thereof if unregistered and registered securities are issuable in that series), including the legends required by law or as we deem necessary or appropriate, the form of any coupons or temporary global security which may be issued and the forms of any other certificates which may be required under the indenture or which we may require in connection with the offering, sale, delivery or exchange of the debt securities;
- if other than U.S. Dollars, the currency or currencies in which payments of principal, interest and other amounts payable with respect to the debt securities will be denominated, payable, redeemable or repurchasable, as the case may be;
- whether the debt securities may be issuable in tranches;
- the obligations, if any, we may have to permit the conversion or exchange of the debt securities into common stock, preferred stock or other capital stock or property, or a combination thereof, and the terms and conditions upon which such conversion will be effected, and any limitations on the ownership or transferability of the securities or property into which the debt securities may be converted or exchanged;
- if other than the trustee under the indenture, any trustees, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the debt securities;
- if the debt securities do not bear interest, the applicable dates required under the indenture for furnishing information to the trustee regarding the holders of the debt securities;
- any deletions from, modifications of or additions to (a) the events of default with respect to the debt securities or (b) the right of the Trustee or the holders of the debt securities in connection with events of default;

- any deletions from, modifications of or additions to the covenants with respect to the debt securities;
- if the amount of payments of principal of, and make-whole amount, if any, and interest on the debt securities may be determined with reference to an index, the manner in which such amount will be determined;
- whether the debt securities will be issued in whole or in part in the global form of one or more debt securities and, if so, the depositary for such debt securities, the circumstances under which any such debt security may be exchanged for debt securities registered in the name of, and under which any transfer of debt securities may be registered in the name of, any person other than such depositary or its nominee, and any other provisions regarding such debt securities;
- whether, under what circumstances and the currency in which, we or any guarantor will pay additional amounts on the debt securities to any holder of the debt securities who is not a U.S. person in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem such debt securities rather than pay such additional amounts (and the terms of any such option);
- whether the debt securities will be secured by any collateral and, if so, a general description of the collateral and the terms of any related security, pledge or other agreements;
- the persons to whom any interest on the debt securities will be payable, if other than the registered holders thereof on the regular record date therefor;
- the dates on which interest, if any, will be payable and the regular record dates for interest payment dates; and
- any other terms or conditions upon which the debt securities will be issued.

Unless otherwise indicated in the applicable prospectus supplement, we will issue debt securities in fully registered form without coupons and in denominations of \$1,000 and in integral multiples of \$1,000, and interest will be computed on the basis of a 360-day year of twelve 30 day months. If any interest payment date or the maturity date falls on a day that is not a Business Day, then the payment will be made on the next Business Day without additional interest and with the same effect as if it were made on the originally scheduled date. "Business Day" means any calendar day that is not a Saturday, Sunday or legal holiday in New York, New York, and on which the trustee and commercial banks are open for business in New York, New York.

Unless otherwise indicated in the applicable prospectus supplement, the trustee will act as paying agent and registrar for the debt securities under the indenture. We may act as paying agent under the indenture.

Covenants

Unless we indicate otherwise in the applicable prospectus supplement, the debt securities will not contain any restrictive covenants, such as covenants restricting us or any of our subsidiaries from incurring, issuing, assuming or guarantying any indebtedness or restricting us or any of our subsidiaries from entering into any sale and leaseback transactions.

Consolidation, Merger and Transfer of Assets

The indenture permits a consolidation or merger between us and another entity and/or the sale, conveyance or lease by us of all or substantially all of our property and assets, provided that:

- the resulting or acquiring entity, if other than us, is organized and existing under the laws of a U.S. jurisdiction and assumes all of our responsibilities and liabilities under the indenture, including the payment of all amounts due on the debt securities and performance of the covenants in the indenture;
- immediately after the transaction, and giving effect to the transaction, no event of default under the indenture exists; and

- we have delivered to the trustee an officers' certificate stating that the transaction and, if a supplemental indenture is required in connection with the transaction, the supplemental indenture comply with the indenture and that all conditions precedent to the transaction contained in the indenture have been satisfied.

If we consolidate or merge with or into any other entity, or sell or lease all or substantially all of our assets in compliance with the terms and conditions of the indenture, the resulting or acquiring entity will be substituted for us in the indenture and the debt securities with the same effect as if it had been an original party to the indenture and the debt securities. As a result, such successor entity may exercise our rights and powers under the indenture and the debt securities, in our name and, except in the case of a lease, we will be released from all our liabilities and obligations under the indenture and under the debt securities.

Notwithstanding the foregoing, we may transfer all of our property and assets to another entity if, immediately after giving effect to the transfer, such entity is our Wholly Owned Subsidiary.

The term "Wholly Owned Subsidiary" means any subsidiary in which we and/or our other wholly owned subsidiaries own all of the outstanding capital stock (other than directors' qualifying shares).

Modification and Waiver

Under the indenture, some of our rights and obligations and some of the rights of the holders of the debt securities may be modified or amended with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding debt securities affected by the modification or amendment. However, the following modifications and amendments will not be effective against any holder without its consent:

- a change in the stated maturity date of any payment of principal or interest;
- a reduction in the principal amount of or interest on any debt securities;
- an alteration or impairment of any right to convert at the rate or upon the terms provided in the indenture;
- a change in the place of payment where, or the currency in which, any payment on the debt securities is payable;
- an impairment of a holder's right to sue us for the enforcement of payments due on the debt securities; or
- a reduction in the percentage of outstanding debt securities required to consent to a modification or amendment of the indenture or required to consent to a waiver of compliance with certain provisions of the indenture or certain defaults under the indenture.

Under the indenture, the holders of not less than a majority in aggregate principal amount of the outstanding debt securities may, on behalf of all holders of the debt securities:

- waive compliance by us with certain restrictive provisions of the indenture; and
- waive any past default under the indenture in accordance with the applicable provisions of the indenture, except a default in the payment of the principal of or interest on any series of debt securities.

Events of Default

Unless we indicate otherwise in the applicable prospectus supplement, "event of default" under the indenture will mean, with respect to any series of debt securities, any of the following:

- failure to pay interest on any debt security for 30 days after the payment is due;

- failure to pay the principal of any debt security when due, either at maturity, upon redemption, by declaration or otherwise;
- failure on our part to observe or perform any other covenant or agreement in the indenture that applies to the debt securities for 90 days after we have received written notice of the failure to perform in the manner specified in the indenture; and
- certain events of bankruptcy, insolvency or reorganization.

If an event of default occurs and continues, the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of such series may declare the entire principal of all the debt securities to be due and payable immediately, except that, if the event of default is caused by certain events in bankruptcy, insolvency or reorganization, the entire principal of all of the debt securities of such series will become due and payable immediately without any act on the part of the trustee or holders of the debt securities. If such a declaration occurs, the holders of a majority of the aggregate principal amount of the outstanding debt securities of such series can, subject to conditions, rescind the declaration.

The indenture requires us to furnish to the trustee not less often than annually, a certificate from our principal executive officer, principal financial officer or principal accounting officer, as the case may be, as to such officer's knowledge of our compliance with all conditions and covenants under the indenture. The trustee may withhold notice to the holders of debt securities of any default, except defaults in the payment of principal of or interest on any debt securities if the trustee in good faith determines that the withholding of notice is in the best interests of the holders. For purposes of this paragraph, "default" means any event which is, or after notice or lapse of time or both would become, an event of default under the indenture.

The trustee is not obligated to exercise any of its rights or powers under the indenture at the request, order or direction of any holders of debt securities, unless the holders offer the trustee satisfactory security or indemnity. If satisfactory security or indemnity is provided, then, subject to other rights of the trustee, the holders of a majority in aggregate principal amount of the outstanding debt securities may direct the time, method and place of:

- conducting any proceeding for any remedy available to the trustee; or
- exercising any trust or power conferred upon the trustee.

The holder of a debt security will have the right to begin any proceeding with respect to the indenture or for any remedy only if:

- the holder has previously given the trustee written notice of a continuing event of default;
- the holders of not less than a majority in aggregate principal amount of the outstanding debt securities have made a written request of, and offered reasonable indemnity to, the trustee to begin such proceeding;
- the trustee has not started such proceeding within 60 days after receiving the request; and
- no direction inconsistent with such written request has been given to the trustee under the indenture.

However, the holder of any debt security will have an absolute right to receive payment of principal of and interest on the debt security when due and to institute suit to enforce this payment.

Satisfaction and Discharge; Defeasance and Covenant Defeasance

Satisfaction and Discharge of Indenture

Unless otherwise indicated in the applicable prospectus supplement, if at any time,

- we have paid the principal of and interest on all the debt securities of any series, except for debt securities which have been destroyed, lost or stolen and which have been replaced or paid in accordance with the indenture, as and when the same shall have become due and payable, or
- we have delivered to the trustee for cancellation all debt securities of any series theretofore authenticated, except for debt securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in the indenture, or
- (i) all the debt securities of such series not theretofore delivered to the trustee for cancellation have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year, and (ii) we have deposited with the trustee, in trust, sufficient money or government obligations, or a combination thereof, to pay the principal, any interest and any other sums due on the debt securities, on the dates the payments are due or become due under the indenture and the terms of the debt securities,

then the indenture shall cease to be of further effect with respect to the debt securities of such series, except for (a) rights of registration of transfer and exchange, and our right of optional redemption, (b) substitution of mutilated, defaced, destroyed, lost or stolen debt securities, (c) rights of holders to receive payments of principal thereof and interest thereon upon the original stated due dates therefor (but not upon acceleration) and remaining rights of the holders to receive mandatory sinking fund payments, if any, (d) the rights, obligations and immunities of the trustee under the indenture, and (e) the rights of the holders of such series of debt securities as beneficiaries thereof with respect to the property so deposited with the trustee payable to all or any of them.

Defeasance of Certain Covenants and Certain Events of Default

Unless otherwise indicated in the applicable prospectus supplement, we may elect with respect to any debt securities of any series either:

- to defease and be discharged from all of our obligations with respect to such debt securities (“defeasance”), with certain exceptions described below; or
- to be released from our obligations with respect to such debt securities under such covenants as may be specified in the applicable prospectus supplement, and any omission to comply with those obligations will not constitute a default or an event of default with respect to such debt securities (“covenant defeasance”).

We must comply with the following conditions before the defeasance or covenant defeasance can be effected:

- we must irrevocably deposit with the indenture trustee or other qualifying trustee, under the terms of an irrevocable trust agreement in form and substance satisfactory to the trustee, trust funds in trust solely for the benefit of the holders of such debt securities, sufficient money or government obligations, or a combination thereof, to pay the principal, any interest and any other sums on the due dates for those payments; and
- we must deliver to the trustee an opinion of counsel to the effect that the holders of such debt securities will not recognize income, gain or loss for federal income tax purposes as a result of defeasance or covenant defeasance, as the case may be, to be effected with respect to such debt securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such defeasance or covenant defeasance, as the case may be, had not occurred.

In connection with defeasance, any irrevocable trust agreement contemplated by the indenture must include, among other things, provision for (a) payment of the principal of and interest on such debt securities, if any, appertaining thereto when due (by redemption, sinking fund payments or otherwise), (b) the payment of the expenses of the trustee incurred or to be incurred in connection with carrying out such trust provisions, (c) rights of registration, transfer, substitution and exchange of such debt securities in accordance with the terms stated in the indenture, and (d) continuation of the rights, obligations and immunities of the trustee as against the holders of such debt securities as stated in the indenture.

The accompanying prospectus supplement may further describe any provisions permitting or restricting defeasance or covenant defeasance with respect to the debt securities of a particular series.

Global Securities

Unless otherwise indicated in the applicable prospectus supplement, each debt security offered by this prospectus will be issued in the form of one or more global debt securities representing all or part of that series of debt securities. This means that we will not issue certificates for that series of debt securities to the holders. Instead, a global debt security representing that series will be deposited with, or on behalf of, a securities depository and registered in the name of the depository or a nominee of the depository. Any such depository must be a clearing agency registered under the Exchange Act.

Notices

We will give notices to holders of the debt securities by mail at the addresses listed in the security register. In the case of notice in respect of unregistered securities or coupon securities, we may give notice by publication in a newspaper of general circulation in New York, New York.

Governing Law

The indenture and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York, except to the extent the Trust Indenture Act is applicable.

Regarding the Trustee

From time to time, we may maintain deposit accounts and conduct other banking transactions with the trustee to be appointed under the indenture or its affiliates in the ordinary course of business.

DESCRIPTION OF CAPITAL STOCK

Under our certificate of incorporation, the total number of shares of all classes of stock that we have authority to issue is 52,000,000, consisting of 2,000,000 shares of preferred stock, par value \$0.001 per share, and 50,000,000 shares of common stock, par value \$0.001 per share.

The following is a summary of certain provisions of our common stock and preferred stock. This summary is not complete. For more detailed information, please see our certificate of incorporation and bylaws which are filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Subject to the rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of common stock are entitled to receive such dividends, if any, as may from time to time be declared by our board of directors out of funds legally available for that purpose. Pursuant to our certificate of incorporation, holders of common stock are entitled to one vote per share, and are entitled to vote upon such matters and in such manner as may be provided by law. Other than certain contractual rights of certain holders of common stock, holders of common stock have no preemptive, conversion, redemption or sinking fund rights. Subject to the rights of holders of all classes of stock at the time outstanding having prior rights as to liquidation, holders of common stock, upon the liquidation, dissolution or winding up of the Company, are entitled to share equally and ratably in the assets of our Company. The outstanding shares of common stock are, and the shares of common stock to be offered or issuable upon conversion of other securities offered hereby when issued will be, validly issued, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to the rights, preferences and privileges of any series of preferred stock that we may issue in the future.

Preferred Stock

Our board of directors may issue up to 2,000,000 shares of preferred stock in one or more series and, subject to Delaware General Corporation Law, may fix the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions, if any), redemption price or prices, liquidation preferences, any other designations, preferences and relative, participating, optional or other special rights and any qualifications, limitations or restrictions thereof and the number of shares constituting any series and the designation thereof. In addition, our board of directors may increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding.

Our board of directors has the power to issue our preferred stock with voting and conversion rights that could negatively affect the voting or other rights of our common stockholders, and our board of directors could take that action without stockholder approval. The issuance of our preferred stock could delay or prevent a change of control of our Company. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of entrenching our board of directors or of delaying, deferring or preventing a third party from acquiring a majority of our outstanding voting stock. The issuance of preferred stock with voting or conversion rights may also adversely affect the voting power of the holders of our common stock. In certain circumstances, an issuance of preferred stock could have the effect of decreasing the market price of shares of our common stock and delaying or preventing a change of control.

Purposes and Effects of Certain Provisions of Our Certificate of Incorporation and Bylaws

General

Our certificate of incorporation and bylaws contain provisions that could make more difficult the acquisition of control of Novatel by means of a tender offer, open market purchases, a proxy contest or otherwise. A description of these provisions is set forth below.

Preferred Stock

We believe that the availability of the preferred stock under our certificate of incorporation provides us with flexibility in structuring possible future financings and acquisitions and in meeting other corporate needs which might arise. Having these authorized shares available for issuance allows us to issue shares of preferred stock without the expense and delay of a special stockholders' meeting. The authorized shares of preferred stock, as well as shares of common stock, are available for issuance without further action by our stockholders, unless action is required by applicable law or the rules of any stock exchange on which our securities may be listed. Our board of directors has the power, subject to applicable law, to issue a series of preferred stock that could, depending on the terms of the series, impede the completion of a merger, tender offer or other takeover attempt. For instance, subject to applicable law, a series of preferred stock might impede a business combination by including class voting rights which would enable the holder or holders of such series to block a proposed transaction. Our board of directors will make any determination to issue shares based on its judgment as to the Company's and our stockholders' best interests. Our board of directors, in so acting, could issue preferred stock having terms which could discourage an acquisition attempt or other transaction that some, or a majority, of our stockholders might believe to be in their best interests or in which stockholders might receive a premium for their stock over the then prevailing market price of our stock.

Supermajority Voting for Amending the Bylaws

Our board of directors is expressly authorized to adopt, amend or repeal the bylaws of Novatel. Our stockholders may adopt additional bylaws and may amend or repeal bylaws, whether or not adopted by them, provided that the affirmative vote of the holders of at least two-thirds of all voting stock is required for any such adoption of additional bylaws, amendment or repeal. The affirmative vote of the holders of at least two-thirds of all voting stock is required to amend or repeal this restriction.

Limitation of Director Liability

Our certificate of incorporation limits the liability of our directors to the Company and our stockholders to the fullest extent permitted by Delaware law. Specifically, a director will not be personally liable for monetary damages for breach of his or her fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to the Company or our stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- violations under Section 174 of the Delaware General Corporation Law, which relates to unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

These provisions in our certificate of incorporation may have the effect of reducing the likelihood of derivative litigation against our directors and may discourage or deter stockholders or management from bringing a lawsuit against our directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited the Company and our stockholders. These provisions do not limit or affect a stockholder's ability to seek and obtain relief under federal securities laws.

No Stockholder Action by Written Consent

Our certificate of incorporation provides that any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only at a duly called annual or special meeting of stockholders and may not be effected by a written consent of stockholders in lieu of a meeting of stockholders. This prevents stockholders from initiating or effecting any action by written consent, thereby limiting the ability of stockholders to take actions opposed by our board of directors. The affirmative vote of holders of at least two-thirds of all voting stock is required to amend or repeal this restriction.

Special Meetings of Stockholders

Our bylaws provide that special meetings of stockholders may be called only by the board of directors, the chairman of our board of directors or our chief executive officer. Business transacted at a special meeting of stockholders is confined to the purpose or purposes of the meeting as stated in the notice of the meeting.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years following the time of the transaction in which the person or entity became an interested stockholder, unless:

- prior to that time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the outstanding voting stock of the corporation, excluding for this purpose shares owned by persons who are directors and also officers of the corporation and by specified employee benefit plans; or
- at or after such time the business combination is approved by the board of directors of the corporation and by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

For the purposes of Section 203, a “business combination” is broadly defined to include mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns or within the immediately preceding three years did own 15% or more of the corporation’s voting stock.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. and its address and telephone number are 250 Royall Street, Canton, MA 02021, (303) 262-0600.

DESCRIPTION OF SUBSCRIPTION RIGHTS

We may issue to our stockholders subscription rights to purchase our common shares, preferred shares, depositary shares or other securities. These subscription rights may be issued independently or together with any other security offered by this prospectus and may or may not be transferable by the stockholder receiving the rights in the rights offering. In connection with any rights offering, we may enter into a standby underwriting agreement with one or more underwriters pursuant to which the underwriter will purchase any securities that remain unsubscribed upon completion of the rights offering.

The applicable prospectus supplement relating to the offering of any subscription rights will describe the terms of the offered subscription rights, including, where applicable, the following:

- the exercise price for the subscription rights;
- the number of subscription rights issued to each stockholder;
- the extent to which the subscription rights are transferable;
- any other terms of the subscription rights, including terms, procedures and limitations relating to the exchange and exercise of the subscription rights;

- the date on which the right to exercise the subscription rights will commence and the date on which the right will expire;
- the extent to which the subscription rights include an over-subscription privilege with respect to unsubscribed securities; and
- the material terms of any standby underwriting arrangement entered into by us in connection with the subscription rights offering.

The description in the applicable prospectus supplement of any offering of any subscription rights will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate or subscription rights agreement, which will be filed with the SEC if we offer subscription rights. For more information on how you can obtain copies of any subscription rights certificate or subscription rights agreement if we offer subscription rights, see “Where You Can Find More Information” in this prospectus. We urge you to read the applicable subscription rights certificate, the applicable subscription rights agreement and any applicable prospectus supplement in their entirety.

DESCRIPTION OF DEPOSITARY SHARES

We may offer depositary shares (either separately or together with other securities) representing fractional shares of preferred stock of any series. In connection with the issuance of any depositary shares, we will enter into a deposit agreement with a bank or trust company, as depositary, which will be named in the applicable prospectus supplement. Depositary shares will be evidenced by depositary receipts issued pursuant to the related deposit agreement. Immediately following our issuance of the security related to the depositary shares, we will deposit the shares of preferred stock with the relevant depositary and will cause the depositary to issue, on our behalf, the related depositary receipts. Subject to the terms of the deposit agreement, each owner of a depositary receipt will be entitled, in proportion to the fraction of a share of preferred stock represented by the related depositary share, to all the rights, preferences and privileges of, and will be subject to all of the limitations and restrictions on, the preferred stock represented by the depositary receipt (including, if applicable, dividend, voting, conversion, exchange, redemption, sinking fund, repayment at maturity, subscription and liquidation rights).

DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of debt securities, common stock, preferred stock, depositary shares, or any combination thereof, with or without the payment of separate consideration therefor (including by means of a dividend or similar distribution to holders of our outstanding securities). We may issue warrants independently or together with any other securities offered by a prospectus supplement. Warrants may be attached to or separate from such securities and may or may not be transferable. Each series of warrants will be issued under a separate warrant agreement we will enter into with a warrant agent specified in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants of a particular series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. In connection with any warrants, we may enter into a standby underwriting agreement with one or more underwriters pursuant to which the underwriters will agree to purchase any securities underlying such warrants that remain unpurchased upon the expiration of such warrants.

The applicable prospectus supplement will describe the terms of the warrants in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- the title of the warrants, which may be denominated as share purchase rights or subscription rights;
- the aggregate number of the warrants;

- the price or prices, if any, at which the warrants will be issued;
- the extent to which the warrants are not transferable;
- the designation, number or principal amount and terms of the debt securities, common stock, preferred stock, and/or depositary shares purchasable upon exercise of the warrants;
- the designation and terms of the other securities, if any, with which the warrants are issued and the number of warrants issued with each security;
- the date, if any, on and after which the warrants and the related underlying securities will be separately transferable;
- whether the warrants will be issued in registered form or bearer form;
- the price at which each underlying security purchasable upon exercise of the warrants may be purchased;
- the date on which the right to exercise the warrants will commence and the date on which that right will expire;
- the identity of the warrant agent;
- the maximum or minimum number of the warrants that may be exercised at any one time;
- information with respect to book-entry procedures, if any;
- a discussion of any material federal income tax considerations;
- in connection with warrants denominated as subscription rights, the extent of any over-subscription privilege with respect to unsubscribed securities;
- the material terms of any standby underwriting arrangement entered into by us in connection with any warrants; and
- any other terms of the warrants, including terms, procedures, and limitations relating to the transferability, exchange and exercise of the warrants.

DESCRIPTION OF PURCHASE CONTRACTS

We may issue purchase contracts, including contracts obligating holders to purchase from us, and for us to sell to holders, a specific or varying number of debt securities, shares of our common stock or preferred stock, depositary shares, warrants or securities of an entity unaffiliated with us, or any combination of the above, at a future date or dates. Alternatively, the purchase contracts may obligate us to purchase from holders, and obligate holders to sell to us, a specific or varying number of debt securities, shares of our common stock or preferred stock, depositary shares, warrants or other property. The price per share of preferred stock or common stock or price of other securities may be fixed at the time the purchase contracts are issued or may be determined by reference to a specific formula described in the purchase contracts. We may issue purchase contracts separately or as a part of units each consisting of a purchase contract and debt securities, preferred securities, warrants or debt obligations of third parties, including U.S. Treasury securities, securing the holder's obligations under the purchase contract. The purchase contracts may require us to make periodic payments to holders or vice versa and the payments may be unsecured or pre-funded on some basis. The purchase contracts may require holders to secure the holder's obligations in a specified manner to be described in the applicable prospectus supplement.

The applicable prospectus supplement will describe the terms of any purchase contracts in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- whether the purchase contracts obligate the holder or us to purchase or sell, or both purchase and sell the securities subject to purchase under the purchase contracts, and the nature and amount of each of those securities, or the method of determining those amounts;

- whether the purchase contracts are to be prepaid or not;
- whether the purchase contracts are to be settled by delivery, or by reference or linkage to the value, performance or level of the securities subject to purchase under the purchase contracts;
- any acceleration, cancellation, termination or other provisions relating to the settlement of the purchase contracts; and
- whether the purchase contracts will be issued in fully registered or global form.

DESCRIPTION OF UNITS

We may issue units comprising one or more securities described in this prospectus in any combination. Units may also include debt obligations of third parties, such as U.S. Treasury securities. Each unit will be issued so that the holder of the unit also is the holder of each security included in the unit. Thus, the unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately at any time or at any time before a specified date.

The applicable prospectus supplement will describe the terms of any units in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- the designation and terms of the units and the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provision for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and
- whether the units will be issued in fully registered or global form.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our consolidated ratio or deficiency of earnings to fixed charges and our consolidated ratio or deficiency of earnings to combined fixed charges and preferred security dividends for the periods indicated:

	Six Months Ended June 30, 2009	Year Ended December 31,				
		2008	2007	2006	2005	2004
		(dollars in thousands)				
Consolidated ratio of earnings to fixed charges	—	—	167x	—	60x	89x
Consolidated deficiency of earnings to fixed charges	\$ 4,368	\$ 1,875	\$ —	\$ 1,732	\$ —	\$ —
Consolidated ratio of earnings to combined fixed charges and preferred security dividends	—	—	167x	—	60x	46x
Consolidated deficiency of earnings to combined fixed charges and preferred security dividends	\$ 4,368	\$ 1,875	\$ —	\$ 1,732	\$ —	\$ —

For purposes of calculating the consolidated ratio of earnings to fixed charges and the consolidated ratio of earnings to combined fixed charges and preferred security dividends, “earnings” represents the sum of income (loss) before taxes from continuing operations before adjustment for income or loss from equity investees, fixed charges, amortization of capitalized interest, distributed income of equity investees, and the Company’s share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. “Fixed charges” consist of interest expensed and capitalized, amortized premiums, discounts and capitalized expenses

related to indebtedness, an estimate of the interest within rental expense, and preference security dividend requirements of consolidated subsidiaries. "Preferred security dividend" is the amount of income before taxes that is required to pay the dividends on outstanding preferred securities.

The Company's earnings were inadequate to cover fixed charges due to losses before taxes from continuing operations by \$4.4 million for the six months ended June 30, 2009, by \$1.9 million for the year ended December 31, 2008 and by \$1.7 million for the year ended December 31, 2006.

The Company's earnings were inadequate to cover combined fixed charges and preferred security dividends due to losses before taxes from continuing operations by \$4.4 million for the six months ended June 30, 2009, by \$1.9 million for the year ended December 31, 2008 and by \$1.7 million for the year ended December 31, 2006.

PLAN OF DISTRIBUTION

We may sell the securities offered by this prospectus in any one or more of the following ways from time to time:

- directly to investors, including through a specific bidding, auction or other process;
- through agents to investors or the public;
- directly to agents or purchasers;
- to or through brokers or dealers;
- to the public through underwriting syndicates led by one or more managing underwriters;
- to one or more underwriters acting alone for resale to investors or to the public;
- through a combination of any such methods of sale; or
- through any other method described in the applicable prospectus supplement.

We may also sell the securities offered by this prospectus in "at the market offerings" within the meaning of Rule 415(a)(4) of the Securities Act of 1933 (the "Securities Act"), to or through a market maker or into an existing trading market, on an exchange or otherwise.

The applicable prospectus supplement will set forth the terms of the offering and the method of distribution and will identify any firms acting as underwriters, dealers or agents in connection with the offering, including:

- the name or names of any underwriters, dealers or agents;
- the purchase price of the securities and the proceeds to us from the sale;
- any over-allotment options under which the underwriters may purchase additional securities from us;
- any underwriting discounts or agency fees and other items constituting compensation to underwriters, dealers or agents;
- any delayed delivery arrangements;
- any public offering price;
- any discounts or concessions allowed or reallocated or paid to dealers; or
- any securities exchange or market on which the securities offered in the prospectus supplement may be listed.

If we use underwriters for a sale of securities, the underwriters will acquire the securities for their own account for resale to the public, either on a firm commitment basis or a best efforts basis. The underwriters may

resell the securities in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the applicable prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions. We may change from time to time any initial public offering price and any discounts or concessions the underwriters allow or reallocate or pay to dealers.

In connection with an offering of securities, the underwriters may purchase and sell securities in the open market. These transactions may include over-allotment, syndicate covering transactions and stabilizing transactions. Over-allotment involves sales of securities in excess of the amount of securities to be purchased by the underwriters in an offering, which creates a short position for the underwriters. Covering transactions involve purchases of the securities in the open market after the distribution has been completed in order to cover short positions. Stabilizing transactions consist of certain bids or purchases of securities made for the purpose of preventing or retarding a decline in the market price of the securities while the offering is in progress. Any of these activities may have the effect of preventing or retarding a decline in the market price of the securities being offered. They may also cause the price of the securities being offered to be higher than the price that otherwise would exist in the open market in the absence of these transactions. The underwriters may conduct these transactions in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

Unless otherwise specified in the applicable prospectus supplement, each class or series of securities will be a new issue with no established trading market, other than shares of our common stock, which are traded on The Nasdaq Global Select Market. We may elect to list any other class or series on an exchange, but we are not obligated to do so. It is possible that one or more underwriters may make a market in the securities, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. No assurance can be given as to the liquidity of, or the trading market for, any offered securities.

If we use dealers for the sale of securities, we will sell the securities to them as principals. The dealers may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in the applicable prospectus supplement the names of the dealers and the terms of the transaction.

We may also sell the securities through agents designated from time to time. In the applicable prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the applicable prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly in transactions not involving underwriters, dealers or agents.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

We may make direct sales through subscription rights distributed to our existing securityholders on a pro rata basis, which may or may not be transferable. In any distribution of subscription rights to our securityholders, if all of the underlying securities are not subscribed for, we may then sell the unsubscribed securities directly to third parties or may engage the services of one or more underwriters, dealers or agents, including standby underwriters, to sell the unsubscribed securities to third parties.

Underwriters, dealers and agents that participate in the distribution of the securities may be underwriters as defined in the applicable securities laws and any discounts or commissions they receive from us and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the applicable

securities laws. We will identify in the applicable prospectus supplement any underwriters, dealers or agents and will describe their compensation. We may have agreements with the underwriters, dealers and agents to indemnify them against specified civil liabilities, including liabilities under the applicable securities laws.

Underwriters, dealers and agents may engage in transactions with or perform services for us in the ordinary course of their businesses for which they may receive customary fees and reimbursement of expenses.

We may use underwriters with whom we have a material relationship. We will describe the nature of such relationship in the applicable prospectus supplement.

CERTAIN LEGAL MATTERS

In connection with particular offerings of the securities in the future, and if stated in the applicable prospectus supplements, the validity of those securities may be passed upon for us by Jones Day, counsel to the Company, and by such counsel as we name in the applicable prospectus supplement. If legal matters in connection with particular offerings of the securities in the future are passed upon by counsel to the underwriters, dealers or agents, if any, such counsel will be named in the applicable prospectus supplement.

EXPERTS

The consolidated financial statements, and the related financial statement schedule II of Novatel Wireless, Inc., as of December 31, 2008 and 2007, and for each of the years in the three year period ended December 31, 2008, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2008 have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2000, filed March 27, 2001).
4.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2002, filed November 14, 2002).
4.3	Certificate of Amendment to Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Company's Amendment No. 1 to Form 10-K on Form 10-K/A for the year ended December 31, 2003, filed March 31, 2004).
4.4	Amended and Restated Certificate of Designation of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.4 to the Company's Amendment No. 1 to Form 10-K on Form 10-K/A for the year ended December 31, 2003, filed March 31, 2004).
4.5	Certificate of Designation of Series B Convertible Preferred Stock (incorporated by reference to Exhibit 3.5 to the Company's Amendment No. 1 to Form 10-K on Form 10-K/A for the year ended December 31, 2003, filed March 31, 2004).
4.6	Bylaws (incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2000, filed on March 27, 2001).
4.7	Amended and Restated Registration Rights Agreement, dated as of June 15, 1999, by and among the Company and certain of its stockholders (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1 (No. 333-42570), filed July 28, 2000, as amended).
4.8	Form of Securities Purchase Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed March 28, 2003).
4.9	Registration Rights Agreement, dated as of March 12, 2003, entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing (incorporated by reference to Exhibit 4.8 to the Company's Current Report on Form 8-K, filed March 28, 2003).
4.10	Registration Rights Agreement, dated as of January 13, 2004, entered into in connection with the Company's January 2004 Common Stock and Warrant Financing Transaction (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003, filed March 15, 2004).
4.11	Form of Indenture.
*4.12	Form of debt securities.
*4.13	Form of certificate of designations for preferred stock of Novatel Wireless, Inc.
*4.14	Form of subscription rights agreement.
*4.15	Form of subscription rights certificate.
*4.16	Form of depositary receipt.
*4.17	Form of depositary agreement.
*4.18	Form of warrant.
*4.19	Form of warrant agreement.
*4.20	Form of purchase contract.

<u>Exhibit No.</u>	<u>Description</u>
*4.21	Form of unit certificate.
*4.22	Form of unit agreement.
5.1	Opinion of Jones Day.
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges.
23.1	Consent of KPMG LLP.
23.2	Consent of Jones Day (included in Exhibit 5.1).
24.1	Powers of Attorney—Novatel Wireless, Inc.

* To be filed, if necessary, by an amendment or as an exhibit to a document filed under the Securities Act or the Exchange Act and incorporated by reference herein.

\$125,000,000

NOVATEL WIRELESS, INC.

**Debt Securities
Common Stock
Preferred Stock
Subscription Rights
Depository Shares
Warrants
Purchase Contracts
Units**

PROSPECTUS

, 2009

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated expenses in connection with the issuance and distribution of an amount of \$125,000,000 of securities registered under this registration statement, other than any underwriting discounts and commissions.

SEC registration fee	\$ 6,975
Legal fees and expenses	50,000
Accounting fees and expenses	25,000
Printing and engraving expenses	3,025
Miscellaneous expenses (1)	500
Total	<u>\$ 85,500</u>

(1) Includes estimate of stock exchange listing fees, blue sky fees and expenses, and NASD filing fees.

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law permits the Company, in certain circumstances, to indemnify any present or former director, officer, employee or agent of the Company against judgments, penalties, fines, settlements and reasonable expenses incurred in connection with a proceeding in which any such person was, is or is threatened to be, made a party by reason of holding such office or position. Article XIV of our amended and restated certificate of incorporation and Article VI of our bylaws provide for indemnification to the maximum extent permitted by Delaware law. In addition, we have entered into indemnification agreements with our officers and directors. Our amended and restated certificate of incorporation provides that, subject to Delaware law, our directors will not be personally liable for monetary damages awarded as a result of a breach of their fiduciary duty owed to the Company and its stockholders. This provision does not eliminate our directors' fiduciary duty and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law.

The above discussion of our certificate of incorporation, bylaws, indemnification agreements and Section 145 of the Delaware General Corporation Law is not intended to be exhaustive and is qualified in its entirety by such certificate of incorporation, bylaws, indemnification agreements and statute.

Item 16. Exhibits.

The following documents are filed as exhibits to this registration statement, including those exhibits incorporated herein by reference to one of our prior filings under the Securities Act or the Exchange Act as indicated in parentheses:

<u>Exhibit No.</u>	<u>Description</u>
4.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2000, filed March 27, 2001).
4.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2002, filed November 14, 2002).
4.3	Certificate of Amendment to Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to the Company's Amendment No. 1 to Form 10-K on Form 10-K/A for the year ended December 31, 2003, filed March 31, 2004).

<u>Exhibit No.</u>	<u>Description</u>
4.4	Amended and Restated Certificate of Designation of Series A Convertible Preferred Stock (incorporated by reference to Exhibit 3.4 to the Company's Amendment No. 1 to Form 10-K on Form 10-K/A for the year ended December 31, 2003, filed March 31, 2004).
4.5	Certificate of Designation of Series B Convertible Preferred Stock (incorporated by reference to Exhibit 3.5 to the Company's Amendment No. 1 to Form 10-K on Form 10-K/A for the year ended December 31, 2003, filed March 31, 2004).
4.6	Bylaws (incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2000, filed on March 27, 2001).
4.7	Amended and Restated Registration Rights Agreement, dated as of June 15, 1999, by and among the Company and certain of its stockholders (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1 (No. 333-42570), filed July 28, 2000, as amended).
4.8	Form of Securities Purchase Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed March 28, 2003).
4.9	Registration Rights Agreement, dated as of March 12, 2003, entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing (incorporated by reference to Exhibit 4.8 to the Company's Current Report on Form 8-K, filed March 28, 2003).
4.10	Registration Rights Agreement, dated as of January 13, 2004, entered into in connection with the Company's January 2004 Common Stock and Warrant Financing Transaction (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003, filed March 15, 2004).
4.11	Form of Indenture.
*4.12	Form of debt securities.
*4.13	Form of certificate of designations for preferred stock of Novatel Wireless, Inc.
*4.14	Form of subscription rights agreement.
*4.15	Form of subscription rights certificate.
*4.16	Form of depositary receipt.
*4.17	Form of depositary agreement.
*4.18	Form of warrant.
*4.19	Form of warrant agreement.
*4.20	Form of purchase contract.
*4.21	Form of unit certificate.
*4.22	Form of unit agreement.
5.1	Opinion of Jones Day.
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges.
23.1	Consent of KPMG LLP.
23.2	Consent of Jones Day (included in Exhibit 5.1).
24.1	Powers of Attorney—Novatel Wireless, Inc.

* To be filed, if necessary, by an amendment or as an exhibit to a document filed under the Securities Act or the Exchange Act and incorporated by reference herein.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or date of the first sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of this registration statement or made in a document incorporated or deemed incorporated by reference into this registration statement or prospectus that is a part of this registration statement will, as to a purchaser with a time of contract sale prior to such effective date, supersede or modify any statement that was made in this registration statement or prospectus that was a part of this registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) If and to the extent that the securities being registered are offered to existing securityholders of the registrant pursuant to warrants (including warrants denominated as share purchase rights or subscription rights) and any such securities not taken by such securityholders are reoffered to the public, a subscription period is established and underwriters are to purchase unsubscribed securities, to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If, in such case, any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the applicable prospectus supplement, a post-effective amendment will be filed to set forth the terms of such offering.

(8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

(9) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted against the registrant by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on September 21, 2009.

NOVATEL WIRELESS, INC.

By:
 /s/ PETER V. LEPARULO
Peter V. Leparulo
Chairman of the Board and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>
<u> </u> /s/ PETER V. LEPARULO Peter V. Leparulo	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)
<u> </u> /s/ KENNETH LEDDON Kenneth Leddon	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
<u> </u> * John D. Wakelin	Director
<u> </u> * James Ledwith	Director
<u> </u> * Greg Lorenzetti	Director
<u> </u> * Horst J. Pudwill	Director
<u> </u> * John Ross	Director
<u> </u> * David A. Werner	Director
<u> </u> * Russell C. Gerns	Director

Catherine F. Ratcliffe, by signing her name hereto, does hereby sign and execute this Registration Statement on behalf of the above-named directors and officers of Novatel Wireless, Inc. on this 21st day of September, 2009, pursuant to powers of attorney executed on behalf of such director and/or officer, and contemporaneously filed with the Securities and Exchange Commission.

*By:
 /s/ CATHERINE F. RATCLIFFE
Catherine F. Ratcliffe, Attorney-in-Fact

NOVATEL WIRELESS, INC.

TO

_____,
as Trustee

INDENTURE

Dated as of _____, 20__

CROSS REFERENCE SHEET *

Provisions of Trust Indenture Act of 1939, as amended, and Indenture to be dated as of _____, 20____ by and between Novatel Wireless, Inc. and _____, as Trustee:

<u>Section of the Act</u>	<u>Section of Indenture</u>
310(a)(1) and (2)	6.9
310(a)(3) and (4)	Inapplicable
310(b)	6.8 and 6.10(a), (b) and (d)
310(c)	Inapplicable
311(a)	6.13
311(b)	6.13
311(c)	Inapplicable
312(a)	4.1 and 4.2(a)
312(b)	4.2(a) and (b)
312(c)	4.2(c)
313(a)	4.4(a)
313(b)(1)	Inapplicable
313(b)(2)	4.4(a)
313(c)	4.4(a)
313(d)	4.4(b)
314(a)	4.3
314(b)	Inapplicable
314(c)(1) and (2)	14.5
314(c)(3)	Inapplicable
314(d)	Inapplicable
314(e)	14.5
314(f)	Inapplicable
315(a), (c) and (d)	6.1
315(b)	5.11
315(e)	5.12
316(a)(1)	5.9 and 5.10
316(a)(2)	Not required
316(a) (last sentence)	7.4
316(b)	5.7
316(c)	7.6
317(a)	5.2
317(b)	3.4(a) and (b)
318(a)	14.7

* This Cross Reference Sheet is not part of the Indenture.

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THIS INDENTURE, dated as of _____, 20____ (this “**Indenture**”), by and between Novatel Wireless, Inc., a Delaware corporation (the “**Company**”), and _____, as Trustee (the “**Trustee**”),

W I T N E S S E T H:

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture in order to issue from time to time its debentures, notes or other evidences of indebtedness in one or more Series (as defined herein) in accordance with the terms of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company according to its terms have been done.

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities by the Holders (as defined herein) thereof, the Company and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Securities as follows:

ARTICLE ONE

DEFINITIONS

The following terms (except as otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this **Section 1.1**. Certain terms used principally in certain Articles or Sections hereof are defined in those Articles or Sections, as the case may be. All terms used but not defined in this Indenture that are defined in the Trust Indenture Act (as defined herein) or the definitions of which in the Securities Act (as defined herein) are referred to in the Trust Indenture Act, including terms defined therein by reference to the Securities Act (except as herein otherwise expressly provided or unless the context otherwise clearly requires), shall have the meanings assigned to such terms in such Trust Indenture Act and in the Securities Act. Unless the context otherwise clearly requires: (a) all accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with generally accepted accounting principles, and the term “generally accepted accounting principles” means such accounting principles as are generally accepted in the United States of America (as defined herein) at the time of any computation; (b) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole, as supplemented and amended from time to time, and not to any particular Article, Section or other subdivision; (c) all references to Articles, Sections or other subdivisions are to Articles, Sections or other subdivisions of this Indenture; (d) words in the singular include the plural and vice versa; (e) the pronoun “his” refers to the masculine, feminine and neuter; (f) the word “including” or any variation thereof shall be deemed to be followed by “without limitation;” and (g) the word “principal,” whenever used with reference to the Securities or any Security or any portion thereof, shall be deemed to be followed by “and premium, if any.”

“**Additional Amounts**” has the meaning specified in **Section 3.5**.

“Business Day” means any calendar day that is not a Saturday, Sunday or legal holiday in New York, New York, and on which the Trustee and commercial banks are open for business in New York, New York.

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock, and all options, warrants or other rights to purchase or acquire any of the foregoing.

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

“Common Stock” includes any stock of any class of the Company that has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company.

“Company” means Novatel Wireless, Inc., a Delaware corporation, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” will mean such successor Person.

“Company Board of Directors” means either the board of directors of the Company or any committee of such board of directors duly authorized to act hereunder, as the case may be.

“Company Board Resolution” means a copy of one or more resolutions certified by the secretary or any assistant secretary of the Company to have been duly adopted by the Company Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee. Where any provision of this Indenture refers to action to be taken pursuant to a Company Board Resolution (including the establishment of any Series of the Securities and the forms and terms thereof), such action may be taken by any officer of the Company authorized to take such action by the Company Board of Directors as evidenced by a Company Board Resolution.

“Company Officers’ Certificate” means a certificate signed by both (i) the chief executive officer, the president or any vice president of the Company and (ii) the treasurer or any assistant treasurer or the secretary or any assistant secretary of the Company, and delivered to the Trustee. Each such certificate shall include the statements provided for in **Section 14.5** to the extent applicable.

“Company Order” means a written order, direction, instruction or request of the Company signed by both (i) the chief executive officer, the president or any vice president of the Company and (ii) the treasurer or any assistant treasurer or the secretary or any assistant secretary of the Company.

“Conversion Date” has the meaning specified in **Section 2.12**.

“Conversion Event” means the cessation of use of a Foreign Currency both by the government of the country or countries, or the confederation or association of governments, that issued such Currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community.

“Corporate Trust Office” means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date as of which this Indenture is dated, located at .

“Coupon” means any interest coupon appertaining to any Security.

“Coupon Security” means any Security authenticated and delivered with one or more Coupons appertaining thereto.

“Currency” means any currency or currencies issued by the government of one or more countries or by any recognized confederation or association of such governments, including Dollars, euros and pounds sterling.

“Currency Determination Agent” means the New York clearing house bank, if any, from time to time selected by the Company for purposes of **Section 2.12**.

“Dollar” means the coin or currency of the United States of America which as of the time of payment is legal tender for the payment of public and private debts.

“Event of Default” means any event or condition specified as such in **Section 5.1**.

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

“Foreign Currency” means any Currency issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments, including euros and pounds sterling.

“Government Obligations” means securities which are (i) direct obligations of the United States of America or the government which issued the Currency in which the Securities of a particular Series are denominated or (ii) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, the United States of America or the government which issued the Currency in which the Securities of such Series are denominated, the full and timely payment of which obligations is unconditionally guaranteed by such government, and which, in either case, are full faith and credit obligations of such government, are denominated in the Currency in which the Securities of such Series are denominated and which are not callable or redeemable at the option of the issuer thereof and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

“**Holder**,” “**Holder of Securities**,” “**Securityholder**” or other similar terms mean the bearer of an Unregistered Security or a Registered Holder of a Registered Security and, when used with respect to any Coupon, means the bearer thereof.

“**Indenture**” means this instrument as originally executed and delivered or, if amended or supplemented as herein provided, as so amended or supplemented or both, and shall include the forms and terms of particular Series of Securities established as contemplated hereunder.

“**Interest**,” when used with respect to non-interest bearing Securities, means interest payable at maturity and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to **Section 3.5** or otherwise, includes such Additional Amounts.

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel who may be an employee of or counsel to the Company, and who shall be reasonably satisfactory to the Trustee. Each such opinion shall include the statements provided for in **Section 14.5**, if and to the extent required hereby.

“**Original Issue Discount**” with respect to any Security, including an Original Issue Discount Security, has the same meaning as set forth in Section 1273 of the Internal Revenue Code of 1986 as in effect on the date hereof, or any successor provision, and the applicable Treasury Regulations thereunder.

“**Original Issue Discount Security**” means any Security which provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to **Section 5.1**.

“**Outstanding**,” when used with reference to Securities, shall, subject to the provisions of **Section 7.4**, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

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

(ii) Securities, or portions thereof, as to which moneys in the amount and Currency required for the repayment or redemption thereof shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside, segregated and held in trust by the Company for the holders of such Securities (if the Company shall act as its own Paying Agent), provided that, if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice;

(iii) Securities for which other Securities shall have been authenticated and delivered in substitution, or which shall have been paid, pursuant to the terms of **Section 2.9** (except with respect to any such Security as to which proof satisfactory to the Trustee and the Company is presented that such Security is held

by a Person in whose hands such Security is a legal, valid and binding obligation of the Company); and

(iv) Securities discharged pursuant to **Section 10.1** or with respect to which the Company has effected defeasance and/or covenant defeasance as provided in **Section 10.2**, to the extent such Securities are not reinstated pursuant to **Section 10.6**.

“Paying Agent” means any Person (which may include the Company) authorized by the Company to pay the principal of or interest, if any, on any Security on behalf of the Company.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment,” when used with respect to the Securities of any Series, means the place or places where the principal of and interest, if any, on the Securities of that Series are payable as specified pursuant to **Section 3.2**, and initially shall mean the designated office of the Trustee at which the corporate trust paying agent office of the Trustee shall, at any particular time, be administered, which office is, at the date of this Indenture, located at .

“Preferred Stock” includes any stock of any class of the Company that has a preference over Common Stock in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company.

“Registered Holder,” when used with respect to a Registered Security, means the Person in whose name such Security is registered in the Security register.

“Registered Security” means any Security registered in the Security register.

“Responsible Officer,” when used with respect to the Trustee, means any officer within the corporate trust department (or any successor group) of the Trustee including any vice president, assistant vice president, assistant secretary, or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of his knowledge of and familiarity with the particular subject.

“Securities Act” means the Securities Act of 1933 as in effect on the date hereof.

“Securities” means debentures, notes or other evidences of indebtedness that have been authenticated and delivered under this Indenture.

“Series” or **“Series of Securities”** means a series of Securities and, except in **Sections 2.3** and **7.4** and **Articles One** (“Outstanding”), **Five** and **Six**, a Tranche in the event that the applicable Series may be issued in separate Tranches.

“**Subsidiary**” means any Person which is consolidated in the Company’s accounts and any Person of which at least a majority of the outstanding stock having by the terms thereof ordinary voting power to elect a majority of the directors (or Persons performing similar functions) of such Person (irrespective of whether or not at the time stock of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by the Company, or by one or more Subsidiaries, or by the Company and one or more Subsidiaries.

“**Tranche**” means all Securities of the same Series which have the same issue date, maturity date, interest rate or method of determining interest, and, in the case of Original Issue Discount Securities, which have the same issue price.

“**Trustee**” means the Person identified as “Trustee” in the first paragraph hereof and, subject to the provisions of **Article Six**, any successor trustee.

“**Trust Indenture Act of 1939**” or “**Trust Indenture Act**,” except as otherwise provided in **Sections 8.1** and **8.2**, means the Trust Indenture Act of 1939 as in effect on the date hereof.

“**United States**” means the United States of America (together with the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

“**United States of America**” means the fifty states constituting the United States of America as of the date hereof.

“**United States Person**” means, unless otherwise specified with respect to any Securities pursuant to **Section 2.3**, an individual who is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

“**Unregistered Security**” means any Security not registered in the Security register.

“**Valuation Date**” has the meaning specified in **Section 2.12**.

“**vice president**,” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title of “vice president.”

“**Wholly Owned Subsidiary**” means any Subsidiary in which the Company and/or its other wholly owned Subsidiaries own all of the outstanding capital stock (other than directors’ qualifying shares).

ARTICLE TWO

SECURITIES

2.1 **Forms Generally.** The Securities of each Series and the Coupons, if any, shall be substantially in such form (not inconsistent with this Indenture) as shall be established by or

pursuant to a Company Board Resolution and set forth in a Company Officers' Certificate or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto (the provisions of which shall be appropriate to reflect the terms of each Series of Securities, including the currency or denomination, which may be Dollars or any Foreign Currency) and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture or any indenture supplemental hereto, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities and Coupons, if any, as evidenced by their execution of the Securities and Coupons, if any.

The definitive Securities and Coupons, if any, shall be printed, or may be produced in any other manner, all as determined by the officers of the Company executing such Securities and Coupons, if any, as evidenced by their execution of such Securities and Coupons, if any.

2.2 **Form of Trustee's Certificate of Authentication.** The Trustee's certificate of authentication on all Securities shall be in substantially the following form:

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Securities of the Series designated herein and referred to in the within-mentioned Indenture.

as Trustee

By _____
Authorized Signatory

Or

as Authentication Agent

By _____
Authorized Office

2.3 **Amount Unlimited; Issuable in Series.** The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more Series. There shall be established in or pursuant to one or more Company Board Resolutions and set forth in a Company Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any Series:

(1) the title of the Securities of the Series (which title shall distinguish the Securities of the Series from all other Securities issued by the Company), including, as applicable, whether the Securities of the Series shall be issued as senior Securities, senior subordinated Securities or subordinated Securities; any subordination provisions particular to the Securities of the Series; and whether the Securities of the Series are convertible or exchangeable for other securities;

(2) any limit upon the aggregate principal amount of the Securities of the Series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to **Sections 2.8, 2.9, 2.11** or **11.2**);

(3) if other than 100% of its aggregate principal amount, the percentage of the aggregate principal amount at which the Securities of the Series will be offered;

(4) the date or dates (whether fixed or extendable) on which the principal of the Securities of the Series is payable;

(5) the rate or rates, which may be fixed or variable, at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable, the basis upon which interest shall be calculated if other than that of a 360-day year consisting of twelve 30-day months and, in the case of Registered Securities, the record dates for the determination of Holders to whom interest is payable;

(6) any provisions relating to the issuance of the Securities of the Series at an Original Issue Discount;

(7) the place or places where the principal of and interest on Securities of the Series shall be payable and where Securities of the Series may be surrendered for conversion or exchange (if other than as provided in **Section 3.2**);

(8) whether any of such Securities are to be redeemable at the option of the Company, and if so, the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the Series may be so redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;

(9) if other than 100% of the aggregate principal amount thereof, the portion of the principal amount of the Securities of the Series which shall be payable upon declaration of acceleration of the maturity date thereof pursuant to **Section 5.1** or provable in bankruptcy pursuant to **Section 5.2**, or, if applicable, which is convertible or exchangeable;

(10) the obligation, if any, of the Company to redeem, purchase or repay Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the price or prices at which, the Currency in which and the period or periods within which, and the terms and conditions upon which, Securities of the Series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such

obligation (including the terms or method of payment thereof if other than cash), and any provision for the remarketing of the Securities;

(11) the issuance of Securities of the Series as Registered Securities or Unregistered Securities or both, and the rights of the Holders to exchange Unregistered Securities of the Series for Registered Securities of the Series or to exchange Registered Securities of the Series for Unregistered Securities of the Series and the circumstances under which any such exchanges, if permitted, may be made;

(12) if other than denominations of \$1,000 and any integral multiple thereof, the denominations, which may be in Dollars or any Foreign Currency, in which Securities of the Series shall be issuable;

(13) whether the Securities of the Series will be certificated and, if so, the form of the Securities (or forms thereof if both Unregistered Securities and Registered Securities shall be issuable in such Series), including such legends as required by law or as the Company deems necessary or appropriate, the form of any Coupons or temporary global security which may be issued and the forms of any other certificates which may be required hereunder or which the Company may require in connection with the offering, sale, delivery or exchange of the Securities;

(14) if other than Dollars, the Currency or Currencies in which payments of interest, principal and other amounts payable with respect to the Securities of the Series are to be denominated, payable, redeemable or repurchasable, as the case may be;

(15) whether Securities of the Series are issuable in Tranches;

(16) the obligations, if any, of the Company to permit the conversion or exchange of the Securities of such Series into Common Stock, Preferred Stock or other Capital Stock or property, or a combination thereof, and the terms and conditions upon which such conversion shall be effected (including the initial conversion or exchange price or rate, the conversion or exchange period, the provisions for conversion or exchange price or rate adjustments and any other provisions relative to such obligation) and any limitations on the ownership or transferability of the securities or property into which the Securities may be converted or exchanged;

(17) if other than the Trustee, any trustees, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the Securities of such Series;

(18) if the Securities of the Series do not bear interest, the applicable dates for purposes of **Section 4.1**;

(19) any deletions from, modifications of or additions to (a) the Events of Default with respect to Securities of the Series or (b) the right of the Trustee or the Holders of such Securities pursuant to **Section 5.1**;

(20) any deletions from, modifications of or additions to the covenants set forth in **Article Three** with respect to Securities of the Series;

(21) if the amount of payments of principal of, and make-whole amount, if any, and interest on, the Securities of the Series may be determined with reference to an index, the manner in which such amount shall be determined;

(22) whether the Securities of the Series shall be issued in whole or in part in the global form of one or more Securities and in such case, (a) the depository for such Securities, which depository must be a clearing agency registered under the Exchange Act, (b) the circumstances under which any such Securities may be exchanged for Securities registered in the name of, and under which any transfer of such Securities may be registered in the name of, any Person other than such depository or its nominee, if other than as set forth in **Section 2.15**, and (c) any other provisions regarding such Securities which provisions may be in addition to or in lieu of, in whole or in part, the provisions of **Section 2.15**;

(23) whether, under what circumstances and the Currency in which, the Company will pay Additional Amounts as contemplated by **Section 3.5** on the Securities of the Series to any Holder who is not a United States Person (including any modification to the definition of such term) in respect of any tax, assessment or governmental charge and, if so, whether the Company will have the option to redeem such Securities rather than pay such Additional Amounts (and the terms of any such option);

(24) whether the Securities of the Series, in whole or in specified part, will not be defeasible pursuant to **Section 10.2(b)** or **Section 10.2(c)**, or both such Sections, and, if the Securities may be defeased, in whole or in specified part, pursuant to either or both such Sections, any provisions to permit a pledge of obligations other than Government Obligations (or the establishment of other arrangements) to satisfy the requirements of **Section 10.2(d)(i)** for defeasance of the Securities and, if other than by a Company Board Resolution, the manner in which any election by the Company to defease the Securities will be evidenced;

(25) whether the Securities of such Series are to be secured by any property, assets or other collateral and, if so, the applicable collateral, any deletions from, modifications of or additions to the provisions of **Article Fourteen**;

(26) the Person to whom any interest on the Securities of such Series will be payable, if other than the Securityholder thereof, on the regular record date therefor;

(27) the dates on which interest, if any, will be payable and the regular record dates for interest payment dates; and

(28) any other terms or conditions upon which the Securities of the Series are to be issued (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one Series shall be substantially identical except as to denomination, except as contemplated by the immediately succeeding paragraph, and except as may otherwise

be provided in or pursuant to such Company Board Resolution or in any such indenture supplemental hereto. All Securities of any one Series need not be issued at the same time, and unless otherwise provided, a Series may be reopened, without the consent of the Holders, for issuances of additional Securities of such Series or to establish additional terms of such Series of Securities (which additional terms shall only be applicable to unissued or additional Securities of such Series).

Each Series may be issued in one or more Tranches. All Securities of a Tranche shall have the same issue date, maturity date, interest rate or method of determining interest, and, in the case of Original Issue Discount Securities, the same issue price.

2.4 Authentication and Delivery of Securities. At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any Series having attached thereto appropriate Coupons, if any, executed by the Company to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver such Securities to or upon a Company Order without any further action by the Company. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive and (subject to **Section 6.1**) shall be fully protected in relying upon:

- (a) a Company Board Resolution relating to such Series;
- (b) an executed supplemental indenture, if any;
- (c) a Company Officers' Certificate setting forth the form and terms of the Securities of such Series as required pursuant to **Sections 2.1** and **2.3**, respectively, and prepared in accordance with **Section 14.5**;
- (d) at the option of the Company, either an Opinion of Counsel, prepared in accordance with **Section 14.5**, or a letter addressed to the Trustee allowing the Trustee to rely on an Opinion of Counsel, substantially to the effect that:
 - (i) the form or forms and terms of such Securities and Coupons, if any, have been established in or pursuant to a Company Board Resolution or in a supplemental indenture as permitted by **Sections 2.1** and **2.3**, respectively, in conformity with the provisions of this Indenture; and
 - (ii) such Securities and Coupons, if any, have been duly authorized, and, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law;

provided, however, that in the case of any Series issuable in Tranches, if the Trustee has previously received the applicable documents referred to in clause (a) through (d) above with

respect to such Series, the Trustee shall authenticate and deliver Securities of such Series executed by the Company for original issuance upon receipt by the Trustee of a notice, executed by an officer of the Company transmitted by facsimile and confirmed in writing to the Trustee, of the terms of the issuance of such Securities.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this **Section 2.4** if the Trustee, being advised by counsel, determines that such Securities may not lawfully be issued by the Company.

Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in **Section 2.10**, together with a written statement (which need not comply with **Section 14.5** and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

2.5 Execution of Securities. The Securities shall be signed on behalf of the Company by both (a) its chief executive officer, president or any vice president and (b) its treasurer, any assistant treasurer, its secretary or any assistant secretary, which may, but need not, be attested. Such signatures may be the manual or facsimile signatures of the present or any future such officers. Typographical and other minor errors or defects in any such reproduction of any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee. Any Coupons attached to any Unregistered Security shall be executed on behalf of the Company by the manual or facsimile signature of any such officer of the Company.

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

2.6 Certificate of Authentication. Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee by the manual signature of one of its authorized signatories, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

The Trustee shall not authenticate or deliver any Unregistered Security until any matured Coupons appertaining thereto have been detached and canceled, except as otherwise provided or permitted by this Indenture.

2.7 Denomination and Date of Securities; Payments of Interest. The Securities shall be issuable in denominations as shall be specified as contemplated by **Section 2.3**. In the

absence of any such specification with respect to the Securities of any Series, the Securities of such Series shall be issuable in denominations of \$1,000 and any multiple thereof, which may be in Dollars or any Foreign Currency, and interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Securities shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine with the approval of the Trustee as evidenced by the execution and authentication thereof.

Each Security shall be dated the date of its authentication, shall bear interest from the date and shall be payable on the dates, in each case, which shall be specified as contemplated by **Section 2.3**.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid, in the case of Registered Securities, to the Person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for the payment of such interest and, in the case of Unregistered Securities, upon surrender of the Coupon appertaining thereto in respect of the interest due on such interest payment date.

The term "**record date**," as used with respect to any interest payment date (except for a date for payment of defaulted interest), means the date specified as such in the terms of the Securities of any particular Series, or, if no such date is so specified, if such interest payment date is the first day of a calendar month, the close of business on the fifteenth day of the next preceding calendar month or, if such interest payment date is the fifteenth day of a calendar month, the close of business on the first day of such calendar month, whether or not such record date is a Business Day.

Any interest on any Security of any Series which is payable, but is not punctually paid or duly provided for, on any interest payment date (called "**defaulted interest**" for the purpose of this **Section 2.7**) shall forthwith cease to be payable to the Registered Holder on the relevant record date by virtue of his having been such Holder; and such defaulted interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any defaulted interest to the Persons in whose names any such Registered Securities (or their respective predecessor Securities) are registered at the close of business on a special record date for the payment of such defaulted interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Security of such Series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment; such money, when so deposited, will be held in trust for the benefit of the Persons entitled to such defaulted interest. Thereupon the Trustee shall fix a special record date for the payment of such defaulted interest in respect of Registered Securities of such Series which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the

notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such defaulted interest and the special record date thereof to be mailed, first class postage prepaid, to each Registered Holder at his address as it appears in the Security register, not less than 10 days prior to such special record date. Notice of the proposed payment of such defaulted interest and the special record date therefor having been mailed as aforesaid, such defaulted interest in respect of Registered Securities of such Series shall be paid to the Person in whose names such Securities (or their respective predecessor Securities) are registered on such special record date and such defaulted interest shall no longer be payable pursuant to the following clause (b).

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

Any defaulted interest payable in respect of any Security of any Series which is not a Registered Security shall be payable pursuant to such procedures as may be satisfactory to the Trustee in such manner that there is no discrimination as between the Holders of Registered Securities and other Securities of the same Series, and notice of the payment date therefor shall be given by the Trustee, in the name and at the expense of the Company, by publication at least once in a newspaper of general circulation in New York, New York.

Subject to the foregoing provisions of this **Section 2.7**, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

In the case of any Security which is converted into Common Stock or Preferred Stock after any regular record date and on or prior to the next succeeding interest payment date (other than any Security whose maturity is prior to such interest payment date), interest whose stated maturity is on such interest payment date shall be payable on such interest payment date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on such regular record date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security which is converted, interest whose stated maturity is after the date of conversion of such Security shall not be payable.

2.8 Registration, Transfer and Exchange. The Company will keep or will cause to be kept at the office or agency of the Trustee to be maintained for the purpose as provided in **Section 3.2** a register or registers in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration and transfer of Registered Securities as is provided in this **Article Two**. Such register shall be in written form in the English language or

in any other form capable of being converted into such form within a reasonable time. At all reasonable times such register or registers shall be open for inspection by the Trustee.

Upon due presentation for registration of transfer of any Registered Security of any Series at any such office or agency to be maintained for the purpose as provided in **Section 3.2**, the Company shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Registered Security or Registered Securities of the same Series in authorized denominations for a like aggregate principal amount.

At the option of the Holder thereof, Unregistered Securities of a Series, which by their terms are registerable as to principal and interest, may, to the extent and under the circumstances specified pursuant to **Section 2.3**, be exchanged for Registered Securities of such Series, as may be issued by the terms thereof. At the option of the Holder thereof, Registered Securities of a Series, which by their terms provide for the issuance of Unregistered Securities, may, to the extent and under the circumstances specified pursuant to **Section 2.3**, be exchanged for Unregistered Securities of such Series. Securities so issued in exchange for other Securities shall be of any authorized denomination and of like principal amount and maturity date, interest rate or method of determining interest, and shall be issued upon surrender of the Securities for which they are to be exchanged and, in the case of Coupon Securities, together with all unmatured Coupons and matured Coupons in default appertaining thereto, at the office of the Company provided for in **Section 3.2** and upon payment, if the Company shall require, of charges provided therein. Unregistered Securities of any Series issued in exchange for Registered Securities of such Series between the regular record date for such Registered Security and the next interest payment date will be issued without the Coupon relating to such interest payment date, and Unregistered Securities surrendered in exchange for Registered Securities between such dates shall be surrendered without the Coupon relating to such interest payment date. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive. Notwithstanding the foregoing, an Unregistered Security will not be delivered in exchange for a Registered Security or Securities unless the Trustee receives a certificate signed by the Person entitled to delivery of such Security or other items or documents fulfilling such conditions as shall be required by regulations of the United States Department of the Treasury, or shall be notified by the Company that such a certificate shall not be required by such regulations; provided, however, that no such Unregistered Security shall be delivered by the Trustee if the Trustee or such agent shall have, or shall have been notified in writing by the Company that the Company has, actual knowledge that such certificate is false.

Upon presentation for registration of any Unregistered Securities of any Series which by its terms is registerable as to principal, at the office or agency of the Company to be maintained as provided in **Section 3.2**, such Security shall be registered as to principal in the name of the Holder thereof and such registration shall be noted on such Security. Any Security so registered shall be transferable on the registry books of the Company upon presentation of such Security at such office or agency for similar notation thereon, but such Security may be discharged from registration by being in a like manner transferred to bearer, whereupon transferability by delivery shall be restored. Except as otherwise provided pursuant to **Section 2.3**, Unregistered Securities shall continue to be subject to successive registrations and discharges from registration at the option of the Holders thereof.

Unregistered Securities shall be transferable by delivery, except while registered as to principal. Registration of any Coupon Security shall not affect the transferability by delivery of the Coupons appertaining thereto which shall continue to be payable to bearer and transferable by delivery.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to **Sections 2.11, 8.5** or **11.2** not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of Securities for redemption under **Article Eleven** or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any Security to be redeemed in part, the portion thereof not redeemed.

2.9 Mutilated, Defaced, Destroyed, Lost and Stolen Securities. In case any temporary or definitive Security or Coupon shall become mutilated or defaced or be destroyed, lost or stolen, the Company at its own discretion may execute, and upon receipt of a Company Order, the Trustee shall authenticate and deliver, a new Security of the same Series or Coupon, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security or Coupon, or in lieu of and substitution for the Security or Coupon so destroyed, lost or stolen. In every case, the applicant for a substitute Security or Coupon shall furnish to the Company, to the Trustee and to any agent of the Company or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security or Coupon and of the ownership thereof.

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

In case any Security or Coupon which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Security or Coupon, pay or authorize the

payment of the same (without surrender thereof except in the case of a mutilated or defaced Security or Coupon); provided, however, that any such payments in respect of Unregistered Securities or Coupons shall be subject to the provisions of **Section 2.12(c)**.

Every substitute Security of any Series or Coupon issued pursuant to the provisions of this **Section 2.9** by virtue of the fact that any such Security or Coupon is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security or Coupon shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this Indenture equally and proportionately with any and all other Securities of such Series or Coupons duly authenticated and delivered hereunder. All Securities or Coupons shall be held and owned upon the express condition that, to the extent permitted by the law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Securities or Coupons and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

2.10 Cancellation of Securities. All Securities surrendered for payment, redemption, registration of transfer, conversion or exchange, or for credit against any payment in respect of a sinking or analogous fund and all Coupons surrendered for payment or exchange, shall, if surrendered to the Company or any agent of the Company or the Trustee, be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled promptly by it; and no Securities or Coupons shall be issued in lieu thereof, except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of cancelled Securities in accordance with its customary procedures. If the Company shall acquire any of the Securities and Coupons, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities and Coupons unless and until the same are delivered to the Trustee for cancellation.

2.11 Temporary Securities. Pending the preparation of definitive Securities for any Series, the Company may execute and the Trustee shall authenticate and deliver temporary Securities for such Series (printed, lithographed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities of any Series may be issued as Registered Securities or Unregistered Securities with or without Coupons attached thereto, of any authorized denomination, and substantially in the form of the definitive Securities of such Series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company with the concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Company shall execute and shall furnish definitive Securities of such Series and thereupon temporary Securities of such Series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Company for that purpose pursuant to **Section 3.2**, and the Trustee shall authenticate and deliver in exchange for such temporary Securities of such Series a like aggregate principal amount of definitive Securities of the same Series of authorized

denominations and, in the case of Unregistered Securities, having attached thereto any appropriate Coupons. Until so exchanged, the temporary Securities of any Series shall be entitled to the same benefits under this Indenture as definitive Securities of such Series.

2.12 Currency and Manner of Payments in Respect of Securities.

(a) With respect to Registered Securities of any Series with respect to which the Holders of such Securities have not made the election provided for in subsection (b) of this **Section 2.12**, the following payment provisions shall apply:

(1) Except as provided in subsection (a)(2) or subsection (e) of this **Section 2.12**, payment of the principal of any Registered Security will be made at the Place of Payment by delivery of a check in the Currency in which the Security is denominated on the payment date against surrender of such Registered Security, or, if the Securities are global securities, in accordance with the procedures of the applicable clearing agency pursuant to **Section 2.15**, and any interest on any Registered Security will be paid at the Place of Payment by mailing a check in the Currency in which the Securities were issued to the Person entitled thereto at the address of such Person appearing on the Security register.

(2) Payment of the principal of and interest on such Security may also, subject to applicable laws and regulations, be made at such other place or places as may be designated by the Company by any appropriate method.

(b) With respect to Registered Securities of any Series, the following payment provisions shall apply, except as otherwise provided in subsections (e) and (f) of this **Section 2.12**:

(1) The Company Board of Directors may provide with respect to any Series of such Securities that Holders shall have the option to receive payments of principal of and interest on such Security in any of the Currencies which may be designated for such election in such Security (or, if no such Currencies are designated, in the Currency in which the Securities of such Series are denominated) by delivering to the Trustee a written election, to be in substantially the form included with the applicable form of Securities as shall be established pursuant to **Section 2.1**, not later than the close of business on the record date immediately preceding the applicable payment date. Such election will remain in effect for such Holder until changed by the Holder by written notice to the Trustee (but any such change must be made not later than the close of business on the record date immediately preceding the next payment date to be effective for the payment to be made on such payment date and no such change may be made with respect to payments to be made on any Security with respect to which notice of redemption has been given by the Company pursuant to **Article Eleven**). Any Holder of any such Security who shall not have delivered any such election to the Trustee by the close of business on the applicable record date will be paid the amount due on the applicable payment date in the relevant Currency as provided in subsection (a) of this **Section 2.12**. Payment of principal shall be made on the

payment date against surrender of such Securities. Payment of principal and interest shall be made at the Place of Payment by mailing a check in the applicable Currency to the Person entitled thereto at the address of such Person appearing on the Security register.

(2) Payment of the principal of and interest on such Security may also, subject to applicable laws and regulations, be made at such other place or places as may be designated by the Company by any appropriate method.

(c) Payment of the principal of any Unregistered Security and of interest on any Coupon Security will be made at such place or places outside the United States of America as may be designated by the Company by any appropriate method only in the Currency in which the Security is payable (except as provided in subsection (e) of this **Section 2.12**) on the payment date against surrender of the Unregistered Security, in the case of payment of principal, or the relevant Coupon, in the case of payment of interest. Except as provided in subsection (e) of this **Section 2.12**, payment with respect to Unregistered Securities and Coupons will be made by check, subject to any limitations on the methods of effecting such payment as shall be specified in the terms of the Security established as provided in **Section 2.3** and as shall be required under applicable laws and regulations. Payment of the principal of and interest on Unregistered Securities may also, subject to applicable laws and regulations, be made at such other place or places as may be designated by the Company by any appropriate method.

(d) Not later than the fourth Business Day after the record date for each payment date, the Trustee will deliver to the Company a written notice specifying, in the Currency in which each Series of Securities are denominated, the respective aggregate amounts of principal of and interest on the Securities to be made on such payment date, specifying the amounts so payable in respect of the Registered and the Unregistered Securities and in respect of the Registered Securities as to which the Holders shall have elected to be paid in another Currency as provided in subsection (b) of this **Section 2.12**. If the Company Board of Directors has provided for the election referred to in subsection (b) of this **Section 2.12** with respect to Restricted Securities and if at least one Holder of such Registered Securities has made such election, then not later than the second Business Day preceding the applicable payment date the Company will deliver to the Trustee an Exchange Rate Officer's Certificate in respect of such payment date. The Dollar or Foreign Currency amount receivable by Holders of Registered Securities who have elected payment in another Currency as provided in subsection (b) of this **Section 2.12** shall be determined by the Company on the basis of the applicable Market Exchange Rate in effect on the second Business Day (the "**Valuation Date**") prior to such payment date and set forth in the applicable Exchange Rate Officer's Certificate. For purposes of this **Section 2.12** and **Section 6.2(a)**, "**Exchange Rate Officer's Certificate**" means, with respect to any payment date in respect of Registered Securities as to which the Company Board of Directors has provided for the election referred to in subsection (b) of this **Section 2.12** and at least one Holder of such Registered Securities has made such election, a certificate setting forth (i) the applicable Market Exchange Rate to Holders of such Registered Securities who had elected payment in a Currency other than the Currency in which such Registered Securities are denominated as determined by the Company and (ii) the Dollar or Foreign Currency amounts payable for the Valuation Date with respect to such payment date on the basis of such Market Exchange Rate or quotation in respect of the principal of and interest on the applicable Series of

Registered Securities, signed by the treasurer or any assistant treasurer of the Company, and delivered to the Trustee. For purposes of this **Section 2.12** and **Section 14.11**, “**Market Exchange Rate**” means for any Currency as of a particular date, the noon Dollar buying rate for such Currency for cable transfers quoted in New York City on such date as certified for customs purposes by the Federal Reserve Bank of New York; provided, however, that if such rate is not available for any reason on such date, the Currency Determination Agent shall determine the Market Exchange Rate for the particular date, in its sole discretion and without liability on its part, based on such quotation of the Federal Reserve Bank of New York as of the most recent available date, or quotations from one or more major banks in New York City or in the country of issue of the currency in question, or such other quotations as the Currency Determination Agent shall deem appropriate. Unless otherwise specified by the Currency Determination Agent, if there is more than one market for dealing in any Currency by reason of foreign exchange regulations or otherwise, the market to be used in respect of such Currency shall be that upon which a nonresident issuer of securities designated in such Currency would purchase such Currency in order to make payments in respect of such securities.

(e) If a Conversion Event occurs with respect to a Foreign Currency in which any of the Securities are denominated or payable, then with respect to each date for the payment of principal of and interest on such Securities occurring after the last date on which the Foreign Currency was so used (the “**Conversion Date**”), the Dollar shall be the Currency of payment for use on each such payment date. The Dollar amount to be paid by the Company to the Trustee and by the Trustee or any Paying Agent to the Holders of such Securities with respect to such payment date shall be the Dollar Equivalent of the Foreign Currency as determined by the Currency Determination Agent in the manner provided in subsection (g) of this **Section 2.12**.

(f) If the Holder of a Registered Security elects payment in a specified Currency as provided for by subsection (b) of this **Section 2.12** and a Conversion Event occurs with respect to such elected Currency, such Holder shall receive payment in the Currency in which payment would have been made in the absence of such election; and if a Conversion Event occurs with respect to the Currency in which payment would have been made in the absence of such election, such Holder shall receive payment in Dollars.

(g) The “**Dollar Equivalent of the Foreign Currency**” shall be determined by the Currency Determination Agent as of each Valuation Date and shall be obtained by converting the applicable Foreign Currency into Dollars at the Market Exchange Rate on the Conversion Date.

(h) All decisions and determinations of the Currency Determination Agent regarding the Dollar Equivalent of the Foreign Currency and the Market Exchange Rate as specified above shall be in its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company, the Trustee and all Holders of the applicable Securities.

(i) In the event that a Conversion Event has occurred with respect to a Foreign Currency, the Company, after learning thereof, will immediately give notice thereof to the Trustee (and the Trustee will promptly thereafter give notice on behalf of the Company in the manner provided in **Section 14.4** to the affected Holders) specifying the Conversion Date.

(j) The Trustee shall be fully justified and protected in relying on and acting upon the information so received by it from the Company and the Currency Determination Agent and shall not otherwise have any duty or obligation to determine such information independently.

2.13 **Compliance with Certain Laws and Regulations.** If any Unregistered Securities or Coupon Securities are to be issued in any Series of Securities, the Company will use reasonable efforts to provide for arrangements and procedures designed pursuant to then applicable laws and regulations, if any, to ensure that Unregistered Securities or Coupon Securities are sold or resold, exchanged, transferred and paid only in compliance with such laws and regulations and without adverse consequences to the Company.

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

2.15 **Securities in Global Form.** Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall be issuable in temporary or permanent global form. If Securities of or within a Series are issuable in whole or in part in global form, any such Security may provide that it shall represent the aggregate amount of Outstanding Securities of such Series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced or increased to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby, shall be made in such manner and by such Person or Persons as shall be specified therein or in the Company Order to be delivered to the Trustee pursuant to **Section 2.4**. Subject to the provisions of **Section 2.4** and, if applicable, **Section 2.11**, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order, if any. Any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with **Section 14.5** and need not be accompanied by an Opinion of Counsel.

The provisions of the last paragraph of **Section 2.4** shall apply to any Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee the Security in global form together with written instructions (which need not comply with **Section 14.5** and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last paragraph of **Section 2.4**.

Notwithstanding the provisions of **Section 3.1**, unless otherwise specified as contemplated by **Section 2.4**, payment of principal of and interest on any Security in permanent global form shall be made to the Person or Persons specified in such Security.

Neither the Company, nor the Trustee shall have any responsibility or obligation to any Person claiming a beneficial ownership interest in the Securities under or through any clearing agency or any other Person which is not shown on the Security register as being a Registered Holder with respect to either the Securities, the accuracy of any records maintained by any such clearing agency, the payment by any such clearing agency or its participants of any amount in respect of the principal of or interest on the Securities, any notice which is permitted or required to be given under the Indenture, any consent given or other action taken by such clearing agency as Registered Holder, or any selection by such clearing agency of any Person to receive payment of principal, interest or other amounts payable on the Securities.

2.16 **Form of Conversion Notice.** The form of any conversion notice for the conversion of Securities into shares of Common Stock, Preferred Stock or other securities of the Company shall be in substantially the form included with the applicable form of Securities as shall be established pursuant to **Section 2.1**.

ARTICLE THREE

COVENANTS OF THE ISSUER

3.1 **Payment of Principal and Interest.** The Company covenants and agrees for the benefit of each Series of Securities that it will duly and punctually pay or cause to be paid (in the currency in which the Securities of such Series and Coupons, if any, are payable, except as otherwise provided pursuant to **Section 2.3** for the Securities of such Series and except as provided in **Section 2.12(b), (e) and (f)**) the principal of, and interest on, each of the Securities of such Series in accordance with the terms of the Securities of such Series, any Coupons appertaining thereto and this Indenture.

The interest on Unregistered Securities shall be payable only upon presentation and surrender of the several Coupons for such interest installments as are evidenced thereby as they severally mature at the office of a Paying Agent outside the United States of America. The interest on any temporary Unregistered Security shall be paid, as to any installment of interest evidenced by a Coupon attached thereto, if any, only upon presentation and surrender of such Coupon, and, as to the other installments of interest, if any, only upon presentation of such Securities for notation thereon of the payment of such interest.

3.2 **Offices for Payment, etc.** So long as any of the Securities remain Outstanding, the Company will maintain the following for each Series: an office or agency (a) where the Securities may be presented for payment, (b) where the Securities may be presented for registration of transfer and for exchange as in this Indenture provided, and (c) where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served. The Company will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. In case the Company shall fail to so designate or maintain any such office or agency or shall fail to give such notice of the location or of any change in the

location thereof, presentations and demands may be made at the Place of Payment and notices may be served at the Corporate Trust Office. Unless otherwise specified pursuant to **Section 2.3**, the Trustee is appointed Paying Agent and Registrar.

So long as any Coupon Securities or Unregistered Securities of any Series remain Outstanding, the Company will (except as specified pursuant to **Section 2.3**) maintain one or more offices or agencies outside the United States of America in such city or cities as may be specified elsewhere in this Indenture or as contemplated by **Section 2.3**, and shall maintain such office or offices for a period of two years (or any period thereafter for which it is necessary in order to conform to United States tax laws or regulations) after the principal on such Coupon Securities or Unregistered Securities has become due and payable, with respect to such Series where Coupons appertaining to Securities of such Series or Unregistered Securities of such Series may be surrendered or presented for payment, or surrendered for exchange pursuant to **Section 2.8** and where notices and demands to or upon the Company in respect of Coupons appertaining to Securities of such Series or the Unregistered Securities of such Series or of this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of any such office or agency. If at any time the Company shall fail to maintain such required office or agency or shall fail to furnish the Trustee with the address thereof, presentations, surrenders and demands in respect of Unregistered Securities may be made or served at the Place of Payment and notice may be served at the Corporate Trust Office and the corporate trust office of any authenticating agent appointed, and presentations, surrenders, notices and demands in respect of Coupons appertaining to Securities of any Series and Unregistered Securities may be made or served at the corporate trust office of the Trustee in the other city or cities referred to above; and the Company hereby appoints the Trustee and any authenticating agent appointed hereunder as its agents to receive all such presentations, surrenders, notices and demands.

3.3 **Appointment to Fill a Vacancy in Office of Trustee.** The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in **Section 6.10**, a Trustee, so that there shall at all times be a Trustee with respect to each Series of Securities hereunder.

3.4 **Paying Agents.** Whenever the Company shall appoint a Paying Agent other than the Trustee with respect to the Securities of any Series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this **Section 3.4**:

(a) that it will hold all sums received by it as such Paying Agent for the payment of the principal of or interest on the Securities of such Series or Coupons (whether such sums have been paid to it by the Company or other obligor on the Securities of such Series or Coupons) in trust for the benefit of the Holders of the Securities of such Series or Coupons or of the Trustee, and upon the occurrence of an Event of Default and upon the written request of the Trustee, pay over all such sums received by it to the Trustee;

(b) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such Series) to make any payment of the principal

of or interest on the Securities of such Series or Coupons when the same shall be due and payable; and

(c) that it will give the Trustee notice of any change of address of any Holder of which it is aware.

The Company will, on or prior to each due date of the principal of or interest on the Securities of such Series or Coupons, deposit with the Paying Agent a sum sufficient to pay such principal or interest so becoming due, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action.

If the Company shall act as its own Paying Agent with respect to the Securities of any Series or Coupons, it will, on or before each due date of the principal of or interest on the Securities of such Series or Coupons, set aside, segregate and hold in trust for the benefit of the Holders of the Securities of such Series or Holders of such Coupons a sum sufficient to pay such principal or interest so becoming due. The Company will promptly notify the Trustee of any failure to take such action.

Anything in this **Section 3.4** to the contrary notwithstanding, the Company may at any time, for the purpose of obtaining a satisfaction and discharge with respect to one or more or all Series of Securities or Coupons hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for any such Series by the Company or any Paying Agent hereunder, as required by this **Section 3.4**, such sums to be held by the Trustee upon the trusts herein contained.

Anything in this **Section 3.4** to the contrary notwithstanding, the agreement to hold sums in trust as provided in this **Section 3.4** is subject to the provisions of **Sections 10.4** and **10.5**.

3.5 Additional Amounts. If Securities of a Series provide for the payment of additional amounts to any Holder who is not a United States Person in respect of any tax, assessment or governmental charge ("**Additional Amounts**"), the Company will pay to the Holder of any Security of such Series or any Coupon appertaining thereto such Additional Amounts as may be so provided by **Section 2.3**. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or interest on, or in respect of, any Security of a Series or payment of any related Coupon or the net proceeds received on the sale or exchange of a Security of a Series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for by the terms of such Series established pursuant to **Section 2.3** to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms and express mention of the payment of Additional Amounts (if applicable) in any provisions shall not be construed as excluding Additional Amounts in those provisions where such express mention is not made.

Except as otherwise specified pursuant to **Section 2.3**, if the Securities of a Series provide for the payment of Additional Amounts, at least 10 days prior to each date of payment of principal or interest on which any Additional Amount shall be payable, the Company will furnish the Trustee and the Company's principal Paying Agent or Paying Agents, if other than the Trustee, with a Company Officers' Certificate instructing the Trustee and such Paying Agent or

Paying Agents whether such payment of principal of or interest on the Securities of that Series shall be made to Holders of Securities of that Series or any related Coupons who are not United States Persons without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of that Series. If any such withholding shall be required, then such Company Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities of that Series or related Coupons and the Company will pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Company Officers' Certificate furnished pursuant to this **Section 3.5** or in the event the Trustee shall not withhold or deduct any sums as a result of not receiving a Company Officers' Certificate pursuant to this **Section 3.5**.

3.6 **Calculation of Original Issue Discount.** The Company shall promptly, at the end of each calendar year, calculate the Original Issue Discount accrued on Outstanding Securities as of the end of such year and shall determine whether the amount of Original Issue Discount qualifies for the *de minimis* exception rule as set forth in Section 1273(a)(3) of the Internal Revenue Code of 1986, as amended from time to time. If such calculated amount does not qualify for the *de minimis* exception rule, then the Company shall subsequently file with the Trustee no later than January 15th of each calendar year (a) a written notice specifying the amount of Original Issue Discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (b) such other specific information relating to such Original Issue Discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE FOUR

SECURITYHOLDERS' LISTS AND REPORTS BY THE ISSUER AND THE TRUSTEE

4.1 **Company to Furnish Trustee Information as to Names and Addresses of Securityholders.** The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee for the Securities of each Series a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Registered Securities of each Series:

(a) semiannually and not more than 15 days after each record date for the payment of interest on such Securities, as hereinabove specified, as of such record date, and on dates to be determined pursuant to **Section 2.3** for non-interest bearing securities in each year; and

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

provided that, if and so long as the Trustee shall be the Security registrar for such Series, such list shall not be required to be furnished but in any event the Company shall be required to furnish such information concerning the Holders of Coupon Securities and Unregistered Securities which is known to it; provided, further, that the Company shall have no obligation to investigate any matter relating to any Holder of an Unregistered Security or any Holder of a Coupon.

4.2 **Preservation and Disclosure of Securityholders' Lists.**

(a) The Trustee for the Securities of each Series shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of each Series of Securities contained in the most recent list furnished to it as provided in **Section 4.1** or maintained by the Trustee in its capacity as Security registrar for such Series, if so acting. The Trustee may destroy any list furnished to it as provided in **Section 4.1** upon receipt of a new list so furnished.

(b) In case three or more Holders of Registered Securities of any Series (hereinafter referred to as “**applicants**”) apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of a particular Series (in which case the applicants must all hold Securities of such Series) or with Holders of all Securities with respect to their rights under this Indenture or under such Securities and such application is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either:

(i) afford to such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this **Section 4.2**, or

(ii) inform such applicants as to the approximate number of Holders of Securities of such Series or all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the provisions of subsection (a) of this **Section 4.2**, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford to such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder of such Series or all Securities, as the case may be, whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this **Section 4.2**, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission together with a copy of the material to be mailed, a written statement to the effect

that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such Series or all Securities, as the case may be, or could be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of such order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met, and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that none of the Company, the Trustee or any agent of the Company or the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with the provisions of subsection (b) of this **Section 4.2**, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under such subsection (b).

4.3 **Reports by the Company.**

(a) The Company covenants to:

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

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

(iii) transmit by mail to the Holders of Registered Securities in the manner and to the extent required by **Sections 4.4(a)** and **14.4**, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and

reports required to be filed by the Company pursuant to subsections (a)(i) and (a)(ii) of this **Section 4.3** as may be required to be transmitted to such Holders by rules and regulations prescribed from time to time by the Commission; provided that any such information, documents or reports filed or furnished with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system shall be deemed to be filed with the Trustee and Holders as of the time such information, documents or reports are filed or furnished by EDGAR; and

(iv) furnish to the Trustee, not less often than annually on or before a date not more than four months after the end of each of its fiscal years ending after the date hereof, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer of the Company as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this subsection (a)(iv), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

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

4.4 Reports by the Trustee.

(a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15 following the date of this Indenture deliver to Holders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange and of any delisting thereof.

ARTICLE FIVE

REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

5.1 Event of Default Defined; Acceleration of Maturity; Waiver of Default. In case one or more of the following Events of Default (unless it is either inapplicable to a particular Series or it is specifically deleted from or modified in the instrument establishing such Series and the form of Security for such Series) shall have occurred and be continuing with respect to any Series of Securities, that is to say:

(a) default in the payment of any installment of interest upon any Security of such Series as and when the same shall become due and payable, and continuance of such default for a period of 30 days; or

(b) default in the payment of the principal of the Securities of such Series as and when the same shall become due and payable either at maturity, upon redemption (for any sinking fund payment or otherwise), by declaration or otherwise; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company in the Securities of such Series, or in this Indenture contained and relating to such Series, for a period of 90 days after the date on which written notice specifying such failure and requiring the Company to remedy the same and stating that such notice is a "**Notice of Default**" hereunder shall have been given by registered or certified mail to the Company by the Trustee for the Securities of such Series, or to the Company and the Trustee by the Holders of not less than 25% in aggregate principal amount at maturity of the Securities of such Series then Outstanding; or

(d) the Company shall make an assignment for the benefit of creditors, or shall file a petition in bankruptcy; or the Company shall be adjudicated insolvent or bankrupt, or shall petition or shall apply to any court having jurisdiction in the premises for the appointment of a receiver, trustee, liquidator or sequestrator of, or for, the Company or any substantial portion of the property of the Company; or the Company shall commence any proceeding relating to the Company or any substantial portion of the property of the Company under any insolvency, reorganization, arrangement or readjustment of debt, dissolution, winding-up, adjustment, composition or liquidation law or statute of any jurisdiction, whether now or hereafter in effect (hereinafter in this clause (d) called "**Proceeding**"); or if there shall be commenced against the Company any Proceeding and an order approving the petition shall be entered, or such Proceeding shall remain undischarged or unstayed for a period of 90 days; or a receiver, trustee, liquidator or sequestrator of, or for, the Company or any substantial portion of the property of the Company shall be appointed and shall not be discharged or unstayed within a period of 90 days; or the Company by any act shall indicate consent to or approval of or acquiescence in any Proceeding or the appointment of a receiver, trustee, liquidator or sequestrator of, or for, the Company or any substantial portion of the property of the Company; provided that a resolution or order for winding-up the Company with a view to its consolidation, amalgamation or merger with another company or the transfer of its assets as a whole, or substantially as a whole, to such other company as provided in **Section 9.1** shall not make the rights and remedies herein enforceable under this clause (d) if such last-mentioned company shall, as a part of such consolidation, amalgamation, merger or transfer, and within 90 days from the passing of the resolution or the date of the order, comply with the conditions to that end stated in **Section 9.1**; or

(e) any other Event of Default provided in the supplemental indenture or Company Board Resolution under which such Series of Securities is issued or in the form of Security for such Series;

then and in each and every such case (other than an Event of Default under clause (d) above), so long as such Event of Default with respect to such Series shall not have been remedied or waived, unless the principal of all Securities of such Series shall have already become due and payable, either the Trustee for such Series or the Holders of not less than 25% in aggregate principal amount at maturity of the Securities of such Series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Holders), may declare the principal (or, in the case of Original Issue Discount Securities, such principal amount as may be determined in accordance with the terms thereof) of all the Securities of such Series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such Series contained to the contrary notwithstanding. With respect to an Event of Default described under clause (d) above, the principal of all Securities of such Series shall become immediately due and payable without any declaration or other act by the Trustee or the Holders. This provision, however, is subject to the condition that if at any time after the principal of the Securities of such Series (or, in the case of Original Issue Discount Securities, such principal amount as may be determined in accordance with the terms thereof) shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay in the Currency in which the Securities of such Series are payable (except as otherwise provided pursuant to **Section 2.3** for the Securities of such Series and except as provided in **Section 2.12(b), (e) and (f)**) all matured installments of interest, if any, upon all the Securities of such Series and the principal of any and all Securities of such Series which shall have become due otherwise than by such acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, upon overdue installments of interest, at the rate borne by the Securities of such Series (or, in the case of Original Issue Discount Securities, at the yield to maturity) to the date of such payment or deposit) and in Dollars such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel and all other expenses and liabilities incurred, and all advances made, by the Trustee, its agents, attorneys and counsel and any and all defaults under this Indenture, other than the nonpayment of the principal of Securities of such Series which shall have become due by such acceleration, shall have been remedied then and in every such case the Holders of a majority in aggregate principal amount at maturity of the Securities of such Series then Outstanding, by written notice to the Company and to the Trustee for the Securities of such Series, may waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

5.2 **Collection of Indebtedness by Trustee; Trustee May Prove Debt.** The Company covenants that (a) in case default shall be made in the payment of any installment of interest on any of the Securities of any Series when such interest shall have become due and payable, and such default shall have continued for a period of 30 days or (b) in case default shall be made in the payment of all or any part of the principal of any of the Securities of any Series when the same shall have become due and payable, whether upon maturity of the Securities of such Series or upon any redemption or by declaration or otherwise, then upon demand of the Trustee for the Securities of such Series, the Company will pay to the Trustee for the Securities of such Series for the benefit of the Holders of the Securities of such Series and the Holders of any Coupons appertaining thereto the whole amount that then shall have become due and

payable on all Securities of such Series or such Coupons for principal of or interest, as the case may be (with interest to the date of such payment upon the overdue principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest at the same rate as the rate of interest specified in the Securities of such Series); and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and any expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee.

Until such demand is made by the Trustee, the Company may pay the principal of and interest on the Securities of any Series to the Persons entitled thereto, whether or not the principal of and interest on the Securities of such Series are overdue.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee for the Securities of such Series, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon such Securities and collect in the manner provided by law out of the property of the Company or other obligor upon such Securities and Coupons, wherever situated, the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings relative to the Company or other obligor upon such Securities and Coupons, if any, under Title 11 of the United States Code or any other applicable federal or state bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or its property or other obligor, or in case of any other comparable judicial proceedings relative to the Company or other obligor, or to the creditors or property of the Company or other obligor, the Trustee, irrespective of whether the principal of any Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this **Section 5.2**, shall be entitled and empowered, by intervention in such proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal (or, if the Securities of such Series are Original Issue Discount Securities, such portion of the principal amount as may be due and payable with respect to the Securities of such Series pursuant to a declaration in accordance with **Section 5.1**) and interest owing and unpaid in respect of the Securities of such Series, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee) and of the Securityholders and the Holders of any Coupons appertaining thereto allowed in any judicial proceedings relative to the Company or other obligor upon all Securities of such Series, or to the creditors or property of the Company or other obligor; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Securityholders and of the Trustee on their behalf; and any trustee, receiver or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee for the Securities of such Series, and, in the event that such Trustee shall consent to the making of payments directly to the Securityholders, to pay to such Trustee such amounts as shall be sufficient to cover reasonable compensation to such Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by such Trustee and each predecessor Trustee and all other amounts due to such Trustee or any predecessor Trustee pursuant to **Section 6.6**.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any Series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar Person.

All rights of action and of asserting claims under this Indenture, or under any of the Securities or any Coupon appertaining thereto, may be enforced by the Trustee for the Securities of such Series without the possession of any of the Securities of such Series or any Coupon appertaining thereto or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders of the Securities and Holders of any Coupons in respect of which such action was taken.

In any proceedings brought by the Trustee for the Securities of such Series (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Securities and Coupons appertaining thereto in respect to which such action was taken, and it shall not be necessary to make any Holders of such Securities and Coupons appertaining thereto parties to any such proceedings.

5.3 Application of Proceeds. Any moneys collected by the Trustee for the Securities of such Series pursuant to this Article shall be applied in the following order at the date or dates fixed by such Trustee and, in case of the distribution of such moneys on account of principal or interest, upon presentation of the Securities and any Coupons appertaining thereto in respect of which moneys have been collected and stamping (or otherwise noting) thereon the payment, or issuing Securities of such Series in reduced principal amounts in exchange for the presented Securities of like Series if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses applicable to such Series in respect of which moneys have been collected, including reasonable compensation to the Trustee and each predecessor Trustee and their respective agents and attorneys and of all

expenses and liabilities incurred, including the costs and expenses of collection, and all advances made, by the Trustee and each predecessor Trustee and all other amounts due to the Trustee or any predecessor Trustee pursuant to **Section 6.6**:

SECOND: In case the principal of the Securities of such Series in respect of which moneys have been collected shall not have become and be then due and payable, to the payment of interest on the Securities of such Series in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest is permissible by law and that such interest has been collected by the Trustee) upon the overdue installments of interest at the same rate as the rate of interest specified in such Securities, such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Securities of such Series in respect of which moneys have been collected shall have become and shall be then due and payable, to the payment of the whole amount then owing and unpaid upon all the Securities of such Series for principal and interest, with interest upon the overdue principal, and (to the extent that payment of such interest is permissible by law and that such interest has been collected by the Trustee) upon overdue installments of interest at the same rate as the rate of interest specified in the Securities of such Series; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities of such Series, then to the payment of such principal and interest without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Security of such Series over any other Security of such Series, ratably to the aggregate of such principal and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders.

5.4 **Suits for Enforcement.** In case an Event of Default has occurred, has not been waived and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

5.5 **Restoration of Rights on Abandonment of Proceedings.** In case the Trustee for the Securities of any Series shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Company and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Securityholders shall continue as though no such proceedings had been taken.

5.6 Limitations on Suits by Securityholders. No Holder of any Security of any Series or Holder of any Coupon shall have any right by virtue or by availing of any provision of this Indenture to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Indenture, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy hereunder, unless (a) such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as provided in **Section 5.1**, (b) the Holders of not less than a majority in aggregate principal amount of the Securities of such Series then Outstanding shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder, (c) such Holder or Holders shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding, and (e) no direction inconsistent with such written request shall have been given to the Trustee pursuant to **Section 5.9**; it being understood and intended, and being expressly covenanted by the taker and Holder of every Security and by a Holder of each Coupon appertaining thereto with every other taker and Holder of a Security or Holder of any Coupon appertaining thereto and the Trustee, that no one or more Holders of Securities of any Series or one or more Holders of any Coupons appertaining thereto shall have any right in any manner whatever, by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other such Holder of Securities or any other Holders of such Coupons, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Securities of the applicable Series and all the Holders of Coupons appertaining thereto. For the protection and enforcement of the provisions of this **Section 5.6**, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

5.7 Unconditional Right of Securityholders to Institute Certain Suits. Notwithstanding any provision in this Indenture and any provision of any Security or Coupon, the right of any Holder of any Security and the right of any Holder of any Coupon appertaining thereto to receive payment of the principal of and interest on such Security at the respective rates, in the respective amount and in the Currency therein prescribed on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

5.8 Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default. Except as provided in **Sections 2.9** and **5.6**, no right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Securityholder to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair

any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and, subject to **Section 5.6**, every power and remedy given by this Indenture or by law to the Trustee, to the Securityholders or to the Holder of any Coupon may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee, the Securityholders or Holders of any Coupon.

5.9 **Control by Securityholders.** The Holders of a majority in aggregate principal amount of the Securities of each Series affected (with each Series treated as a separate class) at the time Outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Securities of such Series by this Indenture; provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture and provided further that (subject to the provisions of **Section 6.1**) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the actions or proceeding so directed may not lawfully be taken or that the actions or proceedings so directed would involve the Trustee in personal liability or if a trust committee of Responsible Officers in good faith shall determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities of all Series or of the Holders of any Coupons appertaining thereto so affected not joining in the giving of said direction, it being understood that (subject to **Section 6.1**) the Trustee shall have no duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

Nothing in this Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction or directions by Securityholders.

5.10 **Waiver of Past Defaults.** Prior to the declaration of the acceleration of the maturity of the Securities of any Series as provided in **Section 5.1**, the Holders of a majority in aggregate principal amount of the Securities of such Series at the time Outstanding may on behalf of the Holders of all the Securities of such Series and Holders of all Coupons, if any, appertaining thereto waive any past default hereunder or its consequences, except a default in the payment of principal or interest on any of the Securities of such Series. In the case of any such waiver, the Company, the Trustee, the Holders of the Securities of such Series and the Holder of any Coupon appertaining thereto shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured and not to have occurred for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

5.11 **Trustee to Give Notice of Default, But May Withhold in Certain Circumstances.** The Trustee shall transmit to the Securityholders of any Series notice, in the manner and to the extent provided in **Section 14.4**, of all defaults which have occurred with

respect to such Series, such notice to be transmitted within 90 days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice (the term “**default**” or “**defaults**” for the purposes of this **Section 5.11** and **Section 6.2(h)** being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided that, except in the case of default in the payment of the principal of or interest on any of the Securities of such Series or any default in the payment of any sinking fund installment or analogous obligation in respect of any of the Securities of such Series, the Trustee shall be protected in withholding such notice if and so long as a trust committee of Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Securityholders of such Series. In the case of any default of the character specified in **Section 5.1(c)**, with respect to Securities of such Series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof.

5.12 **Right of Court to Require Filing of Undertaking to Pay Costs.** All parties to this Indenture agree, and each Holder of any Security and each Holder of any Coupon, by his acceptance thereof, shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys’ fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this **Section 5.12** shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder or group of Securityholders of any Series holding in the aggregate more than 25% in aggregate principal amount of the Securities of such Series, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of or interest on any Security on or after the due date expressed in such Security.

ARTICLE SIX

CONCERNING THE TRUSTEE

6.1 **Duties and Responsibilities of the Trustee; During Default; Prior to Default.** With respect to the Holders of any Series of Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Securities of a particular Series and after the curing or waiving of all Events of Default which may have occurred with respect to such Series, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default with respect to the Securities of a Series has occurred (which has not been cured or waived) of which a Responsible Officer has actual knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent individual would exercise or use under the circumstances in the conduct of such individual’s own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default with respect to the Securities of any Series and after the curing or waiving of all such Events of Default with respect to such Series which may have occurred:

(i) the duties and obligations of the Trustee with respect to the Securities of any Series shall be determined solely by the express provisions of this Indenture, and the Trustee need only perform such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provision are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to **Section 5.9** relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the conditions of this **Section 6.1**.

6.2 Certain Rights of the Trustee. Subject to **Section 6.1**:

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any Company Board Resolution, Company Officers' Certificate, Exchange Rate Officers' Certificate, Company Order, certificate pursuant to **Section 4.3(a)(iv)** or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed).

(c) The Trustee may consult with counsel of its selection and any advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

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

(e) The Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture.

(f) Prior to the occurrence of any Event of Default hereunder and after the curing or waiving of all Events of Default, the Trustee shall not be bound to make any investigation into the facts or matters stated in any Company Board Resolution, Company Officers' Certificate, Exchange Rate Officers' Certificate, certificate pursuant to **Section 4.3(a)(iv)**, Company Order or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security or other paper or document unless requested in writing to do so by the Holders of not less than a majority in aggregate principal amount of the Securities of all Series affected then Outstanding.

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

(h) The Trustee shall not be deemed to have notice of any default or Event of Default (other than any Event of Default under **Section 5.1(a)** or **5.1(b)**) unless a Responsible Officer has actual knowledge thereof or unless written notice of such default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver a Company Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

6.3 Trustee Not Responsible for Recitals, Disposition of Securities or Application of Proceeds Thereof. The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Indenture or of any Securities or Coupons. The Trustee represents that it is duly authorized to execute and deliver this Indenture and perform its obligations hereunder. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds thereof.

6.4 Trustee and Agents May Hold Securities; Collections, etc. The Trustee, any Paying Agent, any Security registrar or any agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons with the same rights it would have if it were not serving in such capacity and, subject to **Sections 6.8** and **6.13**, if operative, may otherwise deal with the Company and receive, collect, hold and retain collections from the Company with the same rights it would have if it were not serving in such capacity.

6.5 Moneys Held by Trustee. Subject to the provisions of **Section 10.4**, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Company or the Trustee shall be under any liability for interest on any moneys received by it hereunder.

6.6 Compensation and Indemnification of Trustee and Its Prior Claim. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed in writing between the Company and the Trustee in Dollars (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Company covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request in Dollars for all reasonable expenses, disbursements and advances actually incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its fraud, negligence or bad faith. The Company also covenants to indemnify the Trustee and each predecessor Trustee for, and to hold it harmless against, any and all loss, liability, damage, claim or expense, including taxes (other than taxes based on the income of the Trustee), actually incurred without fraud, negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including the reasonable costs and expenses of defending itself against or investigating any claim (whether asserted by the Company, a Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligations of the Company under this **Section 6.6** to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for reasonable expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the

Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities or the Holders of particular Coupons, and the Securities are hereby subordinated to such senior claim.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in clause (d) of **Section 5.1**, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

6.7 **Right of Trustee to Rely on Officers' Certificate, etc.** Subject to **Sections 6.1** and **6.2**, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of fraud, negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Company Officers' Certificate delivered to the Trustee, and such Company Officers' Certificate in the absence of fraud, negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it or under the provisions of this Indenture upon the faith thereof.

6.8 **Disqualification of Trustee; Conflicting Interests.** If the Trustee for the Securities of any Series has or shall acquire any conflicting interest, as defined in the Trust Indenture Act, it shall, within 90 days after ascertaining that it has such conflicting interest, and if the default (as defined in the Trust Indenture Act) to which such conflicting interest relates has not been cured or waived or otherwise eliminated before the end of such 90-day period, the Trustee shall, either eliminate such conflicting interest or resign in the manner and with the effect specified in the Trust Indenture Act and this Indenture. To the extent permitted by the Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one Series.

6.9 **Persons Eligible for Appointment as Trustee.** The Trustee for each Series of Securities hereunder shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State or the District of Columbia having a combined capital and surplus of at least \$100,000,000, and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal, state or District of Columbia authority and which has a Corporate Trust Office in any State of the United States of America. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this **Section 6.9**, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this **Section 6.9**, the Trustee shall resign immediately in the manner and with the effect specified in **Section 6.10**.

6.10 Resignation and Removal; Appointment of Successor Trustee.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until acceptance of such appointment by the successor Trustee in accordance with **Section 6.11**.

(b) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all Series of Securities by giving written notice of resignation to the Company and by mailing notice thereof to the Holders in the manner and to the extent provided in **Section 14.4**. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees with respect to the applicable Series by written instrument in duplicate, authorized by a Company Board Resolution and executed by the Company, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee or trustees. If no successor trustee shall have been so appointed with respect to any Series and have accepted appointment within 60 days after the mailing of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide Holder of a Security or Securities of the applicable Series for at least six months may, subject to the provisions of **Section 5.12**, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(c) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of **Section 6.8** with respect to any Series of Securities after written request therefor by the Company pursuant to a Company Order or by any Securityholder who has been a bona fide Holder of a Security or Securities of such Series for at least six months unless the Trustee's duty to resign is stayed in accordance with the provisions of Section 310(b) of the Trust Indenture Act; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of **Section 6.9** and shall fail to resign upon written request by the Company pursuant to a Company Order or by any Securityholder; or

(iii) the Trustee shall become incapable of acting with respect to any Series of the Securities, or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee with respect to the applicable Series of Securities and appoint a successor trustee for such Series by written instrument, in duplicate, authorized by a Company Board Resolution and executed by the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of **Section 5.12**, any Securityholder who has been a bona

Holder of a Security or Securities of such Series for at least six months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such Series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(d) The Holders of a majority in aggregate principal amount of the Securities of each Series at the time Outstanding may at any time remove the Trustee with respect to Securities of such Series and appoint a successor trustee with respect to the Securities of such Series by delivering to the Trustee so removed, to the successor trustee so appointed and to the Company the evidence provided for in **Section 7.1** of the action in that regard taken by the Securityholders.

If no successor trustee shall have been appointed with respect to such Series within 30 days after the mailing of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee with respect to the Securities of such Series.

(e) Any resignation or removal of the Trustee with respect to any Series and any appointment of a successor trustee with respect to such Series pursuant to any of the provisions of this **Section 6.10** shall become effective upon acceptance of appointment by the successor trustee as provided in **Section 6.11**.

6.11 Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in **Section 6.10** shall execute and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee with respect to all or any applicable Series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations with respect to such Series of its predecessor hereunder, with like effect as if originally named as trustee for such Series hereunder; but, nevertheless, on the written request of the Company pursuant to a Company Order or of the successor Trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall, subject to **Section 10.4**, pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a prior claim upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of **Section 6.6**.

If a successor trustee is appointed with respect to the Securities of one or more (but not all) Series, the Company, the predecessor Trustee and each successor trustee with respect to the Securities of any applicable Series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any Series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be

necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts under separate indentures.

No successor trustee with respect to any Series of Securities shall accept appointment as provided in this **Section 6.11** unless at the time of such acceptance such successor trustee shall be qualified under the provisions of **Section 6.8** and eligible under the provisions of **Section 6.9**.

Upon acceptance of appointment by any successor trustee as provided in this **Section 6.11**, the Company shall give notice in the manner and to the extent provided in **Section 14.4** to the Holders of Securities of any Series for which such successor trustee is acting as trustee at their last addresses as they shall appear in the Security register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with any notice called for by **Section 6.10**. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

6.12 Merger, Conversion, Consolidation or Succession to Business of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall become the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of **Section 6.8** and eligible under the provisions of **Section 6.9**, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

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

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

CONCERNING THE SECURITYHOLDERS

7.1 Evidence of Action Taken by Securityholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by a specified percentage in principal amount of the Securityholders of any or all Series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Securityholders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to **Sections 6.1** and **6.2**) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Article.

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

(c) The amount of Unregistered Securities held by any Person executing any instrument or writing as a Securityholder, the numbers of such Unregistered Securities, and the date of his holding the same may be proved by the production of such Securities or by a certificate executed by any trust company, bank, broker or member of a national securities exchange (wherever situated), as depository, if such certificate is in form satisfactory to the Trustee, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Unregistered Securities therein described; or such facts may be proved by the certificate or affidavit of the Person executing such instrument or writing as a Securityholder, if such certificate or affidavit is in form satisfactory to the Trustee. The Trustee and the Company may assume that such ownership of any Unregistered Security continues until (i) another certificate or affidavit bearing a later date issued in respect of the same Unregistered Security is produced, or (ii) such Unregistered Security is produced by some other Person, or (iii) such Unregistered Security is surrendered in exchange for a Registered Security, or (iv) such Unregistered Security has been cancelled in accordance with **Section 2.10**.

7.2 Proof of Execution of Instruments. Subject to **Sections 6.1** and **6.2**, the execution of any instrument by a Securityholder or his agent or proxy may be proved in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

7.3 Holders to Be Treated as Owners. The Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name any Security shall be registered upon the Security register for such Series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest on such Security and for all other purposes; and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by any notice to the contrary. All such

payments so made to any such Person, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

7.4 **Securities Owned by Company Deemed Not Outstanding.** In determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities of any or all Series have concurred in any direction, consent or waiver under this Indenture or whether a quorum is present at a meeting of Holders of Securities, Securities which are owned by the Company or any other obligor on the Securities with respect to which such determination is being made or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, and for purposes of determining the presence of a quorum, only Securities which a Responsible Officer actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or other obligor on such Securities or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on such Securities. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Company shall furnish to the Trustee promptly a Company Officers' Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of any of the above-described Persons; and, subject to **Sections 6.1** and **6.2**, the Trustee shall be entitled to accept such Company Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

7.5 **Right of Revocation of Action Taken.** At any time prior to (but not after) the evidencing to the Trustee, as provided in **Section 7.1**, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of any or all Series, as the case may be, specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article, revoke such action so far as it concerns such Security. Except as aforesaid, any such action taken by the Holder of any Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security and of any Securities issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Securities of any or all Series, as the case may be, specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all the Securities affected by such action.

7.6 **Record Date for Determination of Holders Entitled to Vote.** The Company may, in the circumstances permitted by the Trust Indenture Act, set a record date for the purpose

of determining the Securityholders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Securityholders. If not set by the Company prior to the first solicitation of a Securityholder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to **Section 4.1**) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly appointed proxies) shall be entitled to give or take, or vote on, the relevant action.

ARTICLE EIGHT

SUPPLEMENTAL INDENTURES

8.1 Supplemental Indentures Without Consent of Securityholders. The Company, when authorized by a Company Board Resolution, and the Trustee for the Securities of any and all Series may, from time to time and at any time, enter into one or more indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof), in form satisfactory to such Trustee, for one or more of the following purposes:

(a) to evidence the succession of another entity to the Company or successive successions, and the assumption by such entity of the covenants, agreements and obligations of the Company herein and in the Securities;

(b) to add to the Events of Default such further Events of Default for the protection of the Holders of Securities of any or all Series (and, if such Events of Default are to be for the benefit of less than all the Series of Securities stating that such Events of Default are being added solely for the benefit of one or more particular Series); provided, that, in respect of any such additional Events of Default, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the rights of the Holders of the applicable Securities upon such an Event of Default;

(c) to add to the covenants of the Company such further covenants for the protection of the Holders of Securities of any or all Series (and, if such additional covenants are to be for the benefit of less than all the Series of Securities stating that such covenants are being added solely for the benefit of one or more particular Series), or to surrender any right or power herein conferred upon the Company with regard to all or any Securities of any or all Series (and, if such surrender is to be for the benefit of less than all the Series of Securities stating that such surrender is being added solely for the benefit of one or more particular Series);

(d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any

other provision contained herein or in any supplemental indenture; or to make such other provisions in regard to matters or questions arising under this Indenture or under any supplemental indenture as the Company Board of Directors may deem necessary or desirable and which shall not materially and adversely affect the interests of the Holders of the Securities or the Holders of any Coupons;

(e) to establish the form or terms of Securities of any Series, the Coupons, if any, as permitted by **Sections 2.1** and **2.3**;

(f) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than the one Trustee, pursuant to the requirements of **Section 6.11**;

(g) to delete, modify or add provisions of this Indenture, provided that, except as otherwise contemplated by **Section 2.3**, such deletion, modification or addition does not apply to any Outstanding Security of any Outstanding Security created prior to the date of such supplemental indenture;

(h) to secure, or, if applicable, provide additional security for, any Securities and to provide for matters relating thereto, and to provide for the release of any collateral as security for any Securities; or

(i) to amend or supplement any provision contained herein, which was required to be contained herein in order for this Indenture to be qualified under the Trust Indenture Act, if the Trust Indenture Act or regulations thereunder change what is so required to be included in qualified indentures, in any manner not inconsistent with what then may be required for such qualification.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept collateral thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this **Section 8.1** may be executed without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of **Section 8.2**.

8.2 Supplemental Indentures With Consent of Securityholders. With the consent (evidenced as provided in **Article Seven**) of the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding of each Series affected by such supplemental indenture (treated as one class), the Company, when authorized by a Company Board Resolution, and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or

of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such Series; provided, that the following modifications and amendments will not be effective against any Holder without its consent: (a) a change in the stated maturity date of any payment of principal or interest; (b) a reduction in the principal amount of, or interest on, any Security; (c) an alteration or impairment of the right to convert at the rate or upon the terms provided in the Indenture; (d) a change in the Place of Payment where, or the Currency in which, any payment on the Securities is payable; (e) an impairment of a Holder's right to sue the Company for the enforcement of payments due on the Securities; or (f) a reduction in the percentage of Outstanding Securities required to consent to a modification or amendment of the Indenture or required to consent to a waiver of compliance with certain provisions of the Indenture or certain defaults under the Indenture.

Upon request by the Company pursuant to a Company Order, accompanied by a copy of a Company Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee for such Series of Securities of evidence of the consent of Securityholders as aforesaid and other documents, if any, required by Section 7.1, the Trustee for such Series of Securities shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects such Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case such Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 8.2, the Company shall give notice in the manner and to the extent provided in Section 14.4 to the Holders of Securities of each Series affected thereby at their addresses as they shall appear on the Securities register of the Company, setting forth in general terms the substance of such supplemental indenture. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

For the purposes of this Section 8.2 only, if the Securities of any Series are issuable upon the exercise of warrants, each holder of an unexercised and unexpired warrant with respect to such Series shall be deemed to be a Holder of Outstanding Securities of such Series in the amount issuable upon the exercise of such warrant. For such purposes, the ownership of any such warrant shall be determined by the Company in a manner consistent with customary commercial practices. The Trustee for such Series shall be entitled to rely on a Company Officers' Certificate as to the principal amount of Securities of such Series in respect of which consents shall have been executed by holders of such warrants.

8.3 Effect of Supplemental Indenture. Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Securities of each Series and Holders of Coupons affected thereby shall thereafter be determined,

exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

8.4 **Documents to Be Given to Trustee.** The Trustee, subject to the provisions of **Sections 6.1** and **6.2**, shall receive a Company Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this **Article Eight** complies with the applicable provisions of this Indenture.

8.5 **Notation on Securities in Respect of Supplemental Indentures.** Securities of any Series (including any Coupons appertaining thereto), authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear, upon the direction of the Company, a notation in form satisfactory to the Trustee for the Securities of such Series as to any matter provided for by such supplemental indenture or as to any action taken at any such meeting. If the Company or the Trustee shall so determine, new Securities of any Series (including any Coupons appertaining thereto), so modified as to conform, in the opinion of the Trustee and the Company to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such Series then Outstanding. Failure to make the appropriate notation or issue a new Security will not affect the validity and effect of such amendment, supplement or waiver.

ARTICLE NINE

CONSOLIDATION, MERGER, SALE OR CONVEYANCE

9.1 **Company May Consolidate, etc., on Certain Terms.**

(a) Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of the Company with or into any other entity or entities (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Company to any other entity (whether or not affiliated with the Company) authorized to acquire and operate the same; provided, that in any such case: (i) either the Company shall be the surviving or continuing entity or the resulting or acquiring entity, if other than the Company, is organized and existing under the laws of a United States jurisdiction and assumes all of the Company's responsibilities and liabilities under the Indenture, including the payment of all amounts due on the Securities and performance of the covenants in the Indenture; (ii) immediately after the transaction, and giving effect to the transaction, no Event of Default under the Indenture exists; and (iii) the Company has delivered to the Trustee a Company Officers' Certificate stating that the transaction and, if a supplemental indenture is required in connection with the transaction, the supplemental indenture comply with the Indenture and that all conditions precedent to the transaction contained in the Indenture have been satisfied.

(b) If the Company consolidates or merges with or into any other entity or sells or leases all or substantially all of the Company's assets in compliance with the terms and

conditions of this Indenture, the resulting or acquiring entity will be substituted for the Company in this Indenture and the Securities with the same effect as if such entity had been an original party to this Indenture and the Securities. As a result, such successor entity may exercise the Company's rights and powers under the Indenture and the Securities, in the Company's name and, except in the case of a lease, the Company will be released from all its liabilities and obligations under the Indenture and under the Securities.

(c) Notwithstanding the foregoing provisions, the Company may transfer all of its property and assets to another entity if, immediately after giving effect to the transfer, such entity is a Wholly Owned Subsidiary.

9.2 Successor Corporation Substituted. In case of any such consolidation, merger, sale or conveyance, and following such an assumption by the successor entity, such successor entity shall succeed to and be substituted for the Company, with the same effect as if it had been named herein. Such successor entity may cause to be signed, and may issue either in its own name or in the name of the Company prior to such succession any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor entity instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities and Coupons, if any, appertaining thereto which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor entity thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities and Coupons, if any, appertaining thereto so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities and Coupons, if any, appertaining thereto, theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities and Coupons, if any, appertaining thereto had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance such changes in phraseology and form (but not in substance) may be made in the Securities and Coupons, if any, appertaining thereto, thereafter to be issued as may be appropriate.

In the event of any such sale or conveyance (other than a conveyance by way of lease) by the Company or any successor entity which shall theretofore have become such in the manner described in this **Article Nine**, the Company or such successor entity, as applicable, shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved.

9.3 Opinion of Counsel to Trustee. The Trustee, subject to the provisions of **Sections 6.1** and **6.2**, shall receive an Opinion of Counsel, prepared in accordance with **Section 14.5**, as conclusive evidence that any such consolidation, merger, sale, lease or conveyance, and any such assumption, any such supplemental indenture, and any such liquidation or dissolution, complies with the applicable provisions of this Indenture.

SATISFACTION AND DISCHARGE; DEFEASANCE

10.1 Satisfaction and Discharge of Indenture. If at any time (a) the Company shall have paid or caused to be paid the principal of and interest on all the Securities of any Series and Coupons, if any, appertaining thereto Outstanding hereunder (other than Securities and Coupons which have been destroyed, lost or stolen and which have been replaced or paid as provided in **Section 2.9**) as and when the same shall have become due and payable, or (b) the Company shall have delivered to the Trustee for cancellation all Securities of any Series and Coupons, if any, appertaining thereto theretofore authenticated (other than any Securities of such Series and Coupons which have been destroyed, lost or stolen and which shall have been replaced or paid as provided in **Section 2.9**) or (c)(i) all the Securities of such Series and Coupons, if any, appertaining thereto not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Company shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds the entire amount in the Currency required and/or the required Government Obligations maturing as to principal and interest in such amounts and at such times as will, in aggregate, ensure the availability of cash sufficient, in the opinion of a firm of independent certified public accountants, to pay at maturity or upon redemption all Securities of such Series and Coupons, if any, appertaining thereto (other than any Securities of such Series and Coupons, if any, appertaining thereto which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in **Section 2.9**) not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due to such date of maturity as the case may be, and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to Securities of such Series and Coupons, if any, appertaining thereto, then this Indenture shall cease to be of further effect with respect to Securities of such Series and Coupons, if any, appertaining thereto (except as to (A) rights of registration of transfer and exchange, and the Company's right of optional redemption, (B) substitution of mutilated, defaced, destroyed, lost or stolen Securities and Coupons, (C) rights of Holders to receive payments of principal thereof and interest thereon upon the original stated due dates therefor (but not upon acceleration) and remaining rights of the Holders to receive mandatory sinking fund payments, if any, (D) the rights, obligations and immunities of the Trustee hereunder, and (E) the rights of the Securityholders of such Series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and, subject to **Section 10.6**, the Trustee, upon request by the Company pursuant to a Company Order accompanied by a Company Officers' Certificate and an Opinion of Counsel, shall execute proper instruments acknowledging such satisfaction and discharge of this Indenture with respect to Securities of such Series and Coupons, if any, appertaining thereto.

10.2 Defeasance and Covenant Defeasance.

(a) Unless otherwise specified pursuant to **Section 2.3**, the Securities of any Series shall be subject to defeasance pursuant to **Section 10.2(b)** or covenant defeasance pursuant to **Section 10.2(c)**, in accordance with any applicable requirements specified pursuant to **Section 2.3** and upon compliance with the conditions set forth below in **Section 10.2(d)**. The

Company may elect, at its option, at any time, to have **Section 10.2(b)** or **Section 10.2(c)** applied to any Securities of any Series so subject to defeasance or covenant defeasance. Any such election shall be evidenced by a Company Board Resolution or in another manner specified as contemplated by **Section 2.3** for such Securities.

(b) Upon the Company's exercise of its option, if any, to have this **Section 10.2(b)** applied to any Securities of any Series, on and after the date the conditions set forth in **Section 10.2(d)** are satisfied, the Company shall be deemed to have satisfied and discharged the entire indebtedness represented by such Securities and Coupons, if any, appertaining thereto and to have satisfied and discharged all of its other obligations under such Securities and Coupons, if any, appertaining thereto and this Indenture, insofar as such Securities and Coupons are concerned ("**Defeasance**").

Subject to compliance with this **Section 10.2**, the Company may exercise its option, if any, to have this **Section 10.2(b)** applied to any Securities notwithstanding the prior exercise of its option, if any, to have **Section 10.2(c)** applied to such Securities.

In connection with Defeasance with respect to any Securities of any Series, the irrevocable trust agreement contemplated by **Section 10.2(d)** shall include, among other things, provision for (a) payment of the principal of and interest on such Securities and Coupons, if any, appertaining thereto when due (by redemption, sinking fund payments or otherwise), (b) the payment of the expenses of the Trustee incurred or to be incurred in connection with carrying out such trust provisions, (c) rights of registration, transfer, substitution and exchange of such Securities and Coupons, if any, appertaining thereto in accordance with the terms stated in this Indenture, and (d) continuation of the rights, obligations and immunities of the Trustee as against the Holders of such Securities as stated in this Indenture.

Subject to **Section 10.6**, the Trustee, upon request of the Company pursuant to a Company Order accompanied by a Company Officer's Certificate and Opinion of Counsel, shall execute proper instruments acknowledging any satisfaction and discharge pursuant to this **Section 10.2(b)**.

(c) Upon the Company's exercise of its option, if any, to have this **Section 10.2(c)** applied to any Securities of any Series, on and after the date the conditions set forth in **Section 10.2(d)** are satisfied (i) the Company shall be released from such of its obligations and covenants established pursuant to **Section 2.3** for the benefit of the Holders of such Securities as are specified in the Company Board Resolutions or supplemental indenture establishing such obligations and covenants, and (ii) the occurrence of any event contemplated by **Section 5.1(c)** with respect to such of its obligations and covenants established pursuant to **Section 2.3** for the benefit of the Holders of such Securities as are specified in the Company Board Resolutions or supplemental indenture establishing such obligations and covenants or by **Section 5.1(f)** to the extent specified in the Company Board Resolutions or supplemental indenture establishing such event as an Event of Default shall be deemed not to be or result in an Event of Default, in each case with respect to such Securities ("**Covenant Defeasance**"). Upon the effectiveness of Covenant Defeasance with respect to any Securities of any Series, with respect to such Securities, the Company may omit to comply with and shall have no liability in respect of any of the Company's obligations and covenants established pursuant to **Section 2.3** for the benefit of

the Holders of such Securities as are specified in the Company Board Resolutions or supplemental indenture establishing such obligations and covenants, whether directly or indirectly by reason of any reference elsewhere herein to any such obligation or covenant or by reason of any reference in any such obligation or covenant to any other provision herein or in any other document, but, except as provided in the immediately preceding sentence, the remainder of this Indenture and such Securities of such Series and Coupons, if any, appertaining thereto shall be unaffected thereby.

(d) The following shall be the conditions to the application of **Section 10.2(b)** or **Section 10.2(c)** to any Securities of any Series:

(i) The Company shall have irrevocably deposited or caused to be deposited with the Trustee at its Corporate Trust Office or such other office as the Trustee may designate, under the terms of an irrevocable trust agreement in form and substance satisfactory to the Trustee, as trust funds in trust solely for the benefit of the Holders of Securities of such Series and Coupons, if any, appertaining thereto, (i) cash in the Currency required and/or (ii) the required Government Obligations maturing as to principal and interest in such amounts and at such times as are sufficient, in the opinion of a firm of independent certified public accountants, without consideration of any reinvestment of such principal or interest, to pay the principal of and interest in the Currency required on the Outstanding Securities of such Series and Coupons, if any, appertaining thereto to maturity or redemption, as the case may be, provided that the Trustee shall have been irrevocably instructed to apply such money or the proceeds of such Government Obligations to the payment of said principal of and interest on the Outstanding Securities of such Series and Coupons, if any, appertaining thereto.

(ii) In the event of an election to have **Section 10.2(b)** apply to any Securities of any Series, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities and Coupons, if any, appertaining thereto will not recognize income, gain or loss for federal income tax purposes as a result of the Defeasance to be effected with respect to such Securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such Defeasance had not occurred.

(iii) In the event of an election to have **Section 10.2(c)** apply to any Securities of any Series, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Securities and Coupons, if any, appertaining thereto will not recognize income, gain or loss for federal income tax purposes as a result of the Covenant Defeasance to be effected with respect to such Securities and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such Covenant Defeasance had not occurred.

10.3 Application by Trustee of Funds Deposited for Payment of Securities. Subject to **Section 10.5**, all moneys deposited with the Trustee pursuant to this **Article Ten** shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the Holders of the particular

Securities of such Series and Coupons, if any, appertaining thereto for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest; but such money need not be segregated from other funds except to the extent required by law.

10.4 **Repayment of Moneys Held by Paying Agent.** In connection with the satisfaction and discharge of this Indenture with respect to Securities of any Series or Coupons, if any, appertaining thereto, all moneys then held by any Paying Agent under the provisions of this Indenture with respect to such Series of Securities or Coupons, if any, appertaining thereto, shall, upon a Company Order, be repaid to it or paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

10.5 **Return of Unclaimed Moneys Held by Trustee and Paying Agent.** Anything in this **Article Ten** to the contrary notwithstanding, any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the principal of or interest on any Security of any Series or Coupons, if any, appertaining thereto and not applied but remaining unclaimed for two years after the date upon which such principal or interest shall have become due and payable, shall, upon direction by the Company pursuant to a Company Order unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee for such Series or such Paying Agent, and the Holder of the Security of such Series or Holders of Coupons appertaining thereto shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Company for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any Paying Agent with respect to such moneys shall thereupon cease.

10.6 **Reinstatement of Obligations.** If the Trustee is unable to apply any funds or Government Obligations in accordance with this **Article Ten** by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application or by reason of the Trustee's inability to convert any such funds or Government Obligations into the Currency required to be paid with respect to any Securities of any Series and Coupons, if any, appertaining thereto, the obligations of the Company under this Indenture and the Securities and Coupons for which such application is prohibited, shall be revived and reinstated as if no deposit had occurred pursuant to this **Article Ten** until such time as the Trustee is permitted to apply all such funds or Government Obligations in accordance with this **Article Ten** or is able to convert all such funds or Government Obligations; provided, however, that, if the Company has made any payment of interest on or principal of any of such Securities or Coupons because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities or Coupons to receive such payment from the funds or Government Obligations held by the Trustee.

REDEMPTION OF SECURITIES

11.1 Notice of Redemption; Partial Redemptions. Notice of redemption to the Holders of Securities of any Series to be redeemed as a whole or in part at the option of the Company shall be given by giving notice of such redemption as provided in **Section 14.4**, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such Series. Failure to give notice by mail to the Holder of any Security of a Series designated for redemption as a whole or in part, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any other Security of such Series.

The notice of redemption to each such Holder shall identify the Securities to be redeemed (including "CUSIP" or "ISIN" numbers, if any), specify the date fixed for redemption, the redemption price, each Place of Payment, that payment will be made upon presentation and surrender of such Securities, and that, unless otherwise specified in such notice, Coupon Securities, if any, surrendered for payment must be accompanied by all Coupons maturing subsequent to the redemption date, failing which the amount of any such missing Coupon or Coupons will be deducted from the sum due for payment, that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue, the conversion rate or price, the date on which the right to convert the Securities to be redeemed will terminate and each place where such Securities may be surrendered for conversion, if applicable, and that, if less than all of the Outstanding Securities of a Series are to be redeemed, the identification and principal amount of the Securities to be redeemed. If less than all of the Securities of any Series are to be redeemed, the notice of redemption shall specify the numbers of the Securities of such Series to be redeemed, and, if only Unregistered Securities of any Series are to be redeemed, and if such Unregistered Securities may be exchanged for Registered Securities, the last date on which exchanges of Unregistered Securities for Registered Securities not subject to redemption may be made. In case any Security of a Series is to be redeemed in part, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security and Coupons, if any, appertaining thereto, a new Security or Securities of such Series in principal amount equal to the unredeemed portion thereof with appropriate Coupons will be issued.

The notice of redemption of Securities of any Series to be redeemed at the option of the Company shall be given by the Company or, upon direction by the Company pursuant to a Company Order, by the Trustee in the name and at the expense of the Company. The Company shall give the Trustee at least 45 days prior written notice of any redemption hereunder, unless a shorter period shall be satisfactory to the Trustee.

Not later than 9:00 a.m., New York time, on the redemption date specified in the notice of redemption given as provided in this **Section 11.1**, the Company will have on deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in **Section 3.4**) an amount of money in the Currency in which the Securities of such Series and Coupons, if any, appertaining thereto are

payable (except as otherwise specified pursuant to **Section 2.3** and except as provided in **Sections 2.12(b), (e) and (f)** of this Indenture) sufficient to redeem on the redemption date all the Securities of such Series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. If any Security to be redeemed is converted into Common Stock or Preferred Stock, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any predecessor Security to receive interest as provided in the last paragraph of **Section 2.7**) be paid to the Company upon direction by the Company pursuant to a Company Order or, if then held by the Company, shall be discharged from such trust. If less than all the Outstanding Securities of a Series are to be redeemed, the Company will deliver to the Trustee at least 60 days prior to the date fixed for redemption a Company Officers' Certificate stating the aggregate principal amount of Securities to be redeemed, unless a shorter period shall be satisfactory to the Trustee.

If less than all the Securities of a Series are to be redeemed, and the Securities are not held in global form pursuant to **Section 2.15**, the Trustee shall select, in such manner as it shall deem appropriate and fair, Securities of such Series to be redeemed in whole or in part. Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Securities of such Series. The Trustee shall promptly notify the Company in writing of the Securities of such Series selected for redemption and, in the case of any Securities of such Series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any Series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed. If any Security to be redeemed in part is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities (or portions thereof) which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection. In any case where more than one Security is registered in the same name, the Trustee in its discretion may treat the aggregate principal amount so registered as if it were represented by one Security.

11.2 Payment of Securities Called for Redemption. If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue and, except as provided in **Sections 6.5** and **10.4**, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a Place of Payment specified in said notice, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided that any semiannual payment of

interest on Registered Securities becoming due on the date fixed for redemption shall be payable to the Holders of such Securities registered as such on the relevant record date subject to the terms and provisions of **Section 2.4**.

If any Coupon Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing on or after the date fixed for redemption, such Security may be paid after deducting from the redemption price an amount equal to the face amount of all such missing Coupons or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee, if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any missing Coupon in respect of which a deduction shall have been made from the redemption price, such Holder shall be entitled to receive the amount so deducted; provided, however, that, unless otherwise provided pursuant to **Section 2.3**, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an office or agency located outside of the United States of America.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest borne by the Security.

Upon presentation of any Security redeemed in part only and the Coupons appertaining thereto, the Company shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Company, a new Security or Securities and the Coupons appertaining thereto of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

11.3 Exclusion of Certain Securities from Eligibility for Selection for Redemption. Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Company and delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

11.4 Repayment at the Option of the Holders. Securities of any Series which are repayable at the option of the Holders thereof before their stated maturity shall be repaid in accordance with the terms of the Securities of such Series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their stated maturity, for purposes of **Section 10.1**, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled.

ARTICLE TWELVE

HOLDERS' MEETINGS

12.1 **Purposes of Meetings.** A meeting of Holders of Securities of any or all Series may be called at any time and from time to time pursuant to the provisions of this **Article Twelve** for any of the following purposes:

- (a) to give any notice to the Company or the Trustee for the Securities of such Series, or to give any directions to the Trustee for such Series, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of **Article Five**;
- (b) to remove the Trustee for such Series and nominate a successor Trustee pursuant to the provisions of **Article Six**;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of **Section 8.2**; and
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Securities of any one or more or all Series, as the case may be, under any provision of this Indenture or under applicable law.

12.2 **Call of Meetings by Trustee.** The Trustee for the Securities of any Series may at any time call a meeting of Holders of Securities of such Series to take any action specified in **Section 12.1**, to be held at such time and at such place in San Diego, California, or such other city within the United States of America in which there is a Place of Payment as the Trustee for such Series shall determine. Notice of every meeting of the Holders of Securities of any Series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of Securities of such Series in the manner and to the extent provided in **Section 14.4**. Such notice shall be given not less than 20 nor more than 90 days prior to the date fixed for the meeting.

12.3 **Call of Meetings by Company or Holders.** In case at any time the Company, pursuant to a Company Board Resolution or the Holders of not less than 10% in aggregate principal amount of the Outstanding Securities of any or all Series, as the case may be, shall have requested the Trustee for such Series to call a meeting of Holders of Securities of any or all Series, as the case may be, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee for such Series shall not have given the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place in San Diego, California, or such other city within the United States of America in which there is a Place of Payment for such meeting and may call such meeting to take any action authorized in **Section 12.1**, by giving notice thereof as provided in **Section 12.2**.

12.4 **Qualifications for Voting.** To be entitled to vote at any meeting of Holders, a Person shall be (a) a Holder of one or more Securities with respect to which such meeting is

being held or (b) a Person appointed by an instrument in writing as proxy by such Holder. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee for the Securities of the Series with respect to which such meeting is being held and its counsel and any representatives of the Company and its counsel.

12.5 **Regulations.** Notwithstanding any other provisions of this Indenture, the Trustee for the Securities of any Series may make such reasonable regulations as it may deem advisable for any meeting of Holders of the Securities of such Series, in regard to proof of the holding of Securities of such Series and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of the Securities of such Series as provided in **Section 12.3**, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to **Section 7.4**, at any meeting each Holder of Securities with respect to which such meeting is being held or proxy therefore shall be entitled to one vote for each \$1,000 (or the equivalent in the Currency in which such Securities are denominated, as determined pursuant to **Section 14.11**) principal amount (in the case of the Original Issue Discount Securities, such principal amount to be determined as provided in **Section 14.11**) of Securities held or represented by him. However, no vote shall be cast or counted at any meeting in respect of any such Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of the Securities of such Series held by him or instruments in writing aforesaid duly designating him as the Person to vote on behalf of other Holders of such Series. At any meeting of Holders, the presence of Persons holding or representing Securities with respect to which such meeting is being held in an aggregate principal amount sufficient to take action on the business for the transaction of which such meeting was called shall constitute a quorum, but, if less than a quorum is present, the Persons holding or representing a majority in aggregate principal amount of such Securities represented at the meeting may adjourn such meeting with the same effect, for all intents and purposes, as though a quorum had been present. Any meeting of Holders of Securities with respect to which a meeting was duly called pursuant to the provisions of **Section 12.2** or **Section 12.3** may be adjourned from time to time by a majority of such Holders present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

12.6 **Voting.** The vote upon any resolution submitted to any meeting of Holders of Securities with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such Holders or of their representatives by proxy and the serial number or numbers of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at

the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to such record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that such notice was given in the manner and to the extent provided in **Section 14.4**. The record shall show the serial numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

12.7 **No Delay of Rights by Meeting.** Nothing in this **Article Twelve** shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Securities of any Series.

ARTICLE THIRTEEN

SECURITY

If so provided pursuant to **Section 2.3** with respect to the Securities of any Series, the Securities of such Series may be secured by such property, assets or other collateral as may be specified in or pursuant to **Section 2.3**. Any and all terms and provisions applicable to the security for the Securities of such Series shall also be provided in or pursuant to **Section 2.3**, which may include provisions for the execution and delivery of such security agreements, pledge agreements, collateral agreements and other similar or related agreements as the Company may elect and which may provide for the Trustee to act as collateral agent or in a similar or other capacity. The Trustee shall comply with Sections 313(a)(5) and (6) and 313(b)(1) of the Trust Indenture Act and the Company shall comply with Sections 314(b), 314(c) and 314(d) of the Trust Indenture Act, in each case in respect of any secured Securities that may be Outstanding hereunder from time to time.

ARTICLE FOURTEEN

MISCELLANEOUS PROVISIONS

14.1 **Incorporators, Stockholders, Officers and Directors of Company Exempt from Individual Liability.** No recourse under or upon any obligation, covenant or agreement contained in this Indenture, in any Security or Coupon appertaining thereto, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such or against any past, present or future stockholder, officer or director, as such, of the Company or of any predecessor or successor to the Company, either directly or through the Company or any such

predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities and Coupons, if any, appertaining thereto, by the Holders thereof and as part of the consideration for the issue of the Securities; it being expressly understood that, without limitation to the foregoing, this Indenture and the Securities and the obligations created hereunder and thereunder are solely corporate, limited liability company, partnership, limited partnership or similar obligations, as the case may be, of the Company and that no such personal liability whatever shall attach to, or is or shall be incurred by, any past, present or future shareholder, incorporator, employee, officer or director, as such, of the Company or any of its respective predecessors or successors, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied herefrom or therefrom and that any and all such personal liability of every type and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such past, present or future shareholder, incorporator, employee, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied herefrom or therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Securities. As used in this **Section 14.1**, all references to “**shareholders**” shall be deemed to mean, with respect to any Person, any past, present or future holder or owner of an equity interest in such Person, including owners or holders of capital stock, limited or general partnership interests and limited liability company interests.

14.2 Provisions of Indenture for the Sole Benefit of Parties and Securityholders. Nothing in this Indenture or in any Security or Coupon, if any, appertaining thereto, expressed or implied, shall give or be construed to give to any Person, firm or corporation, other than the parties hereto, any Paying Agent and their successors hereunder and the Holders of the Securities and Coupons, if any, appertaining thereto any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders of the Securities and Coupons.

14.3 Successors and Assigns of Company Bound by Indenture. All the covenants, stipulations, promises and agreements in this Indenture by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

14.4 Notices and Demands on Company, Trustee and Securityholders. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee, by the Holders of Securities, or by the Holders of Coupons to or on the Company may be given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Company is filed by the Company with the Trustee) to the Company at 9645 Scranton Road, San Diego, California 92121, Attention: General Counsel. Any Company Order or notice by the Company, or any notice, direction, request or demand by Securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the Corporate Trust Office.

Where this Indenture provides for notice to Holders of any event, (a) if any of the Securities affected by such event are Registered Securities, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed by first-class mail, postage prepaid to such Registered Holders as their names and addresses appear in the Security register within the time prescribed and (b) if any of the Securities affected by such event are Unregistered Securities or Coupon Securities, such notice shall be sufficiently given (unless otherwise herein expressly provided) if published once in a newspaper of general circulation in New York, New York, within the time prescribed. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Company and the Securityholders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

14.5 Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee a Company Officers' Certificate or stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition, (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (c) a statement that, in the opinion of such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with, and (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in

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

Any certificate, statement or opinion of an officer of the Company or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent.

14.6 Payments Due on Saturdays, Sundays and Holidays. If the date of maturity of interest on or principal of the Securities of any Series or Coupons, if any, appertaining thereto or the date fixed for redemption or repayment of any such Security or Coupon shall not be a Business Day, then payment of interest or principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue on amounts payable on such date for the period from and after such date to the next succeeding Business Day.

14.7 Conflict of Any Provision of Indenture with Trust Indenture Act. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included herein by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

14.8 New York Law to Govern. This Indenture and each Security shall be deemed to be a contract under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of such State.

14.9 Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

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

14.11 Determination of Principal Amount. In determining whether the Holders of the requisite principal amount of Outstanding Securities of any Series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, whether a quorum is present at a meeting of Holders of Securities or whether sufficient funds are available for redemption or for any other purpose, the principal amount of an Original Issue Discount Security

that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to **Section 5.1** and the principal amount of any Securities denominated in a Foreign Currency that shall be deemed to be Outstanding for such purposes shall be determined by converting the Foreign Currency into Dollars at the Market Exchange Rate as of the date of such determination.

14.12 **Waiver.** With respect to the Outstanding Securities of any Series, the Holders of not less than a majority in aggregate principal amount of the Securities of such Series at the time Outstanding may on behalf of the Holders of all the Securities of such Series and Holders of all Coupons, if any, appertaining thereto: (a) waive compliance by the Company with any restrictive provisions in this Indenture; and (b) waive any past default under this Indenture as provided in **Section 5.10**.

14.13 **Force Majeure.** In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices to resume performance as soon as practicable under the circumstances.

14.14 **Waiver of Jury Trial.** THE COMPANY, THE TRUSTEE AND EACH HOLDER OF A SECURITY, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

NOVATEL WIRELESS, INC.

By: _____
Name: _____
Title: _____

TRUSTEE:

By: _____
Name: _____
Title: _____

September 21, 2009

Novatel Wireless, Inc.
9645 Scranton Road
San Diego, California 92121

Re: Registration Statement on Form S-3 Filed by Novatel Wireless, Inc.

Ladies and Gentlemen:

We have acted as counsel for Novatel Wireless, Inc., a Delaware corporation (the "Company"), in connection with the authorization of the possible issuance and sale from time to time, on a delayed basis, by the Company of up to \$125,000,000 in initial aggregate offering price of: (i) shares of common stock, par value \$.001 per share, of the Company (the "Common Stock"); (ii) shares of preferred stock, par value \$.001 per share, of the Company (the "Preferred Stock"), in one or more series, certain of which may be convertible into or exchangeable for Common Stock; (iii) depositary shares representing fractional interests in Preferred Stock (the "Depositary Shares"); (iv) subscription rights to purchase Common Stock, Preferred Stock, Depositary Shares or other securities (the "Subscription Rights"); (v) debt securities of the Company (the "Debt Securities"), in one or more series, certain of which may be convertible into or exchangeable for Common Stock; (vi) warrants to purchase Common Stock, Preferred Stock, Debt Securities, Depositary Shares or any combination thereof (the "Warrants"); (vii) purchase contracts for the purchase or sale of Common Stock, Preferred Stock, Debt Securities, Depositary Shares, Warrants or securities of a third party at a future date or dates (the "Purchase Contracts"), which may be issued separately or as part of units consisting of a Purchase Contract and debt securities, preferred securities, warrants or debt obligations of third parties securing the holders' obligations under a Purchase Contract; and (viii) units consisting of one or more of the securities described in clauses (i) through (vii) above and which may include debt obligations of third parties (the "Units"), in each case as contemplated by the Company's Registration Statement on Form S-3 to which this opinion is an exhibit (as the same may be amended from time to time, the "Registration Statement"). The Common Stock, the Preferred Stock, the Depositary Shares, the Subscription Rights, the Debt Securities, the Warrants, the Purchase Contracts, and the Units are collectively referred to herein as the "Securities" and each, a "Security." The Securities are to be issued from time to time pursuant to Rule 415 under the Securities Act of 1933 (the "Securities Act"). The Debt Securities are to be issued under an indenture (as the same may be supplemented from time to time, the "Indenture"), to be entered into between the Company and a trustee to be appointed (the "Trustee").

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion. Based on the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. The shares of Common Stock, upon receipt by the Company of such lawful consideration therefor having a value not less than the par value thereof as the Company's Board of Directors (or an authorized committee thereof) may determine, will be validly issued, fully paid and nonassessable.
2. The shares of Preferred Stock, upon receipt by the Company of such lawful consideration therefor having a value not less than the par value thereof as the Company's Board of Directors (or an authorized committee thereof) may determine, will be validly issued, fully paid and nonassessable.
3. The Depositary Shares, upon receipt by the Company of such lawful consideration therefor as the Company's Board of Directors (or an authorized committee thereof) may determine, will be validly issued, and the depositary receipts representing the Depositary Shares will entitle the holders thereof to the rights specified therein and in the deposit agreement pursuant to which they are issued.
4. The Subscription Rights, upon receipt by the Company of such lawful consideration therefor as the Company's Board of Directors (or an authorized committee thereof) may determine, will constitute valid and binding obligations of the Company.

5. The Debt Securities, upon receipt by the Company of such lawful consideration therefor as the Company's Board of Directors (or an authorized committee thereof) may determine, will constitute valid and binding obligations of the Company.

6. The Warrants, upon receipt by the Company of such lawful consideration therefor as the Company's Board of Directors (or an authorized committee thereof) may determine, will constitute valid and binding obligations of the Company.

7. The Purchase Contracts, upon receipt by the Company of such lawful consideration therefor as the Company's Board of Directors (or an authorized committee thereof) may determine, will constitute valid and binding obligations of the Company.

8. The Units, upon receipt by the Company of such lawful consideration therefor as the Company's Board of Directors (or an authorized committee thereof) may determine, will constitute valid and binding obligations of the Company.

In rendering the foregoing opinions, we have assumed that: (i) the Registration Statement, and any amendments thereto, will have become effective (and will remain effective at the time of issuance of any Securities thereunder); (ii) a prospectus supplement describing each class and/or series of Securities offered pursuant to the Registration Statement, to the extent required by applicable law and relevant rules and regulations of the Securities and Exchange Commission (the "Commission"), will be timely filed with the Commission; (iii) the definitive terms of each class and/or series of Securities will have been established in accordance with the authorizing resolutions adopted by the Company's Board of Directors (or an authorized committee thereof) and, as applicable, the Company's restated certificate of incorporation and applicable law; (iv) the Company will issue and deliver the Securities in the manner contemplated by the Registration Statement and any Securities that consist of shares of capital stock will have been authorized and reserved for issuance, in each case within the limits of the then remaining authorized but unissued and unreserved amounts of such capital stock; (v) the resolutions authorizing the Company to issue, offer and sell the Securities will have been adopted by the Company's Board of Directors (or an authorized committee thereof) and will be in full force and effect at all times at which the Securities are offered or sold by the Company; (vi) all Securities will be issued in compliance with applicable federal and state securities laws; and (vii) any Deposit Agreement, Subscription Rights Agreement, Indenture, Warrant Agreement, Purchase Contract Agreement (each as defined below) or unit agreement will be governed by and construed in accordance with the laws of the State of New York and will constitute a valid and binding obligation of each party thereto other than the Company.

With respect to any Securities consisting of Preferred Stock, we have further assumed that the Company will issue and deliver the shares of Preferred Stock being issued and delivered after the filing with the Secretary of State of the State of Delaware of a certificate of amendment to the Company's restated certificate of incorporation, approved by us, establishing the designations, preferences and rights of the class or series of Preferred Stock being issued and delivered.

With respect to any Securities consisting of Depositary Shares, we have further assumed that the Depositary Shares will be: (i) issued and delivered after authorization, execution and delivery of the deposit agreement, approved by us, relating to the Depositary Shares to be entered into between the Company and an entity (the "Depositary") selected by the Company to act as depositary (the "Deposit Agreement"), and (ii) issued after the Company deposits with the Depositary shares of the Preferred Stock to be represented by such Depositary Shares that are authorized, validly issued, fully paid and nonassessable as contemplated by the Registration Statement and the Deposit Agreement.

With respect to any Securities consisting of Subscription Rights, we have further assumed that (i) the subscription rights agreement, approved by us, relating to the Subscription Rights (the "Subscription Rights Agreement") to be entered into between the Company and an entity selected by the Company to act as the

subscription rights agent (the "Rights Agent") will have been duly authorized, executed and delivered by the Company and the Rights Agent, and (ii) the Subscription Rights will be authorized, executed and delivered by the Company and the Rights Agent in accordance with the provisions of the Subscription Rights Agreement.

With respect to any Securities consisting of any series of Debt Securities, we have further assumed that: (i) all terms of such Debt Securities not provided for in the applicable Indenture will have been established in accordance with the provisions of the applicable Indenture and reflected in appropriate documentation approved by us and, if applicable, executed and delivered by the Company and the Trustee; and (ii) such Debt Securities will be executed, authenticated, issued and delivered in accordance with the provisions of the applicable Indenture.

With respect to any Securities consisting of Warrants, we have further assumed that (i) the warrant agreement, approved by us, relating to the Warrants (the "Warrant Agreement") to be entered into between the Company and an entity selected by the Company to act as the warrant agent (the "Warrant Agent") will have been authorized, executed and delivered by the Company and the Warrant Agent, and (ii) the Warrants will be authorized, executed and delivered by the Company and the Warrant Agent in accordance with the provisions of the Warrant Agreement.

With respect to any Securities consisting of Purchase Contracts, we have further assumed that (i) the purchase contract agreement, approved by us, relating to the Purchase Contracts (the "Purchase Contract Agreement") to be entered into between the Company and an entity selected by the Company to act as the purchase contract agent (the "Purchase Contract Agent") will have been authorized, executed and delivered by the Company and the Purchase Contract Agent, and (ii) the Purchase Contracts will be authorized, executed and delivered by the Company and the Purchase Contract Agent in accordance with the provisions of the Purchase Contract Agreement.

With respect to any Securities consisting of Units, we have further assumed that each component of such Unit will be authorized, validly issued, fully paid and nonassessable (to the extent applicable) and will constitute a valid and binding obligation of the Company or any third party (to the extent applicable) as contemplated by the Registration Statement and the applicable unit agreement, if any.

The opinions expressed herein are limited by bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, voidable preference, moratorium or other similar laws and related regulations and judicial doctrines from time to time in effect relating to or affecting creditors' rights generally, and by general equitable principles and public policy considerations, whether such principles and considerations are considered in a proceeding at law or at equity.

As to facts material to the opinions and assumptions expressed herein, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others. The opinions expressed herein are limited to the laws of the State of New York and the Delaware General Corporation Law including applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting such law, in each case as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the reference to Jones Day under the caption "Certain Legal Matters" in the prospectus constituting a part of such Registration Statement. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day

Novatel Wireless, Inc.
Statement Re: Computation of Ratios

The following table sets forth our consolidated ratio or deficiency of earnings to fixed charges and our consolidated ratio or deficiency of earnings to combined fixed charges and preferred security dividends for the periods indicated:

	Six Months Ended June 30, 2009	Year Ended December 31,				
		2008	2007	2006	2005	2004
(dollars in thousands)						
Earnings:						
Income (loss) before taxes from continuing operations	\$ (4,458)	\$(2,190)	\$59,518	\$(2,263)	\$12,522	\$14,168
Fixed charges	90	315	359	531	211	161
Amortization of capitalized interest	—	—	—	—	—	—
Distributed income of equity investees	—	—	—	—	—	—
Share of pre-tax losses of equity investees	—	—	—	—	—	—
Less interest capitalized	—	—	—	—	—	—
Less preference security dividend of subsidiaries	—	—	—	—	—	—
Less noncontrolling interest in pre-tax income of subsidiaries	—	—	—	—	—	—
Total Earnings	<u>\$ (4,368)</u>	<u>\$(1,875)</u>	<u>\$59,877</u>	<u>\$(1,732)</u>	<u>\$12,733</u>	<u>\$14,329</u>
Fixed Charges:						
Interest expensed and capitalized	\$ 6	\$ 20	\$ 60	\$ 134	\$ 27	\$ 56
Amortized premiums, discounts and capitalized expenses related to indebtedness	—	—	—	—	—	—
Estimate of interest within rental expense	84	295	299	397	184	105
Preference security dividend requirements of subsidiaries	—	—	—	—	—	—
Total Fixed Charges	<u>\$ 90</u>	<u>\$ 315</u>	<u>\$ 359</u>	<u>\$ 531</u>	<u>\$ 211</u>	<u>\$ 161</u>
Consolidated ratio of earnings to fixed charges	—	—	167x	—	60x	89x
Consolidated deficiency of earnings to fixed charges	\$ 4,368	\$ 1,875	\$ —	\$ 1,732	\$ —	\$ —
Preferred Security Dividends:						
Accretion of dividends on Series A convertible preferred stock	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 18
Accretion of dividends on Series B preferred stock	—	—	—	—	—	127
Effective tax rate	—	—	—	—	—	2.5%
Total Preferred Security Dividends	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 149</u>
Consolidated ratio of earnings to combined fixed charges and preferred security dividends	—	—	167x	—	60x	46x
Consolidated deficiency of earnings to combined fixed charges and preferred security dividends	\$ 4,368	\$ 1,875	\$ —	\$ 1,732	\$ —	\$ —

For purposes of calculating the consolidated ratio of earnings to fixed charges and the consolidated ratio of earnings to combined fixed charges and preferred security dividends, "earnings" represents the sum of income

(loss) before taxes from continuing operations before adjustment for income or loss from equity investees, fixed charges, amortization of capitalized interest, distributed income of equity investees, and the Company's share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. "Fixed charges" consist of interest expensed and capitalized, amortized premiums, discounts and capitalized expenses related to indebtedness, an estimate of the interest within rental expense, and preference security dividend requirements of consolidated subsidiaries. "Preferred security dividend" is the amount of income before taxes that is required to pay the dividends on outstanding preferred securities.

The Company's earnings were inadequate to cover fixed charges due to losses before taxes from continuing operations by \$4.4 million for the six months ended June 30, 2009, by \$1.9 million for the twelve months ended December 31, 2008 and by \$1.7 million for the 12 months ended December 31, 2006.

The Company's earnings were inadequate to cover combined fixed charges and preferred security dividends due to losses before taxes from continuing operations by \$4.4 million for the six months ended June 30, 2009, by \$1.9 million for the twelve months ended December 31, 2008 and by \$1.7 million for the 12 months ended December 31, 2006.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors
Novatel Wireless, Inc. and subsidiaries:

We consent to the use of our reports dated March 15, 2009, with respect to the consolidated balance sheets of Novatel Wireless, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss) and cash flows for each of the years in the three-year period ended December 31, 2008, the accompanying financial statement schedule II, and the effectiveness of internal control over financial reporting as of December 31, 2008, incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

Our report on the consolidated financial statements contains an explanatory paragraph that states that the Company adopted the disclosure provisions of Statement of Financial Accounting Standards No. 157, *Fair Value Measurements*, in 2008, and changed its method of accounting for uncertainty in income taxes in 2007 due to the adoption of Financial Accounting Standards Board Interpretation 48, *Accounting for Uncertainty In Income Taxes—an Interpretation of FASB Statement 109*.

/s/ KPMG LLP

San Diego, California
September 21, 2009

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned hereby constitutes and appoints Peter V. Leparulo, Kenneth Leddon and Catherine F. Ratcliffe, and each of them, the true and lawful attorney or attorneys-in-fact of the undersigned, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, to sign on his or her behalf, as a director or officer, or both, as the case may be, of Novatel Wireless, Inc., a Delaware corporation (the "Corporation"), a Registration Statement on Form S-3 (the "Registration Statement") relating to the registration under the Securities Act of 1933, as amended, by the Corporation of an indeterminate principal amount of debt securities, common stock, preferred stock, depositary shares representing preferred stock, subscription rights, warrants and purchase contracts and units consisting of any of these securities or securities of other entities, and to sign any or all amendments and any or all post-effective amendments to the Registration Statement, whether on Form S-3 or otherwise, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys or attorneys-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys or attorneys-in-fact or any of them or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Dated: September 21, 2009

/s/ PETER V. LEPARULO
Peter V. Leparulo

/s/ KENNETH LEDDON
Kenneth Leddon

/s/ JOHN D. WAKELIN
John D. Wakelin

/s/ JAMES LEDWITH
James Ledwith

/s/ GREG LORENZETTI
Greg Lorenzetti

/s/ HORST J. PUDWILL
Horst J. Pudwill

/s/ JOHN ROSS
John Ross

/s/ DAVID A. WERNER
David A. Werner

/s/ RUSSELL C. GERNS
Russell C. Gerns