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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 27, 2005

CHENIERE ENERGY, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1-16383
(Commission File Number)

95-4352386
(I.R.S. Employer Identification No.)

717 Texas Avenue
Suite 3100
Houston, Texas
(Address of principal executive offices)

77002
(Zip Code)

Registrant's telephone number, including area code: (713) 659-1361

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

See “Item 2.03—Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant” for a description of (i) the Purchase Agreement, dated as of July 22, 2005 (the “Purchase Agreement”), between Cheniere Energy, Inc. (the “Company”) and Credit Suisse First Boston LLC (the “Initial Purchaser”), (ii) the Indenture, dated as of July 27, 2005 (the “Indenture”), between the Company, as issuer, and The Bank of New York, as trustee, governing the terms of the Company’s 2.25% Convertible Senior Notes due 2012 (the “Notes”) and (iii) the Registration Rights Agreement, dated as of July 27, 2005 (the “Registration Rights Agreement”), between the Company and the Initial Purchaser.

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

Pursuant to the Purchase Agreement, the Company agreed to sell to the Initial Purchaser \$300 million aggregate principal amount of its Notes, which are convertible into cash or a combination of cash and shares of common stock, \$.003 par value (the “Common Stock”), of the Company. In addition, the Company also granted the Initial Purchaser an option to purchase, by August 26, 2005, up to \$25,000,000 aggregate principal amount of additional Notes. The Initial Purchaser exercised this option, thereby resulting in the sale of \$325,000,000 aggregate principal amount of the Notes on July 27, 2005. The Purchase Agreement contains customary representations and warranties of the parties and indemnification and contribution provisions whereby the Company, on the one hand, and the Initial Purchaser, on the other hand, have agreed to indemnify each other against certain liabilities.

The closing of the sale of the Notes occurred on July 27, 2005. The Notes were not registered under the Securities Act of 1933, as amended (the “Securities Act”), and were sold to the Initial Purchaser on a private placement basis in reliance on the exemption from registration provided by Section 4(2) of the Securities Act provided by Rule 144A. Pursuant to the Registration Rights Agreement, the Company agreed, as promptly as practicable, but in no event more than 90 days after the original issuance of the Notes, to file a shelf registration statement with the Securities and Exchange Commission covering resales of the Notes and the Company’s common stock issuable upon conversion of the Notes. In addition, the Company agreed to use its commercially reasonable efforts to cause the shelf registration statement to become effective no later than February 22, 2006.

Under the Indenture, the Company issued the Notes, which bear interest at 2.25% per annum on the principal amount from July 27, 2005, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning February 1, 2006. The Notes will mature on August 1, 2012. The Notes are unsubordinated unsecured obligations and rank equally with the Company’s existing and future unsubordinated and unsecured obligations and are junior to any of the Company’s future secured obligations to the extent of the value of the collateral securing such obligations. The Notes are not guaranteed by, and are structurally subordinate in right of payment to, all obligations of the Company’s subsidiaries, except that those subsidiaries which may in the future guarantee our other obligations will also be required to guarantee the Notes. At any time on or before August 1, 2012, the Company may redeem the Notes, in whole or in part, at an initial redemption price equal to \$1,000 in cash per \$1,000 principal amount of Notes to be

redeemed, plus any accrued and unpaid interest, including additional interest, if any, if (i) in the previous ten trading days ending on the date prior to the date of the giving of the redemption notice the volume-weighted average price of the Company's Common Stock exceeds 150% of the then effective conversion price of the Notes for at least 5 consecutive trading days and (ii) the shelf registration statement relating to the Notes is effective and expected to remain in effect (unless no longer required). The Notes are convertible into shares of the Company's Common Stock at any time prior to the close of business on the business day immediately preceding the maturity date of the Notes, unless the Company has redeemed or purchased the Notes. The conversion rate with respect to a Note is initially 28.2326 shares of Common Stock per \$1,000 principal amount, which represents an initial conversion price of approximately \$35.42 per share, subject to adjustments.

The description of the provisions of the Purchase Agreement, the Registration Rights Agreement and the Indenture set forth above is qualified in its entirety by reference to the full and complete terms set forth in the Purchase Agreement, the Registration Rights Agreement and the Indenture, copies of which are attached to this Current Report on Form 8-K as Exhibits 4.1, 4.2 and 4.3, respectively.

Item 7.01. Regulation FD Disclosure.

On July 27, 2005, the Company issued a press release announcing that it has closed its previously announced private offering of \$325 million aggregate principal amount of its Notes. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

c) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
4.1	Purchase Agreement, dated as of July 22, 2005, between Cheniere Energy, Inc. and Credit Suisse First Boston LLC (filed herewith).
4.2	Registration Rights Agreement, dated as of July 27, 2005, between Cheniere Energy, Inc. and Credit Suisse First Boston LLC (filed herewith).
4.3	Indenture, dated as of July 27, 2005, between Cheniere Energy, Inc., as issuer, and The Bank of New York, as trustee (filed herewith).
99.1	Press release, dated July 27, 2005 (filed herewith).

SIGNATURES

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

Date: July 27, 2005

CHENIERE ENERGY, INC.

By: /s/ Don A. Turkleson

Name: Don A. Turkleson

Title: Senior Vice President, Chief Financial
Officer and Secretary

EXHIBIT INDEX

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\$300,000,000

Cheniere Energy, Inc.

2.25% Convertible Senior Notes due 2012

PURCHASE AGREEMENT

July 22, 2005

CREDIT SUISSE FIRST BOSTON LLC,
As Sole Purchaser,
Eleven Madison Avenue,
New York, N.Y. 10010-3629

Dear Sirs:

1. *Introductory.* Cheniere Energy, Inc., a Delaware corporation (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell to Credit Suisse First Boston LLC (the “**Purchaser**”) U.S. \$300,000,000 principal amount of its 2.25% Convertible Senior Notes due 2012 (the “**Firm Securities**”) which are convertible into cash or a combination of cash and shares of common stock, \$.003 par value, of the Company (the “**Underlying Shares**”) and, at the election of the Purchaser, an aggregate of up to an additional \$25,000,000 principal amount of its 2.25% Convertible Senior Notes due 2012 (“**Optional Securities**”) (the Firm Securities and the Optional Securities which the Purchaser may elect to purchase pursuant to Section 3 hereof are herein collectively called the “**Offered Securities**”), each to be issued under an indenture dated as of July 27, 2005 (the “**Indenture**”), between the Company and The Bank of New York as Trustee, on a private placement basis pursuant to an exemption under Section 4(2) of the United States Securities Act of 1933 (the “**Securities Act**”), and hereby agrees with the Purchaser as follows:

The Offered Securities will be convertible into shares of common stock, par value \$0.003 per share, of the Company (the “**Common Stock**”) in accordance with the terms of the Offered Securities and the Indenture, at the initial conversion rate specified in Schedule A hereto.

The holders of the Offered Securities will be entitled to the benefits of a Registration Rights Agreement to be dated on July 27, 2005 among the Company and the Purchaser (the “**Registration Rights Agreement**”), pursuant to which the Company agrees to file a registration statement with the Securities and Exchange Commission (the “**Commission**”) registering the resale of the Offered Securities and the Underlying Shares, as hereinafter defined, under the Securities Act.

2. *Representations and Warranties of the Company.* The Company represents and warrants to, and agrees with, the Purchaser that:

(a) A preliminary offering circular and an offering circular relating to the Offered Securities has been prepared by the Company. Such preliminary offering circular (the “**Preliminary Offering Circular**”) and offering circular (the “**Offering Circular**”) together with the documents incorporated by reference therein, as amended or supplemented as of the date of this Agreement are hereinafter collectively referred to as the “**Offering Document**”. The Offering Document, as of the date hereof, and as of the Closing Date, does not and will not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions

from the Offering Document based upon written information furnished to the Company by any Purchaser through Credit Suisse First Boston LLC (“CSFB”) specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 7(b) hereof. Except as disclosed in the Offering Document, on the date of this Agreement, the Company’s Annual Report on Form 10-K most recently filed with the Commission and all subsequent reports which have been filed by the Company with the Commission or sent to stockholders pursuant to the Securities Exchange Act of 1934 (the “Exchange Act”) do not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Such documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder.

(b) The financial statements and the related notes thereto of the Company and its consolidated subsidiaries included or incorporated by reference in the Preliminary Offering Circular and the Offering Circular comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as applicable, and present fairly the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis throughout the periods covered thereby; the other financial information included or incorporated by reference in the Preliminary Offering Circular and the Offering Circular has been derived from the accounting records of the Company and its subsidiaries and presents fairly the information shown thereby; and the “Selected consolidated financial data” set forth in the Preliminary Offering Circular and the Offering Circular is accurately presented in all material respects and prepared on a basis consistent with the audited and unaudited historical consolidated financial statements from which it has been derived.

(c) Since the date of the most recent financial statements of the Company included or incorporated by reference in the Preliminary Offering Circular and the Offering Circular, (i) there has not been any change in the capital stock (other than the issuance of shares of Common Stock upon exercise of options) or long-term debt of the Company or any of its subsidiaries, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, or any material adverse change, or any development involving a prospective material adverse change, in or affecting the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its subsidiaries taken as a whole; (ii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole; and (iii) neither the Company nor any of its subsidiaries has sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority that is material to the Company and its subsidiaries, taken as a whole, except in the case of each of clauses (i), (ii) and (iii) as otherwise disclosed in or incorporated by reference in the Preliminary Offering Circular or the Offering Circular.

(d) The Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and files reports with the Commission on the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

(e) The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective states of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority (corporate and other) necessary to own or hold their respective properties and to conduct the businesses in which they are engaged as described in the Offering Circular except where the failure to be so qualified or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, stockholders’ equity, results of operations or prospects of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations with respect to the Offered Securities (a “**Material Adverse Effect**”). The subsidiaries listed in Schedule B to this Agreement are the only subsidiaries of the Company. The

Company does not own, directly or indirectly, equity securities of any entity other than (i) its interests in such subsidiaries and (ii) as disclosed in the Offering Document, minority interests in Freeport LNG Development, L.P., J & S Cheniere S.A., Gryphon Exploration Company and Air Tower LLC.

(f) The Company has an authorized capitalization as set forth in the Offering Document under the heading “Capitalization”; and all the outstanding shares of capital stock or other equity interests (including general and limited partnership interests) of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and conform to the description thereof contained in the Offering Document under the heading “Description of Capital Stock”, except as otherwise described in the Offering Document or otherwise herein, are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party.

(g) The Company has full right, power and authority to execute and deliver this Agreement, the Offered Securities, the Indenture, the Registration Rights Agreement and the Issuer Call Spread (the “**Issuer Call Spread**” and, together with this Agreement, the Offered Securities, the Indenture and the Registration Rights Agreement, the “**Transaction Documents**”) and to perform its obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby has been duly and validly taken.

(h) The Indenture has been duly authorized by the Company and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally or by equitable principles relating to enforceability (collectively, the “**Enforceability Exceptions**”); and on the First Closing Date (as defined in Section 3 hereof), the Indenture will conform in all material respects to the requirements of the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder.

(i) The Offered Securities have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the Indenture.

(j) When the Offered Securities are delivered and paid for pursuant to this Agreement on the Closing Date, such Offered Securities will be convertible into shares of Common Stock of the Company in accordance with the terms of the Indenture; the Underlying Shares issuable upon conversion of such Offered Securities have been duly authorized and reserved for issuance upon such conversion and, when issued upon such conversion, will be validly issued, fully paid and non-assessable; the Underlying Shares have been duly authorized and validly issued, are fully paid and non-assessable and conform to the description thereof contained in the Offering Document; and the stockholders of the Company have no preemptive rights with respect to the Offered Securities or the Underlying Shares.

(k) Except as disclosed in the Offering Document and for amounts payable by Cheniere to an NASD member investment banking firm pursuant to the terms of an engagement letter, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Purchaser for a brokerage commission, finder’s fee or other like payment.

(l) This Agreement has been duly authorized, executed and delivered by the Company and the Registration Rights Agreement will have been duly authorized, executed and delivered by the Company on the First Closing Date and, when duly executed and delivered in accordance with its terms by each of the other parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions, and except that rights to indemnity and contribution thereunder may be limited by applicable law and public policy.

(m) Each Transaction Document, Terminal Use Agreement and Engineering, Procurement and Construction contract referred to in the Offering Document conforms in all material respects to the descriptions thereof contained in the Offering Document.

(n) Except as disclosed in the Offering Document, neither the Company nor any of its subsidiaries is (i) in violation of its charter, by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(o) The execution, delivery and performance by the Company of each of the Transaction Documents to which the Company is a party, the issuance and sale of the Offered Securities, the issuance and delivery from time to time of the Underlying Shares by the Company upon conversion of the Offered Securities in accordance with the terms of the Offered Securities and the provisions of the Indenture and compliance by the Company with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter, by-laws or similar organizational documents of the Company or any of its subsidiaries or (iii) result in the violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (i) and (iii) above, for any such conflict, breach or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(p) No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of each of the Transaction Documents to which the Company is a party, the issuance and sale of the Offered Securities and compliance by the Company with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, except for such consents, approvals, authorizations, orders and registrations or qualifications as may be required (i) under applicable state securities laws in connection with the purchase and resale of the Offered Securities by the Purchaser, (ii) that, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect and (iii) with respect to the Offered Securities under the Securities Act and applicable state securities laws as contemplated by the Registration Rights Agreement.

(q) There are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is or may be a party or to which any property of the Company or any of its subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, could reasonably be expected to have a Material Adverse Effect; to the Company's knowledge, no such investigations, actions, suits or proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others; and (i) there are no current or pending legal, governmental or regulatory actions, suits or proceedings that would be required under the Securities Act to be described in a prospectus that are not so described in the Offering Document and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to a registration statement or described in a registration statement or a prospectus that are not filed with the Commission or described in the Offering Document.

(r) Each of (i) UHY Mann Frankfort Stein & Lipp, CPAs, LLP, who have certified certain financial statements of the Company and its subsidiaries and are an independent registered public accounting firm with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (“PCAOB”), (ii) KPMG LLP, who certified the financial statements of Gryphon Exploration Company and are an independent registered public accounting firm with respect to Gryphon Exploration Company within the applicable rules and regulations adopted by the Commission and PCAOB and (iii) Hein & Associates LLP, who certified the financial statements of Freeport LNG Development, L.P. and are an independent registered public accounting firm with respect to Freeport LNG Development, L.P. within the applicable rules and regulations adopted by the Commission and PCAOB, are, in each case, independent public accountants within the meaning of Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants and its interpretations and rulings thereunder.

(s) The Company and its subsidiaries have good and indefeasable title in fee simple to, have valid rights to lease or otherwise use, or have options to acquire, all items of real and personal property that are material to the respective businesses of the Company and its subsidiaries, in each case free and clear of all liens, encumbrances, claims and defects and imperfections of title except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries or (ii) could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(t) The Company and its subsidiaries own, possess or can acquire on reasonable terms, adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses; and the conduct of their respective businesses will not conflict in any material respect with any such rights of others, and the Company and its subsidiaries have not received any notice of any claim of infringement of or conflict with any such rights of others.

(u) Neither the Company nor any of its subsidiaries is, and after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Offering Document none of them will be, an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, “**Investment Company Act**”), in each case that is or is required to be registered under Section 8 of the Investment Company Act.

(v) Neither the Company nor any of its subsidiaries is a “holding company” or a “subsidiary company” of a holding company or an “affiliate” thereof within the meaning of the Public Utility Holding Company Act of 1935, as amended.

(w) Except as set forth in the Offering Document, the Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties, the conduct of their respective businesses as described in the Offering Document or as are currently required to develop their proposed LNG receiving terminals, given the current state of such development, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect or, in the case of development of their proposed LNG receiving terminals, as described in the Offering Document; and except as described in the Offering Document, neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such license, certificate, permit or authorization or has any reason to believe that any such license, certificate, permit or authorization will not be renewed in the ordinary course.

(x) No material labor disturbance by or material dispute with employees of the Company or any of its subsidiaries exists or, to the Company’s knowledge, is contemplated or threatened.

(y) The Company and its subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, “**Environmental Laws**”), (ii) have received and are in compliance with all permits, licenses or other approvals currently required of them under applicable Environmental Laws to conduct their respective businesses, (iii) own or operate any real property contaminated with any substance that is subject to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, and (iv) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except in any such case as described in the Preliminary Offering Circular and the Offering Circular or for any such failure to comply, failure to receive required permits, licenses or approvals, or contamination, claim or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

(z) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company and its affiliates has been maintained in all material respects in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “**Code**”); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no “accumulated funding deficiency” as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

(aa) The Company and its subsidiaries maintain systems of internal accounting controls sufficient to provide reasonable assurance that in all material respects (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(bb) The Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, which insurance is in amounts and insures against such losses and risks as are reasonably adequate for the conduct by the Company and its subsidiaries of their respective businesses; and neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance.

(cc) Neither the Company nor any of its subsidiaries nor, to the Company’s knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(dd) On and immediately after the Closing Date, the Company (after giving effect to the issuance of the Offered Securities and the other transactions related thereto as described in the Offering Document) will be Solvent. As used in this paragraph, the term “**Solvent**” means, with respect to a particular date, that on such date (i) the present fair market value (or present fair saleable value) of the assets of the Company is not less than the total amount required to pay the liabilities of the Company on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured;

(ii) the Company is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business; (iii) assuming consummation of the issuance of the Offered Securities as contemplated by this Agreement and the Offering Document, the Company is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature; (iv) the Company is not engaged in any business or transaction, and does not propose to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which the Company is engaged; and (v) the Company is not a defendant in any civil action that would result in a judgment that the Company is or would become unable to satisfy.

(ee) Except as disclosed in the Offering Document, no subsidiary of the Company is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's properties or assets to the Company or any other subsidiary of the Company.

(ff) On the Closing Date, the Offered Securities will not be of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in an automated inter-dealer quotation system; and each of the Preliminary Offering Circular and the Offering Circular, as of its respective date, contains or will contain all the information that, if requested by a prospective purchaser of the Offered Securities, would be required to be provided to such prospective purchaser pursuant to Rule 144A(d)(4) under the Securities Act.

(gg) Neither the Company nor any of its affiliates (as defined in Rule 501(b) of Regulation D) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Offered Securities in a manner that would require registration of the Offered Securities under the Securities Act.

(hh) None of the Company or any of its affiliates or any other person acting on its or their behalf (other than the Purchaser, as to which no representation is made) has (i) solicited offers for, or offered or sold, the Offered Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act or (ii) engaged in any directed selling efforts within the meaning of Regulation S under the Securities Act ("**Regulation S**"), and all such persons have complied with the offering restrictions requirement of Regulation S. The Company has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for this Agreement.

(ii) Assuming the accuracy of the representations and warranties of the Purchaser contained in Section 4 and their compliance with their agreements set forth therein, it is not necessary, in connection with the issuance and sale of the Offered Securities to the Purchaser and the offer, resale and delivery of the Offered Securities by the Purchaser in the manner contemplated by this Agreement and the Offering Circular, to register the Offered Securities under the Securities Act or to qualify the Indenture under the United States Trust Indenture Act of 1939, as amended.

(jj) The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Offered Securities.

(kk) Neither the issuance, sale and delivery of the Offered Securities nor the application of the proceeds thereof by the Company as described in the Offering Document will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(ll) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Offering Document has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The statements and financial information (including the assumptions described therein) included in the Offering Document described under the heading “Business—Our LNG Receiving Terminals—Freeport LNG—Our Expectations Regarding Freeport LNG,” in the second paragraph under the heading “Business—Our LNG Receiving Terminals—Sabine Pass LNG—Total TUA” and in the second paragraph under the heading “Business—Our LNG Receiving Terminals—Chevron USA TUA” were made by the Company with a reasonable basis and in good faith and reflect the Company’s good faith best estimate of the matters described therein; all assumptions material to such statements and financial information are set forth in the Offering Document; the assumptions used in the preparation of the projected information are reasonable; and none of the Company or its subsidiaries are aware of any business, economic or industry developments inconsistent with the assumptions underlying such statements and financial information.

(mm) Nothing has come to the attention of the Company that has caused the Company to believe that the statistical and market-related data included in the Offering Document is not based on or derived from sources that are reliable and accurate in all material respects.

(nn) No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required by the Securities Act to be described in a prospectus that is not described in the Offering Document and that is not so described therein.

(oo) The information included in the Offering Document regarding the Company’s estimated proved reserves is based on the reports generated by Sharp Petroleum Engineering, Inc. and Ryder Scott Company, as independent petroleum engineers with respect to the Company (the “**Engineers**”). The information underlying the estimates of the reserves of the Company supplied by the Company to the Engineers, for the purposes of preparing the reserve reports of the Company referenced in the Offering Document (the “**Reserve Reports**”), was true and correct in all material respects on the date of each such Reserve Report; the estimates of future capital expenditures and other future exploration and development costs supplied to the Engineers were prepared in good faith and with a reasonable basis; the information provided to the Engineers for purposes of preparing the Reserve Reports was prepared in all material respects in accordance with customary industry practices; the Engineers were, as of the date of each of the Reserve Reports prepared by them, and are, as of the date hereof, independent petroleum engineers with respect to the Company; other than normal production of reserves and intervening spot market product price fluctuations, and except as disclosed in the Offering Document, the Company is not aware of any facts or circumstances that would result in a material decline in the reserves in the aggregate, or the aggregate present value of future net cash flows therefrom, as included in the Offering Document and as reflected in the Reserve Reports; estimates of such reserves and the present value of the future net cash flows therefrom as included in the Offering Document and reflected in the Reserve Reports comply in all material respects with the Securities Act.

(pp) There is and has been no failure on the part of the Company or any of the Company’s directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the “**Sarbanes-Oxley Act**”), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(qq) Except as set forth in the Offering Document, the proceeds to the Company from the offering of the Offered Securities will not be used to purchase or carry any security.

3. *Purchase, Sale and Delivery of Offered Securities.* On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Company, at a purchase price of 97.25% of \$300,000,000 principal amount of the Firm Securities.

The Company will deliver against payment of the purchase price the Firm Securities in the form of one or more permanent global securities in definitive form (the **Firm Global Securities**) deposited with the Trustee as custodian for The Depository Trust Company (**"DTC"**) and registered in the name of Cede & Co., as nominee for DTC. Interests in any permanent global securities will be held only in book-entry form through DTC, except in the limited circumstances described in the Offering Document. Payment for the Firm Securities shall be made by the Purchaser in Federal (same day) funds by official check or checks or wire transfer to an account at a bank acceptable to CSFB at the office of Shearman & Sterling LLP, 599 Lexington Ave., New York, NY 10022 at 10 A.M. (New York time), on July 27, 2005, or at such other time not later than seven full business days thereafter as CSFB and the Company determine, such time being herein referred to as the **"First Closing Date,"** against delivery to the Trustee as custodian for DTC of the Firm Global Securities representing all of the Firm Securities. The Firm Global Securities will be made available for checking at the above office of Shearman & Sterling LLP at least 24 hours prior to the First Closing Date.

In addition, upon written notice from CSFB given to the Company from time to time not more than 30 days subsequent to the date of this Agreement, the Purchaser may purchase all or less than all of the Optional Securities at the purchase price of 97.25% of \$25,000,000 principal amount of the Optional Securities (including any accrued interest thereon to the related Optional Closing Date). The Company agrees to sell to the Purchaser the principal amount of Optional Securities specified in such notice and the Purchaser agrees to purchase such Optional Securities. No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by CSFB to the Company.

The time for the delivery of and payment for the Optional Securities, being herein referred to as the **"Optional Closing Date"**, which may be the First Closing Date (the First Closing Date and the Optional Closing Date, if any, being sometimes referred to as a **"Closing Date"**), shall be determined by CSFB on behalf of the Purchaser but shall not be later than seven full business days after written notice of election to purchase Optional Securities is given.

The Company will deliver against payment of the purchase price the Optional Securities being purchased on the Optional Closing Date in the form of one or more permanent global Securities in definitive form (each, an **"Optional Global Security"**) deposited with the Trustee as custodian for DTC and registered in the name of Cede & Co., as nominee for DTC. Payment for such Optional Securities shall be made by the Purchaser in Federal (same day) funds by official check or checks or wire transfer to an account at a bank acceptable to CSFB at the office of Shearman & Sterling LLP, against delivery to the Trustee as custodian for DTC of the Optional Global Securities representing all of the Optional Securities being purchased on the Optional Closing Date.

4. Representations by Purchaser; Resale by Purchaser.

(a) The Purchaser represents and warrants to the Company that:

(i) it is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act (a **"QIB"**) and an accredited investor within the meaning of Rule 501(a) under the Securities Act; and

(ii) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Securities as part of their initial offering except:

(A) within the United States to persons whom it reasonably believes to be QIBs in transactions pursuant to Rule 144A under the Securities act (**Rule 144A**) and in connection with each such sale, it has taken or will take reasonable steps to ensure that the purchaser of the Securities is aware that such sale is being made in reliance on Rule 144A; or

(B) in accordance with the restrictions set forth in Section 4(b) hereof.

(b) The Purchaser acknowledges that the Offered Securities have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of,

U.S. persons except in accordance with Regulation S or pursuant to an exemption from the registration requirements of the Securities Act. The Purchaser represents and agrees that it has offered and sold the Offered Securities and will offer and sell the Offered Securities (i) as part of their distribution at any time and (ii) otherwise until the later of the commencement of the offering and the latest Closing Date, only in accordance with Rule 144A or Rule 903 under the Securities Act. Accordingly, neither such Purchaser nor its affiliates, nor any persons acting on its or their behalf, have engaged or will engage in any directed selling efforts with respect to the Offered Securities, and such Purchaser, its affiliates and all persons acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S. The Purchaser agrees that, at or prior to confirmation of sale of the Offered Securities, other than a sale pursuant to Rule 144A, such Purchaser will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases the Offered Securities from it during the restricted period a confirmation or notice to substantially the following effect:

“The Securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the “Securities Act”) and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the date of the commencement of the offering and the closing date, except in either case in accordance with Regulation S (or Rule 144A if available) under the Securities Act. Terms used above have the meanings given to them by Regulation S.”

Terms used in this subsection (b) have the meanings given to them by Regulation S.

(c) The Purchaser agrees that each of it and its affiliates has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for any such arrangements with the prior written consent of the Company.

(d) The Purchaser agrees that it and each of its affiliates has not solicited offers for, or offered or sold, and will not solicit offers for or sell, the Offered Securities by means of any form of general solicitation or general advertising, within the meaning of Rule 502(c) of Regulation D under the Securities Act or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act, including, but not limited to (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. The Purchaser agrees, with respect to resales made in reliance on Rule 144A of any of the Offered Securities, to deliver either with the confirmation of such resale or otherwise prior to settlement of such resale a notice to the effect that the resale of such Offered Securities has been made in reliance upon the exemption from the registration requirements of the Securities Act provided by Rule 144A.

5. *Certain Agreements of the Company.* The Company agrees with the Purchaser that:

(a) The Company will advise CSFB promptly of any proposal to amend or supplement the Offering Document and will not effect such amendment or supplementation without CSFB’s consent, such consent not to be unreasonably withheld. If, at any time prior to the completion of the resale of the Offered Securities by the Purchaser, any event occurs as a result of which the Offering Document as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Company promptly will notify CSFB of such event and promptly will prepare, at its own expense, an amendment or supplement which will correct such statement or omission. Neither CSFB’s consent to, nor the Purchaser’ delivery to offerees or investors of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 6.

(b) The Company will furnish to CSFB copies of the Preliminary Offering Circular, the Offering Circular and all amendments and supplements to such documents, in each case as soon as available and in such quantities as CSFB reasonably requests. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will promptly furnish or cause to

be furnished to CSFB and, upon request of holders and prospective purchasers of the Offered Securities, to such holders and purchasers, copies of the information required to be delivered to holders and prospective purchasers of the Offered Securities pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto) in order to permit compliance with Rule 144A in connection with resales by such holders of the Offered Securities. The Company will pay the expenses of printing and distributing to the Purchaser all such documents.

(c) The Company will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such states in the United States as CSFB designates and will continue such qualifications in effect so long as required for the resale of the Offered Securities by the Purchaser provided that the Company will not be required to qualify as a foreign corporation or to file a general consent to service of process in any such state or take any action that would subject it to taxation based on its income or revenues in any jurisdiction where it is not currently subject to taxation.

(d) During the period of two years after the later of the First Closing Date and the Optional Closing Date, the Company will, upon request, furnish to CSFB and any holder of Offered Securities a copy of the restrictions on transfer applicable to the Offered Securities.

(e) During the period of two years after the later of the First Closing Date and the Optional Closing Date, the Company will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Offered Securities that have been reacquired by any of them.

(f) The Company will pay all expenses incidental to the performance of its obligations under this Agreement, the Indenture and the Registration Rights Agreement including (i) the fees and expenses of the Trustee and its professional advisers; (ii) all expenses in connection with the execution, issue, authentication, packaging and initial delivery of the Offered Securities, the preparation and printing of the Offered Securities, the Indenture, and the Offering Document and amendments and supplements thereto; (iii) the cost of qualifying the Offered Securities for trading in The PortalSM Market (“**PORTAL**”) of The Nasdaq Stock Market, Inc. and any expenses incidental thereto, (iv) the cost of any advertising approved by the Company in connection with the issue of the Offered Securities, (v) any expenses (including fees and disbursements of counsel) incurred in connection with qualification of the Offered Securities for sale under the laws of such jurisdictions in the United States as CSFB designates and the printing of memoranda relating thereto, and (vi) expenses incurred in distributing the Preliminary Offering Circulars and the Offering Circular (including any amendments and supplements thereto) to the Purchaser, provided that the Company will not be required to reimburse the Purchaser for any of the Purchaser’s out-of-pocket expenses (including fees and disbursements of counsel) incurred in connection with the offering of the Offered Securities.

(g) In connection with the offering, until CSFB shall have notified the Company and the Purchaser of the completion of the resale of the Offered Securities, neither the Company nor any of its affiliates has or will, either alone or with one or more other persons, bid for or purchase for any account in which it or any of its affiliates has a beneficial interest any Offered Securities or attempt to induce any person to purchase any Offered Securities; and neither it nor any of its affiliates will make bids or purchases for the purpose of creating actual, or apparent, active trading in, or of raising the price of, the Offered Securities.

(h) For a period of 90 days after the date of the initial offering of the Offered Securities by the Purchaser, the Company will not offer, sell, contract to sell, pledge, or otherwise dispose of, directly or indirectly, any shares of Common Stock of the Company or securities convertible into or exchangeable or exercisable for shares of Common Stock of the Company or warrants or other rights to purchase shares of Common Stock of the Company, without the prior written consent of CSFB, or publicly disclose the intention to make any such offer, sale, pledge or disposition; provided that such restriction shall not apply to: (i) the Offered Securities, (ii) the filing of the shelf registration statement covering resales of the Offered Securities pursuant to the Registration Rights Agreement

(the “**Shelf Registration Statement**”), (iii) the filing of any registration statement on Form S-8 to register Shares of Common Stock reserved for issuance under the Company’s equity compensation plans; (iv) the conversion or exchange of convertible or exchangeable securities or the exercise of warrants or options, in each case outstanding on the date hereof; (v) grants of employee stock options pursuant to the terms of a plan in effect on the date hereof, (vi) issuances of Common Stock pursuant to the exercise of such options and (vii) the filing of a universal shelf registration statement to register the Company’s Common Stock, preferred stock, debt securities, warrants and units, provided that such universal shelf registration statement is filed on or after the 31st day following the date of this Agreement date of the filing of the Shelf Registration Statement. The Company will not at any time offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any securities under circumstances where such offer, sale, pledge, contract or disposition would cause the exemption afforded by Section 4(2) of the Securities Act to cease to be applicable to the offer and sale of the Offered Securities.

6. *Conditions of the Obligations of the Purchaser.* The obligations of the Purchaser to purchase and pay for the Firm Securities on the First Closing Date and for the Optional Securities on the Optional Closing Date will be subject to the accuracy of the representations and warranties on the part of the Company herein, to the accuracy of the statements of officers of the Company made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) The Purchaser shall have received a letter, dated the date of this Agreement, of UHY Mann Frankfort Stein & Lipp CPAs, LLP and Hein & Associates LLP, in form and substance reasonably satisfactory to the Purchaser, containing statements and information of the type customarily included in accountants’ “comfort letters” to initial purchasers with respect to the financial statements and certain financial information contained or incorporated by reference in the Preliminary Offering Circular and the Offering Circular; provided that the letter delivered on the Closing Date shall use a “cut-off” date no more than three business days prior to such Closing Date.

(b) Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole which, in the judgment of CSFB, is material and adverse and makes it impractical or inadvisable to proceed with completion of the offering or the sale of and payment for the Offered Securities; (ii) any change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the judgment of CSFB, be likely to prejudice materially the success of the proposed issue, sale or distribution of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market; (iii) any material suspension or material limitation of trading in securities generally on the New York Stock Exchange or any setting of minimum prices for trading on such exchange; (iv) or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (v) any banking moratorium declared by U.S. Federal or New York authorities; (vi) any major disruption of settlements of securities or clearance services in the United States; or (vii) any attack on, outbreak or escalation of hostilities or act of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity or emergency if, in the judgment of CSFB, the effect of any such attack, outbreak, escalation, act, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the offering or sale of and payment for the Offered Securities.

(c) The Purchaser shall have received an opinion, dated the Closing Date, of Andrews Kurth LLP, counsel for the Company, in form and substance satisfactory to counsel for the Purchaser, to the effect set forth in Exhibit A hereto and to such further effect as counsel to the Purchaser may reasonably request.

(d) The Purchaser shall have received an opinion, dated the Closing Date, of King & Spalding LLP, special regulatory counsel for the Company, in form and substance satisfactory to counsel for the Purchaser, to the effect set forth in Exhibit A-1 hereto.

(e) The Purchaser shall have received an opinion, dated such Closing Date, of the General Counsel for the Company, in form and substance satisfactory to counsel for the Purchaser, to the effect set forth in Exhibit B hereto and to such further effect as counsel to the Purchaser may reasonably request.

(f) The Purchaser shall have received from Shearman & Sterling LLP, counsel for the Purchaser, such opinion or opinions, dated such Closing Date, with respect to the validity of the Offered Securities, the Offering Circular, the exemption from registration for the offer and sale of the Offered Securities by the Company to the Purchaser and the resales by the Purchaser as contemplated hereby and other related matters as CSFB may require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters. In rendering such opinion, Shearman & Sterling LLP may rely as to matters governed by Delaware law upon the opinion of Andrews Kurth LLP referred to above.

(g) The Purchaser shall have received a certificate, dated such Closing Date, signed by any two of the chief executive officer, president and the chief financial officer of the Company in which such officers, to the best of their knowledge after reasonable investigation, shall state that the representations and warranties of the Company in this Agreement are true and correct, that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date, and that, subsequent to the respective dates of the most recent financial statements in the Offering Document, there has been no material adverse change, nor any development or event involving a prospective material adverse change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole except as set forth in the Offering Document or as described in such certificate.

(h) The Purchaser shall have received letters, dated such Closing Date, of UHY Mann Frankfort Stein & Lipp CPAs, LLP and Hein & Associates LLP which meet the requirements of subsection (a) of this Section, except that the specified date referred to in such subsection will be a date not more than three days prior to such Closing Date for the purposes of this subsection.

(i) The Purchaser shall have received, on or prior to the date of this Agreement, lockup letters substantially in the form of Exhibit C hereto signed by each of the executive officers and directors of the Company listed on Schedule C.

(j) On the First Closing Date, the Registration Rights Agreement, in form and substance reasonably satisfactory to the Purchaser, shall have been duly executed and delivered by the Company and (assuming due execution, delivery and performance by the Purchaser) be in full force and effect.

(k) On the First Closing Date, the Issuer Call Spread, in form and substance reasonably satisfactory to the Purchaser, shall have been duly executed and delivered by the Company and (assuming due execution, delivery and performance by the Purchaser) be in full force and effect.

The Company will furnish the Purchaser with such conformed copies of such opinions, certificates, letters and documents as the Purchaser reasonably requests. CSFB may in its sole discretion waive on behalf of the Purchaser compliance with any conditions to the obligations of the Purchaser hereunder, whether in respect of the Optional Closing Date or otherwise.

7. Indemnification and Contribution. (a) The Company will indemnify and hold harmless the Purchaser, its partners, members, directors, officers and affiliates and each person, if any, who controls such Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a "**Purchaser Indemnified Party**"), against any losses, claims, damages or liabilities, to which the Purchaser may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Offering Document, or any

amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, including any losses, claims, damages or liabilities arising out of or based upon the Company's failure to perform its obligations under Section 5(a) of this Agreement, and will reimburse the Purchaser Indemnified Party for any legal or other expenses reasonably incurred by such Purchaser Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Purchaser through CSFB specifically for use therein, it being understood and agreed that such information consists only of the information described as such in subsection (b) below, and provided, further, that with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from any Offering Document the indemnity agreement contained in this subsection (a) shall not inure to the benefit of the Purchaser that sold the Offered Securities concerned to the person asserting any such losses, claims, damages or liabilities, to the extent that such sale was an initial resale by the Purchaser and any such loss, claim, damage or liability of the Purchaser results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Offered Securities to such person, a copy of the Offering Document (exclusive of any material included therein but not attached thereto) if the Company had previously furnished copies thereof to the Purchaser.

(b) The Purchaser will indemnify and hold harmless the Company, its directors and officers and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a "**Company Indemnified Party**"), against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Offering Document, or any amendment or supplement thereto, or arise out of or are based upon the omission or the alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Purchaser through CSFB specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by each Company Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred, it being understood and agreed that the only such information furnished by any Purchaser consists of the following information in the Offering Document furnished on behalf of the Purchaser: the sixth sentence in the paragraph under "Risk Factors - There is no established trading market for the notes. Your ability to sell the notes may be limited by the absence of an active trading market, and if one develops, it may not be liquid", the first sentence in the third paragraph under the caption "Plan of Distribution", the ninth paragraph except for the first sentence thereof under the caption "Plan of Distribution", the tenth paragraph under the caption "Plan of Distribution", the fifth sentence of the 11th paragraph under the caption "Plan of Distribution"; provided, however, that the Purchaser shall not be liable for any losses, claims, damages or liabilities arising out of or based upon the Company's failure to perform its obligations under Section 5(a) of this Agreement.

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any proceeding, claim or action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such proceeding, claim or action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably

satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. It is understood and agreed that the indemnifying party shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any reasonably necessary local counsel) for all indemnified parties, and that all such reasonable fees and expenses shall be paid or reimbursed as they are incurred. Any such separate firm for the Purchaser Indemnified Parties shall be designated in writing by CSFB and any such separate firm for the Company Indemnified Parties shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement effected without its written consent unless (i) such settlement is entered into in good faith by the indemnified party more than 45 days after receipt by such indemnifying party of written notice of the proposed settlement, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement includes (i) an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party thereunder shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Purchaser on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Purchaser on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Purchaser on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company from the sale of the Offered Securities, on the one hand, and the total discounts and commissions received by the Purchaser from the Company in connection therewith as provided under this Agreement, on the other hand, bear, in each case, to the aggregate offering price of the Offered Securities. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Purchaser and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any proceeding, action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities purchased by it were resold exceeds the amount of any damages which such Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

(e) The obligations of the Company under this Section shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Purchaser within the meaning of the Securities Act or the Exchange Act; and the obligations of the Purchaser under this Section shall be in addition to any liability which the respective Purchaser may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act.

8. [Intentionally Omitted.]

9. *Survival of Certain Representations and Obligations.* The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the Purchaser set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Purchaser, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If for any reason the purchase of the Offered Securities by the Purchaser is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of the Company and the Purchaser pursuant to Section 7 shall remain in effect, and if any Offered Securities have been purchased hereunder the representations and warranties in Section 2 and all obligations under Section 5 shall remain in effect.

10. *Notices.* All communications hereunder will be in writing and, if sent to the Purchaser will be mailed, delivered or telegraphed and confirmed to the Purchaser, c/o Credit Suisse First Boston LLC, Eleven Madison Avenue, New York, N.Y. 10010-3629, Attention: Transactions Advisory Group, or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at Cheniere Energy, Inc., 717 Texas Avenue, Suite 3100, Houston, Texas 77002, Attention: Don A. Turkleson; provided, however, that any notice to a Purchaser pursuant to Section 7 will be mailed, delivered or telegraphed and confirmed to such Purchaser.

11. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder, except that holders of Offered Securities shall be entitled to enforce the agreements for their benefit contained in the second and third sentences of Section 5(b) hereof against the Company as if such holders were parties hereto.

12. *Intentionally omitted.*

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

14. *Absence of Fiduciary Relationship.* The Company acknowledges and agrees that:

(a) CSFB has been retained solely to act as the initial purchaser in connection with the sale of the Offered Securities and that no fiduciary, advisory or agency relationship between the Company and CSFB has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether CSFB has advised or is advising the Company on other matters;

(b) the price of the Offered Securities set forth in this Agreement was established by the Company following discussions and arm's-length negotiations with CSFB, and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) it has been advised that CSFB and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company, and that CSFB has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) it waives, to the fullest extent permitted by law, any claims it may have against CSFB for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the transactions contemplated by this Agreement and agrees that CSFB shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

15. *Applicable Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflicts of laws.

The Company hereby submits to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

If the foregoing is in accordance with the Purchaser's understanding of our agreement, kindly sign and return to the Company one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the Purchaser in accordance with its terms.

Very truly yours,

CHENIERE ENERGY, INC.

By: /s/ Charif Souki

Name: Charif Souki
Title: Chairman of the Board of Directors and
Chief Executive Officer

By: /s/ Don A. Turkleson

Name: Don A. Turkleson
Title: Senior Vice President,
Chief Financial Officer and Secretary

By: /s/ Zurab S. Kobiashvili

Name: Zurab S. Kobiashvili
Title: Senior Vice President and General Counsel

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

CREDIT SUISSE FIRST BOSTON LLC

By: /s/ Jamie Welch

Name: Jamie Welch

Title: Managing Director

SCHEDULE A

The initial conversion rate is 28.2326 shares of Common Stock per \$1,000 principal amount of 2.25% Convertible Senior Notes due 2012 (which represent a conversion price of approximately \$35.42 per share of Common Stock).

SCHEDULE B*[List of Subsidiaries]*

Name of Subsidiary	Jurisdiction of Incorporation or Organization	Assumed Names Under Which Subsidiary Does Business
Cheniere Corpus Christi Pipeline Company	Delaware	none
Cheniere Creole Trail Pipeline Company	Delaware	none
Cheniere Energy Operating Co., Inc.	Delaware	none
Cheniere Energy Shared Services, Inc.	Delaware	none
Cheniere FLNG, L.P.	Delaware	none
Cheniere FLNG-GP, LLC	Delaware	none
Cheniere Gryphon Management, Inc.	Nevada	none
Cheniere International, Inc.	Delaware	none
Cheniere LNG Financial Services, Inc.	Delaware	none
Cheniere LNG O&M Services, L.P.	Delaware	none
Cheniere LNG Services, Inc.	Delaware	none
Cheniere LNG Terminals, Inc.	Delaware	none
Cheniere LNG Trading & Marketing, Inc.	Delaware	none
Cheniere LNG, Inc.	Delaware	none
Cheniere LNG-LP Interests, LLC	Delaware	none
Cheniere Mgt Services, LLC	Delaware	none
Cheniere Pipeline Company	Delaware	none
Cheniere Resources, Inc.	Delaware	none
Cheniere Sabine Pass Pipeline Company	Delaware	none
Corpus Christi Interests, LLC	Delaware	none
Corpus Christi LNG, L.P.	Delaware	none
Corpus Christi LNG-GP, Inc.	Delaware	none

Corpus Christi LNG-LP, Inc.	Delaware	none
Corpus Christi LNG-LP, LLC	Delaware	none
Creole Trail LNG, L.P.	Delaware	none
Creole Trail LNG-GP, Inc.	Delaware	none
Creole Trail LNG-LP, LLC	Delaware	none
Sabine Pass LNG, L.P.	Delaware	none
Sabine Pass LNG-GP, Inc.	Delaware	none
Sabine Pass LNG-LP, LLC	Delaware	none

SCHEDULE C

[List of persons subject to lock-up]

Charif Souki	Chairman and Chief Executive Officer
Walter L. Williams	Vice Chairman
Stanley C. Horton	President and Chief Operating Officer
Don A. Turkleson	Senior Vice President, Chief Financial Officer and Secretary
Jonathan S. Gross	Senior Vice President – Exploration
Keith M. Meyer	Senior Vice President – LNG
Keith F. Carney	Director
Zurab S. Kobiashvili	Senior Vice President and General Counsel
Craig K. Townsend	Vice President and Chief Accounting Officer
Paul J. Hoenmans	Director
J. Robinson West	Director
David Kilpatrick	Director
Nuno Brandolini	Director

Exhibit A

Opinion of Andrews Kurth LLP

1. The Issuer is validly existing as a corporation and in good standing under the General Corporation Law of the State of Delaware.
2. The Issuer has the corporate power and corporate authority under the General Corporation Law of the State of Delaware to (i) execute and deliver, and to incur and perform all of its obligations under, each of the Transaction Agreements to which it is a party and (ii) carry on its business and own its properties as described in the Offering Circular.
3. Each of the Transaction Agreements has been duly authorized, executed and delivered by the Issuer.
4. Each of the Indenture and the Registration Rights Agreement constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, under the Applicable Laws of the State of New York.
5. When authenticated by the Trustee in the manner provided in the Indenture and delivered to and paid for by the Initial Purchaser in accordance with the Purchase Agreement, the Notes will constitute valid and binding obligations of the Issuer, entitled to the benefits of the Indenture and enforceable against the Issuer in accordance with their terms, under the Applicable Laws of the State of New York.
6. The shares of Common Stock into which the Notes are convertible at the initial conversion price provided in the Indenture have been duly authorized by all necessary corporate action of the Issuer and reserved for issuance upon such conversion and, upon issuance of such shares of Common Stock on conversion of the Notes in accordance with the terms of the Indenture at conversion prices at or in excess of the par value of such shares of Common Stock, will be validly issued, fully paid and nonassessable. There are no preemptive rights to acquire any such shares of Common Stock set forth in the Organizational Documents or in the General Corporation Law of the State of Delaware.
7. Neither (i) the execution and delivery on behalf of, or the incurrence or performance by the Issuer of its obligations under, each of the Transaction Agreements to which it is a party, each in accordance with its terms nor (ii) the offering, issuance, sale and delivery of the Notes pursuant to the Purchase Agreement, (A) constituted, constitutes or will constitute a violation of either of the Organizational Documents, (B) constituted, constitutes or will constitute a breach or violation of, or a default (or an event which, with notice or lapse of time or both, would constitute such a default), under any Applicable Agreement, other than any such breach, violation or default that has been waived, (C) resulted, results or will result in the creation of any security interest in, or lien upon, any of the property or assets of the Issuer pursuant to any Applicable Agreement, (D) resulted, results or will result in any violation of (i) the Applicable Laws of the State of New York, (ii) the Applicable Laws of the United States of America or (iii) Regulation T, U or X of the Board of Governors of the Federal Reserve System, or (E) resulted, results or will result in the contravention of any Applicable Order.
8. No Governmental Approval, that has not been obtained or taken, and is not in full force and effect, is required to authorize any of the Transaction Agreements to which the Issuer is a party on the date hereof, or is otherwise required for (i) the validity of any such Transaction Agreement, (ii) the valid execution and delivery by the Issuer of any such Transaction Agreement, (iii) the incurrence or performance by the Issuer of its obligations thereunder or (iv) the enforceability of any such Transaction Agreement against the Issuer.
9. The statements in the Offering Circular under the caption “United States Federal Income Tax Considerations” insofar as they refer to statements of law or legal conclusions, fairly summarize the matters referred to therein in all material respects, subject to the qualifications and assumptions stated therein.
10. The statements in the Offering Circular under the captions “Description of Capital Stock,” “Description of Certain Indebtedness,” “Description of the Notes” and “Business – Our LNG Receiving

Terminals,” insofar as such statements purport to summarize certain provisions of documents referred to therein and reviewed by us as described above, fairly summarize such provisions in all material respects, subject to the qualifications and assumptions stated therein.

11. Assuming (i) the accuracy of the representations and warranties of the Issuer set forth in paragraphs (gg) and (hh) of Section 2 of the Purchase Agreement, (ii) the due performance by the Issuer and the Initial Purchaser of the covenants and agreements set forth in the Purchase Agreement, (iii) the compliance by the Initial Purchaser with the offering and transfer procedures and the restrictions described in the Offering Circular, (iv) the accuracy of the representations and warranties of the Initial Purchaser set forth in Section 4 of the Purchase Agreement, (v) the accuracy of the representations and warranties made or deemed to be made in accordance with the Purchase Agreement and the Offering Circular by purchasers to whom the Initial Purchaser initially resells Notes, and (vi) that purchasers to whom the Initial Purchaser initially resells the Notes have been made aware of the information set forth in the Offering Circular under the caption “Transfer Restrictions,” (A) the offer, issue, sale and delivery of the Notes to the Initial Purchaser and the initial resale of the Notes by the Initial Purchaser, each in the manner contemplated by the Purchase Agreement and the Offering Circular, and the issuance of shares of Common Stock to holders of the Notes upon conversion thereof in accordance with the terms of the Indenture and the Notes, do not require registration under the Securities Act, and (B) prior to the effectiveness of the Shelf Registration Statement (as defined in the Registration Rights Agreement), such offer, issue, sale and delivery of the Notes and such initial resale of the Notes do not require qualification of the Indenture under the Trust Indenture Act of 1939, as amended; provided, however, that we express no opinion as to any subsequent resale or other transfer of any Notes or any Common Stock.

12. The Issuer is not, and immediately upon completion of the offering of the Notes described in the Offering Circular and the Issuer’s investment of the proceeds of such offering as described in the Offering Circular, will not be, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

In addition, we have participated in conferences with officers and other representatives of the Issuer and the independent public accountants for the Issuer, your representatives and your counsel at which the contents of the Offering Circular and related matters were discussed and, although we have not independently verified and are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Offering Circular (except as and to the extent set forth in paragraphs 9 and 10 above), on the basis of the foregoing (relying with respect to factual matters to the extent we deem appropriate upon statements by officers and other representatives of the Issuer), no facts have come to our attention that have led us to believe that the Offering Circular (including the Incorporated Documents), as of its date and as of the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, it being understood that we express no statement or belief with respect to (a) the financial statements and related schedules included or incorporated by reference in the Offering Circular, including the notes and the auditor’s report thereon and (b) the other financial, accounting or oil and gas reserve data, in each case, included or incorporated by reference in the Offering Circular or excluded therefrom.

As used herein, the following terms have the respective meanings set forth below:

“Applicable Agreements” means those agreements and other instruments set forth on Schedule 1 to the Opinion Support Certificate.

“Applicable Laws” means, as to a particular jurisdiction, those laws, rules and regulations of such jurisdiction that, in our experience, are normally applicable to transactions of the type contemplated by the Transaction Agreements (as defined below), without our having made any special investigation as to the applicability of any specific law, rule or regulation, and which are not the subject of a specific opinion herein referring expressly to a particular law or laws; provided that the term “Applicable Laws” does not include:

(a) any municipal or other local law, rule or regulation, and any other law, rule or regulation relating to (i) pollution or protection of the environment, (ii) zoning, land use, building or construction codes or guidelines, (iii) labor, employee rights and benefits, or occupational safety and health, or (iv) utility regulation;

(b) antitrust laws and other laws regulating competition;

(c) antifraud laws;

(d) tax laws, rules or regulations;

(e) United States federal and state securities or blue sky laws, rules or regulations;

(f) the rules and regulations of the National Association of Securities Dealers, Inc.;

(g) (i) the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations promulgated thereunder by the Commission and (ii) the Natural Gas Act, as amended, and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission;

(h) any law, rule or regulation that (i) may have become applicable to the Issuer as a result of the involvement of the Initial Purchaser with the transactions contemplated by the Purchase Agreement or because of any facts specifically pertaining to the Initial Purchaser or because of the legal or regulatory status or the nature of the business of the Initial Purchaser and (ii) would not otherwise be applicable to the Issuer; and

(i) any law, rule or regulation relating specifically to bank holding companies or insurance companies and any other law, rule or regulation that may be applicable to any party by virtue of the particular nature of the business conducted by it or any goods or services produced by it or property owned or leased by it.

“Applicable Orders” means those orders or decrees of governmental authorities identified on Schedule 2 to the Opinion Support Certificate.

“Governmental Approval” means any consent, approval, license, authorization or validation of, or filing, recording or registration with, any Governmental Authority pursuant to (i) the Applicable Laws of the State of New York, (ii) the Applicable Laws of the United States of America or (iii) the General Corporation Law of the State of Delaware.

“Governmental Authority” means any executive, legislative, judicial, administrative or regulatory body of the State of New York, the State of Delaware or the United States of America.

“Incorporated Documents” means, collectively, the following reports of the Issuer as filed with the SEC: (i) Annual Report on Form 10-K for the fiscal year ended December 31, 2004, filed with the SEC on March 10, 2005, as amended by Amendment No. 1 thereto, filed on March 16, 2005, (ii) Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2005, filed with the SEC on May 6, 2005 and (iii) Current Reports on Form 8-K filed with the SEC on January 12, 2005, January 24, 2005, February 8, 2005 (two), February 28, 2005, March 2, 2005, March 10, 2005, March 14, 2005, March 18, 2005, April 4, 2005, April 7, 2005, April 13, 2005, April 25, 2005, May 25, 2005 and June 30, 2005.

“Organizational Documents” means, collectively, the following instruments, each in the form reviewed by us, as indicated above: (i) the Certificate of Incorporation and (ii) the Bylaws.

“Person” has the meaning given to such term in the Indenture.

“Transaction Agreements” means, collectively, the following instruments, each in the form reviewed by us, as indicated above: (i) the Purchase Agreement, (ii) the Registration Rights Agreement, (iii) the Notes and (iv) the Indenture.

Exhibit A-1

Opinion of King & Spalding LLP

The statements in the Offering Circular under the caption “Business – Governmental Regulation,” insofar as they refer to statements of law or legal conclusions, fairly summarize the matters referred to therein in all material respects, subject to the qualifications and assumptions stated therein.

Exhibit B

Opinion of General Counsel

I am of the opinion that, to my knowledge, except as described in the Offering Circular, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject which, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, would reasonably be expected to have a Material Adverse Effect (as defined in the Purchase Agreement); and to my knowledge, no such investigations, actions, suits or proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others.

I have participated in conferences with representatives of the Company, with representatives of its independent accountants and with representatives of the Initial Purchaser and their counsel at which conferences the contents of the Offering Circular (including the documents incorporated by reference therein) and related matters were discussed and, although I have not independently verified and am not passing on, and assume no responsibility for, the accuracy, completeness or fairness of the Offering Circular (including the documents incorporated by reference therein) (except as expressly provided above), on the basis of the foregoing (relying with respect to factual matters to the extent I deem appropriate upon statements by officers and other representatives of the Company), no facts have come to my attention to cause me to believe that the Offering Circular (including the documents incorporated by reference therein) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than the financial statements, the notes and schedules thereto, and the other financial data included or incorporated by reference therein, as to which I express no statement or belief).

Exhibit C
Form Lock-Up Agreement

Cheniere Energy, Inc.
717 Texas Avenue, Suite 3100
Houston, Texas 77002

Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, NY 10010 3629
Fax No.: (212) 325 8278

Dear Sirs:

As an inducement to Credit Suisse First Boston LLC (“**CSFB**”) to execute the Purchase Agreement (the “Purchase Agreement”) with Cheniere Energy, Inc., pursuant to which an offering will be made that is intended to result in the establishment of an orderly market for Convertible Senior Notes Due 2012 (the “**Securities**”) of Cheniere Energy, Inc., and any successor (by merger or otherwise) thereto, (the “**Company**”), the undersigned hereby agrees that during the period specified in the following paragraph (the “**Lock-Up Period**”), the undersigned will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any shares of Common Stock, par value \$.003 per share, of the Company (the “**Common Stock**”) or securities convertible into or exchangeable or exercisable for any shares of Common Stock, enter into a transaction which would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of shares of Common Stock, whether any such aforementioned transaction is to be settled by delivery of shares of Common Stock or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of CSFB. In addition, the undersigned agrees that, without the prior written consent of CSFB, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for shares of Common Stock.

The initial Lock-Up Period will commence on the date of this Lock-Up Agreement and end on and include the date 90 days after the offering date set forth on the final offering circular used to sell the Securities (the “**Offering Date**”) pursuant to the Purchase Agreement, to which you are or expect to become parties; provided, however, that beginning on the 31st day after the Offering Date, the undersigned, along with the other executive officers and directors of the Company, may take the actions otherwise prohibited hereby with respect to an aggregate amount of 200,000 shares of Common Stock (the “**Allocable Shares**”).

The undersigned further agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this Lock-Up Agreement during the term of this Lock-Up Agreement, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has received written confirmation from the Company’s Chief Financial Officer or Chief Executive Officer that the Lock-Up Period has expired and that the undersigned has been allocated (in the discretion of the Company) a portion of the Allocable Shares with respect to such action.

Any shares of Common Stock acquired by the undersigned in the open market will not be subject to this Agreement. A transfer of shares of Common Stock or securities convertible into or

exchangeable or exercisable for any shares of Common Stock to a family member or trust may be made, provided the transferee agrees to be bound in writing by the terms of this Agreement prior to such transfer and no filing by any party (donor, donee, transferor or transferee) under the Securities Exchange Act of 1934, as amended, shall be required or shall be voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the Lock-Up Period). Notwithstanding anything in this Agreement to the contrary, the undersigned may exercise options outstanding on the date hereof (including cashless exercises thereof); provided, however, that any shares of Common Stock received upon the exercise of options granted to the undersigned (except those sold in order to effect the cashless exercise of options) will also be subject to this Agreement.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Common Stock or securities convertible into or exchangeable or exercisable for any shares of Common Stock if such transfer would constitute a violation or breach of this Agreement

This Agreement shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. The undersigned shall be released from all obligations under this Agreement if the Purchase Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and purchase of the Securities to be sold thereunder. **This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.**

Very truly yours,

[Name of stockholder]

\$325,000,000

Cheniere Energy, Inc.

2.25% Convertible Senior Notes Due 2012

REGISTRATION RIGHTS AGREEMENT

July 27, 2005

Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, New York 10010-3629

Dear Sirs:

Cheniere Energy, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to Credit Suisse First Boston LLC (the "**Initial Purchaser**"), upon the terms set forth in a purchase agreement dated July 22, 2005 (the "**Purchase Agreement**"), \$300,000,000 aggregate principal amount of its 2.25% Convertible Senior Notes Due 2012 (the "**Firm Securities**") and also proposes to grant to the Initial Purchaser an option, exercisable from time to time by the Initial Purchaser, to purchase up to an additional \$25,000,000 aggregate principal amount (the "**Optional Securities**") of its 2.25% Convertible Senior Notes Due 2012. The Firm Securities and the Optional Securities which the Initial Purchaser may elect to purchase pursuant to the Purchase Agreement are herein collectively called the "**Notes**". The Notes will be convertible into shares of common stock, par value \$0.003 per share, of the Company (the "**Common Stock**") at the conversion rate set forth in the Offering Circular dated July 22, 2005. The Notes will be issued pursuant to an Indenture, dated as of July 27, 2005 (the "**Indenture**"), between the Company and The Bank of New York, as trustee (the "**Trustee**"). As an inducement to the Initial Purchaser to enter into the Purchase Agreement, the Company agrees with the Initial Purchaser, for the benefit of (i) the Initial

Purchaser and (ii) the holders of the Notes and the Common Stock issuable upon conversion of the Notes (collectively, the **'Securities'**) from time to time until the earlier of (i) such time as such Securities have been sold pursuant to a Shelf Registration Statement (as defined below) or (ii) the expiration of the Shelf Registration Period (as defined below) (each of the foregoing a **'Holder'** and collectively the **'Holders'**), as follows:

1. *Shelf Registration.* (a) The Company shall, at its cost, prepare and, as promptly as practicable (but in no event more than 90 days after the original issuance of the Firm Securities (such original issuance date, the **'Closing Date'**)) file with the Securities and Exchange Commission (the **'Commission'**), and thereafter use its commercially reasonable efforts to cause to be declared effective, no later than 210 days after the Closing Date, a registration statement (the **'Shelf Registration Statement'**) on an appropriate form under the Securities Act of 1933, as amended (the **'Securities Act'**) relating to the offer and sale of the Transfer Restricted Securities (as defined in Section 5 hereof) by the Holders thereof from time to time in accordance with the methods of distribution set forth in the Shelf Registration Statement and Rule 415 under the Securities Act (hereinafter, the **'Shelf Registration'**); provided, however, that no Holder (other than the Initial Purchaser) shall be entitled to have the Securities held by it covered by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all the provisions of this Agreement applicable to such Holder.

(b) The Company shall use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective in order to permit the prospectus included therein (the **'Prospectus'**) to be lawfully delivered by the Holders of the relevant Securities, for a period of two years (or for such longer period if extended pursuant to Section 2(h) below) from the date of the latest issuance of the Notes from the Company to the Initial Purchaser or such shorter period that will terminate when all the Securities covered by the Shelf Registration Statement (i) have been sold pursuant thereto or (ii) may be sold pursuant to Rule 144(k) under the Securities Act, or any successor rule thereof, or otherwise transferred in a manner that results in (A) the Securities not being subject to transfer restrictions under the Securities Act and (B) the absence of a need for a restrictive legend regarding registration under the Securities Act (assuming for this purpose that the Holders thereof are not affiliates of the Company) or (iii) cease to be outstanding (in any such case, such period being called the **'Shelf Registration Period'**). The Company shall be deemed not to have used its commercially reasonable efforts to keep the Shelf Registration Statement effective during the requisite period if it voluntarily takes any action that would result in Holders of Securities covered thereby not being able to offer and sell such Securities during that period, unless such action is (i) required by applicable law or (ii) taken by the Company in good faith and contemplated by Section 2(b)(v) and 2(b)(vi) below, and the Company thereafter complies with the requirements of Section 2(h).

(c) Notwithstanding any other provisions of this Agreement to the contrary, the Company shall cause the Shelf Registration Statement and the Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the Commission and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) Each Holder of Transfer Restricted Securities (as defined below) agrees that if such Holder wishes to sell Transfer Restricted Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 1(d) and Section 2(h). Each Holder of Transfer Restricted Securities wishing to sell Transfer Restricted Securities pursuant to a Shelf Registration Statement and related Prospectus and to be listed as a selling securityholder in the Shelf Registration and related Prospectus at the time the Shelf Registration Statement is declared effective (the “**Effective Time**”) agrees to deliver a written notice, substantially in the form of Annex A to the offering circular disseminated in connection with the issuance of the Firm Securities (a “**Notice and Questionnaire**”) to the Company at least one (1) Business Day (a “**Business Day**” meaning each day that is not a Saturday, Sunday or legal holiday) prior to the filing of the Shelf Registration Statement or any amendment thereto (each Holder delivering the Notice and Questionnaire, a “**Notice Holder**”). From and after the date the Shelf Registration Statement is declared effective, each Holder wishing to sell Registrable Securities pursuant to the Shelf Registration Statement and related prospectus agrees to deliver a Notice and Questionnaire to the Company at least five (5) Business Days prior to any intended distribution of Transfer Restricted Securities under the Shelf Registration Statement. The Company shall, as promptly as practicable after the later of the date of receipt of a Notice and Questionnaire or the expiration of any Suspension Period (as defined in Section 2(b) hereof) in effect when the Notice and Questionnaire is delivered (i) if required by applicable law, file with the Commission a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other document required under the Securities Act so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Transfer Restricted Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its commercially reasonable efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable; (ii) provide such Holder copies of any documents filed pursuant to Section 1(d)(i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any

post-effective amendment filed pursuant to Section 1(d)(i). Notwithstanding the foregoing, in no event shall the Company be required to file more than one post-effective amendment pursuant to this Section 1(d) in any calendar quarter or to file a supplement or post-effective amendment during any Suspension Period.

2. *Registration Procedures.* In connection with the Shelf Registration contemplated by Section 1 hereof, the following provisions shall apply:

(a) The Company shall (i) give notice to the Holders in the manner as set forth in the Indenture (A) of its intention to file a Shelf Registration Statement (the “**Filing Notice**”) and (B) when the Shelf Registration Statement or any amendment thereto has been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective; (ii) furnish to the Initial Purchaser, prior to the filing thereof with the Commission, a copy of the Shelf Registration Statement and each amendment thereof and each supplement, if any, to the Prospectus included therein and, in the event that the Initial Purchaser (with respect to any portion of an unsold allotment from the original offering) is participating in the Shelf Registration Statement, shall use its commercially reasonable efforts to reflect in each such document, when so filed with the Commission, such comments as the Initial Purchaser reasonably may propose; and (iii) include the names of the Holders who propose to sell Securities pursuant to the Shelf Registration Statement as selling securityholders. The Filing Notice will seek, among other things, a determination from each such Holder as to whether such Holder elects to have its Notes and the Common Stock issuable on conversion thereof registered for sale pursuant to the Shelf Registration Statement. For purposes of this Section 2, notice to The Depository Trust Company shall be sufficient to satisfy the Company’s obligation to provide notice to the Holders.

(b) The Company shall give written notice (a “**Deferral Notice**”) to the Initial Purchaser and the Holders of the Securities (which notice pursuant to clauses (ii)-(vi) hereof (each a “**Material Event**”) shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made of any of the following):

(i) when the Shelf Registration Statement or any amendment thereto has been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) any request by the Commission for amendments or supplements to the Shelf Registration Statement or the prospectus included therein or for additional information or it shall become necessary to amend such Shelf Registration Statement or supplement the related prospectus to comply with the Securities Act or the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) or the respective rules thereunder;

(iii) the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for that purpose;

(iv) the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(v) the happening of any event that requires the Company to make changes in the Shelf Registration Statement or the Prospectus in order that the Shelf Registration Statement or the Prospectus does not contain an untrue statement of a material fact nor omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading; and

(vi) the occurrence or existence of any pending corporate development or other similar event with respect to the Company or a public filing with the Commission that, in the reasonable discretion of the Company, makes it appropriate to suspend the availability of a Shelf Registration Statement and the related Prospectus.

The Company shall be entitled to exercise its right under this Section 2(b) to suspend the availability of the Shelf Registration Statement or any Prospectus upon the occurrence of any event contemplated by clauses (ii) through (vi) above, without incurring or accruing any obligation to pay Additional Interest pursuant to Section 5, for one or more periods not to exceed an aggregate of 60 days in any 12-month period (such period, during which the availability of the Registration Statement and any Prospectus is suspended being a "**Suspension Period**").

(c) The Company shall use its commercially reasonable efforts to obtain the withdrawal, at the earliest possible time, of any order suspending the effectiveness of the Shelf Registration Statement.

(d) The Company shall furnish to each Holder of Securities included within the coverage of the Shelf Registration, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits thereto (including those, if any, incorporated by reference); provided that such exhibits shall be deemed to have been provided if such information is available through EDGAR or on or through the Company's website.

(e) The Company shall, during the Shelf Registration Period, deliver to each Holder of Securities included within the coverage of the Shelf Registration, without charge, as many copies of the Prospectus (including each preliminary prospectus) included in the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. The Company consents, subject to the provisions of this Agreement, to the use of the Prospectus or any amendment or supplement thereto by each of the Notice Holders of the Securities in connection with the offering and sale of the Securities covered by the Prospectus, or any amendment or supplement thereto, included in the Shelf Registration Statement.

(f) Prior to any public offering of the Securities pursuant to the Shelf Registration Statement, the Company shall use its reasonable best efforts to register or qualify or cooperate with the Notice Holders included therein and their respective counsel in connection with the registration or qualification of the Securities for offer and sale under the securities or "blue sky" laws of such states of the United States as any Notice Holder reasonably requests in writing and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of the Securities covered by such Registration Statement; provided, however, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified or (ii) take any action which would subject it to general service of process in suits or to taxation in any jurisdiction where it is not then so subject.

(g) Except with respect to Securities held in book-entry form, the Company shall cooperate with the Notice Holders to facilitate the timely preparation and delivery of certificates representing the Securities to be sold pursuant to any Registration Statement free of any restrictive legends and in such denominations and registered in such names as the Holders may request in writing a reasonable period of time prior to sales of the Securities pursuant to the Shelf Registration Statement.

(h) Upon the occurrence of any Material Event contemplated by clauses (ii) through (vi) of Section 2(b) during the period for which the Company is required to maintain an effective Shelf Registration Statement, the Company shall, as promptly as practicable, prepare and file, if necessary pursuant to applicable law, a post effective amendment to the Shelf Registration Statement or an amendment or supplement to the Prospectus and any other required document that would be incorporated by reference into such shelf Registration Statement and Prospectus so that, as thereafter delivered to Holders or purchasers of the Securities, the Shelf Registration Statement and documents incorporated thereto will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company provides a Deferral Notice to the Initial Purchaser and the Holders to suspend the use of the Prospectus, then the Initial Purchaser and the Holders shall suspend use of such Prospectus, and the two-year period of effectiveness of the Shelf Registration

Statement provided for in Section 1(b) above shall be extended by the number of days from and including the date of the giving of such notice to and including the date when the Initial Purchaser and the Holders shall have been advised by the Company that the Prospectus may be used or have received such amended or supplemented prospectus pursuant to this Section 2(h).

(i) Not later than the effective date of the Shelf Registration Statement, the Company will provide CUSIP numbers for the Notes and the Common Stock registered under the Shelf Registration Statement, and provide the Trustee with printed certificates for such Notes, in a form eligible for deposit with The Depository Trust Company.

(j) The Company will comply with all rules and regulations of the Commission to the extent and so long as they are applicable to the Shelf Registration and will make generally available to its security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earnings statement satisfying the provisions of Section 11(a) of the Securities Act, no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement, which statement shall cover such 12-month period.

(k) The Company shall cause the Indenture to be qualified under the Trust Indenture Act of 1939 as amended (the "**Trust Indenture Act**"), in a timely manner and containing such changes, if any, as shall be necessary for such qualification. In the event that such qualification would require the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(l) The Company may require each Holder of Securities to be sold pursuant to the Shelf Registration Statement to promptly furnish to the Company such information regarding the Holder and the distribution of the Securities where such information is legally required or requested by the Commission for inclusion in the Shelf Registration Statement, and the Company may exclude from such registration the Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving such request.

(m) The Company shall enter into such customary agreements (including, if requested, an underwriting agreement in customary form) and take all such other actions, if any, as any Holder shall reasonably request in order to facilitate the disposition of the Securities pursuant to the Shelf Registration.

(n) The Company shall (i) make reasonably available for inspection during normal business hours by the Holders, any underwriter participating in any

disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders or any such underwriter, all relevant financial and other records, pertinent corporate documents and properties of the Company and (ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as shall be reasonably necessary to enable such persons, to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; provided, however, that the foregoing inspection and information gathering shall be coordinated on behalf of the Initial Purchaser by you and on behalf of the other parties, by one counsel designated by and on behalf of such parties as described in Section 3 hereof; provided, further, that, if the Company designates in writing any such information, reasonably and in good faith, as confidential, at the time of delivery of such information, each such person will be required to agree or acknowledge that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it as the basis for any market transactions in the securities of the Company or otherwise unless and until such is made generally available to the public through no fault or action of such person.

(o) The Company, if requested by any Notice Holder covered by the Shelf Registration Statement, shall cause (i) its counsel to deliver an opinion and updates thereof relating to the Securities in customary form addressed to such Notice Holders and the managing underwriters, if any, thereof, and dated, in the case of the initial opinion, the effective date of such Shelf Registration Statement (it being agreed that the matters to be covered by such opinion shall include, without limitation, the due incorporation or valid existence and good standing of the Company; the due authorization, execution and delivery of the relevant agreement of the type referred to in Section 2(m) hereof; the due authorization, execution, authentication and issuance, and the validity and enforceability, of the Securities; the absence of legal, governmental or regulatory investigations, actions, suits or proceedings pending to which the Company or any of its subsidiaries is a party or to which any property of the Company or any of its subsidiaries is the subject which would prevent the Company from fulfilling its obligations hereunder; the absence of governmental approvals required to be obtained in connection with the Shelf Registration Statement, the offering and sale of the Securities, or any agreement of the type referred to in Section 2(m) hereof; the compliance as to form of the Shelf Registration Statement and any documents incorporated by reference therein and of the Indenture with the requirements of the Securities Act and the Trust Indenture Act, respectively; and, as of the date of the opinion and as of the effective date of the Shelf Registration Statement or most recent post effective amendment thereto, as the case may be, the absence from the Shelf Registration Statement and the prospectus included therein, as then amended or supplemented, and from any documents incorporated by reference therein of an untrue statement of a material fact or the omission to state therein a material fact required to be stated therein or necessary to make the statements therein

not misleading (in the case of any such documents, in the light of the circumstances existing at the time that such documents were filed with the Commission under the Exchange Act); (ii) its officers to execute and deliver all customary documents and certificates and updates thereof requested by any underwriters of the Securities and (iii) its independent registered public accounting firm and the independent registered public accounting firm with respect to any other entity for which financial information is provided in the Shelf Registration Statement to provide to the Notice Holders and any underwriter therefor a comfort letter in customary form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72.

(p) The Company will use its commercially reasonable efforts to (a) if the Notes have been rated prior to the initial sale of such Notes, confirm such ratings will apply to the Securities covered by a Registration Statement, or (b) if the Notes were not previously rated, cause the Notes covered by a Registration Statement to be rated with the appropriate rating agencies, if so requested by holders of a majority in aggregate principal amount of Securities covered by the Shelf Registration Statement, or by the managing underwriters, if any.

(q) In the event that any broker-dealer registered under the Exchange Act shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or “assist in the distribution” (within the meaning of the Conduct Rules (the “**Rules**”) of the National Association of Securities Dealers, Inc. (“**NASD**”)) thereof, whether as a Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company will assist such broker-dealer in complying with the requirements of such Rules, including, without limitation, by (i) if such Rules, including Rule 2720, shall so require, engaging a “qualified independent underwriter” (as defined in Rule 2720) to participate in the preparation of the Shelf Registration Statement relating to such Securities, to exercise usual standards of due diligence in respect thereto and, if any portion of the offering contemplated by such Shelf Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield of such Securities, (ii) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof and (iii) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules.

(r) The Company shall use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Securities covered by the Shelf Registration Statement contemplated hereby.

3. *Registration Expenses.* (a) All expenses incident to the Company's performance of and compliance with this Agreement will be borne by the Company, regardless of whether a Shelf Registration Statement is ever filed or becomes effective, including without limitation;

(i) all registration and filing fees and expenses;

(ii) all fees and expenses of compliance with federal securities and state "blue sky" or securities laws;

(iii) all expenses of printing (including printing certificates for the Securities to be issued and printing of Prospectuses), messenger and delivery services and telephone;

(iv) all fees and disbursements of counsel for the Company;

(v) all application and filing fees in connection with listing the Securities on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(vi) all fees and disbursements of independent certified public accountants of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Company will bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any person, including special experts, retained by the Company.

(b) In connection with the Shelf Registration Statement required by this Agreement, the Company will reimburse the Initial Purchaser and the Notice Holders of Securities covered by the Shelf Registration Statement, for the reasonable fees and disbursements of not more than one counsel, designated by the Notice Holders of a majority in aggregate principal amount of the Securities covered by the Shelf Registration Statement (provided that Notice Holders of Common Stock issued upon the conversion of the Notes shall be deemed to be Notice Holders of the aggregate principal amount of Notes from which such Common Stock was converted) to act as counsel for the Notice Holders in connection therewith.

4. *Indemnification.* (a) The Company agrees to indemnify and hold harmless each Notice Holder and each person, if any, who controls such Notice Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each Notice Holder, and such controlling persons are referred to collectively as the "**Notice Holder Indemnified Parties**") from and against any losses, claims, damages or

liabilities, whether such liabilities are joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, liabilities or actions relating to purchases and sales of the Securities) to which each Notice Holder Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or Prospectus including any document incorporated by reference therein, or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and shall reimburse, as incurred, the Notice Holder Indemnified Parties for any legal or other expenses reasonably incurred by the Notice Holder Indemnified Parties in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; provided, however, that (i) the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or Prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration in reliance upon and in conformity with written information pertaining to such Notice Holder and furnished to the Company by or on behalf of such Notice Holder specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to the Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Notice Holder from whom the person asserting any such losses, claims, damages or liabilities purchased the Securities concerned, to the extent that a prospectus relating to such Securities was required to be delivered by such Notice Holder under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Notice Holder results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the final prospectus if the Company had previously furnished copies thereof to such Notice Holder; provided further, however, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Indemnified Party. The Company shall also indemnify underwriters, their officers and directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Notice Holders of the Securities if requested by such Notice Holders.

(b) Each Notice Holder, severally and not jointly, will indemnify and hold harmless the Company, its officers and directors and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the

Exchange Act (each, a “**Company Indemnified Party**”) from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Company Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon (i) (A) any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or in any amendment thereto or (B) the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading or (ii) (A) any untrue statement or alleged untrue statement of a material fact contained in the prospectus or supplement thereto or in any preliminary prospectus relating to the Shelf Registration, or (B) the omission or alleged omission to state therein a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but in each case only to the extent that the untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information pertaining to such Notice Holder and furnished to the Company by or on behalf of such Notice Holder specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Company for any legal or other expenses reasonably incurred by the Company Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which such Notice Holder may otherwise have to the Company Indemnified Party.

(c) Promptly after receipt by an indemnified party under this Section 4 of notice of the commencement of any action, claim or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 4, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action, claim or proceeding is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof the indemnifying party will not be liable to such indemnified party under this Section 4 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof.

It is understood and agreed that the indemnifying party shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any reasonably necessary local counsel) for all indemnified parties, and that all such reasonable fees and expenses shall be paid or reimbursed as they are incurred. Any such separate firm for the Notice Holder Indemnified Parties shall be designated in writing by the Notice Holder Indemnified Parties and any such separate firm for the Company Indemnified Parties shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement effected without its written consent unless (i) such settlement is entered into in good faith by the indemnified party more than 45 days after receipt by such indemnifying party of written notice of the proposed settlement, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action, and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 4 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Notice Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any proceeding, action or claim which is the subject of this subsection (d). Notwithstanding any other

provision of this Section 4(d), the Notice Holders shall not be required to contribute any amount in excess of the amount by which the net proceeds received by such Notice Holders from the sale of the Securities pursuant to the Shelf Registration Statement exceeds the amount of damages which such Notice Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Company.

(e) The agreements contained in this Section 4 shall survive the sale of the Securities pursuant to the Shelf Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

5. *Additional Interest Under Certain Circumstances.* (a) The Company shall pay Additional interest (the "**Additional Interest**") to the holders of Transfer Restricted Securities as follows if any of the following events occur (each such event in clauses (i) through (iii) below being herein called a "**Registration Default**");

(i) the Shelf Registration Statement has not been filed with the Commission by the 90th day after the Closing Date;

(ii) the Shelf Registration Statement has not been declared effective by the Commission by the 210th day after the Closing Date; or

(iii) the Shelf Registration Statement is declared effective by the Commission but (A) the Shelf Registration Statement thereafter ceases to be effective or (B) the Shelf Registration Statement or the Prospectus ceases to be usable in connection with resales of Transfer Restricted Securities (as defined below) during the periods specified herein because either (1) any event occurs as a result of which the Prospectus forming part of such Shelf Registration Statement would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or (2) it shall be necessary to amend such Shelf Registration Statement or supplement the related prospectus, to comply with the Securities Act or the Exchange Act or the respective rules thereunder.

Each of the foregoing will constitute a Registration Default whatever the reason for any such event and whether it is voluntary or involuntary or is beyond the control of the Company or pursuant to operation of law or as a result of any action or inaction by the Commission.

The Company shall pay Additional Interest to the Holders of the Notes over and above the interest set forth in the title of the Notes from and including the date on which any such Registration Default shall occur to but excluding the date on which all such Registration Defaults have been cured; provided that in no event shall the Company be obligated to pay Additional Interest following the expiration of the Shelf Registration Period; and provided further, however, that no such Additional Interest shall accrue for or during any Suspension Period. Additional Interest will accrue at a rate of 0.50% of the principal amount of the Notes per annum (the “**Additional Interest Rate**”) immediately following the occurrence of such Registration Default.

(b) A Registration Default referred to in Section 5(a)(iii) hereof shall be deemed not to have occurred and be continuing in relation to the Shelf Registration Statement or the related Prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment has not yet been declared effective and needs to be declared effective to permit Notice Holders to use the related Prospectus or (y) other material events, with respect to the Company that would need to be described in such Shelf Registration Statement or the related Prospectus and (ii) in the case of clause (y), the Company is proceeding promptly and in good faith to amend or supplement the Shelf Registration Statement and related Prospectus to describe such events as required by paragraph 2(h) hereof; provided, however, that in any case if such Registration Default occurs for a continuous period in excess of 30 days, Additional Interest shall be payable in accordance with Section 5(a) from the day such Registration Default occurs until such Registration Default is cured.

(c) Any amounts of Additional Interest due pursuant to Section 5(a) will be payable in cash semiannually in arrears on February 1 and August 1 (each, an “**Interest Payment Date**”) to Holders of record of the Notes on the preceding January 15 and July 15. The amount of Additional Interest will be determined by multiplying the Additional Interest Rate by the principal amount of the Notes, further multiplied by a fraction, the numerator of which is the number of days such Additional Interest Rate was applicable during such period (determined on the basis of a 360 day year comprised of twelve 30-day months), and the denominator of which is 360. If a Holder converts its Notes, all Additional Interest, if any, that has accrued since the Interest Payment Date last preceding the date of conversion will be deemed to be paid in full upon such conversion, and no separate payment will be made by the Company upon conversion on account of such Additional Interest.

(d) “**Transfer Restricted Securities**” means each Security until (i) the date on which such Security has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement or (ii) the date on which such Security is distributed to the public pursuant to Rule 144 under the Securities Act or assuming for this purpose that the Holder thereof is not an affiliate of the Company, is saleable pursuant to Rule 144(k) under the Securities Act.

7. *Rules 144 and 144A.* The Company shall use its best efforts to file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the request of any Holder, make publicly available other information so long as necessary to permit sales of their securities pursuant to Rules 144 and 144A. The Company covenants that it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Transfer Restricted Securities without registration under the Securities Act within the limitation of the exemptions provided by Rules 144 and 144A (including the requirements of Rule 144A(d)(4)). The Company will provide upon request a copy of this Agreement to prospective purchasers of Securities identified to the Company by the Initial Purchaser upon request. Upon the request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 6 shall be deemed to require the Company to (i) register any of its securities pursuant to the Exchange Act or (ii) take any such actions after the expiration of the Shelf Registration Period.

8. *Underwritten Registrations.* If any of the Transfer Restricted Securities covered by the Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering (“**Managing Underwriters**”) will be selected by the Holders of a majority in aggregate principal amount of such Transfer Restricted Securities to be included in such offering (provided that Holders of Common Stock issued upon conversion of the Notes shall not be deemed Holders of Common Stock, but shall be deemed to be Holders of the aggregate principal amount of Notes from which such Common Stock was converted).

No person may participate in any underwritten registration hereunder unless such person (i) agrees to sell such person’s Transfer Restricted Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

9. *Miscellaneous.*

(a) *Remedies.* The Company acknowledges and agrees that any failure by the Company to comply with its obligations under Section 1 hereof may result in material irreparable injury to the Initial Purchaser or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchaser or any Holder may obtain such relief as may be required to specifically enforce the Company's obligations under Sections 1 hereof. The Company further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) *No Inconsistent Agreements.* The Company will not on or after the date of this Agreement enter into any agreement with respect to its securities that is inconsistent in any material respect with the rights granted to the Holders in this Agreement or otherwise conflicts in any material respect with the provisions hereof. The rights granted to the holders of the Company's securities under any agreement in effect on the date hereof do not and will not impair the Company's ability to perform its obligations hereunder.

(c) *Amendments and Waivers.* The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, except by the Company and the written consent of the Holders of a majority in principal amount of the Securities affected by such amendment, modification, supplement, waiver or consents (provided that Holders of Common Stock issued upon conversion of Notes shall not be deemed Holders of Common Stock, but shall be deemed to be Holders of the aggregate principal amount of Notes from which such Common Stock was converted). Without the consent of the Holder of the Notes, however, no modification may change the provisions relating to the payment of Additional Interest.

(d) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, first class mail, facsimile transmission, or air courier which guarantees overnight delivery:

(1) if to a Holder, that is not a Notice Holder, at the most current address given by such Holder to the Company.

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

(3) if to the Initial Purchaser:

Credit Suisse First Boston LLC
Eleven Madison Avenue
New York, NY 10010 3629
Fax No.: (212) 325 8278
Attention: Transactions Advisory Group

with a copy to:

Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
Fax No.: (212) 848-7179
Attention: Robert Evans III

(3) if to the Company, at its address as follows:

Cheniere Energy, Inc.
717 Texas Avenue, Suite 3100
Houston, Texas 77002
Fax No.: (713) 659-5459
Attention: Don A. Turkleson

with a copy to:

Andrews Kurth LLP
600 Travis, Suite 4200
Houston, TX 77002
Fax No.: (713) 220-4285
Attention: Meredith S. Mouer

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; three business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by recipient's facsimile machine operator, if sent by facsimile transmission; and on the day delivered, if sent by overnight air courier guaranteeing next day delivery.

(e) *Third-Party Beneficiaries*. The Holders shall be third-party beneficiaries to the agreements made hereunder between the Company, on the one hand, and the Initial Purchaser, on the other hand, and shall have the right to enforce such agreements directly to the extent they may deem such enforcement necessary or advisable to protect their rights or the rights of Holders hereunder.

(f) *Successors and Assigns*. This Agreement shall be binding upon the Company and its successors and assigns.

(g) *Counterparts*. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) *Headings*. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) *Governing Law*. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

By the execution and delivery of this Agreement, the parties hereto submit to the nonexclusive jurisdiction of any federal or state court in the State of New York.

(j) *Severability*. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(k) *Securities Held by the Company*. Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities is required hereunder, Securities held by the Company or its affiliates (other than subsequent Holders of Securities if such subsequent Holders are deemed to be affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Initial Purchaser and the Company in accordance with its terms.

Very truly yours,

CHENIERE ENERGY, INC.

By: /s/ Don A. Turkleson

Name: Don A. Turkleson
Title: Senior Vice President, Chief
Financial Officer and Secretary

By: /s/ Zurab S. Kobiashvili

Name: Zurab S. Kobiashvili
Title: Senior Vice President and General Counsel

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

CREDIT SUISSE FIRST BOSTON LLC

By: /s/ Reiner Boehning

Name: Reiner Boehning
Title: Director

CHENIERE ENERGY, INC.,

AS ISSUER

THE BANK OF NEW YORK

AS TRUSTEE

UP TO \$325,000,000 AGGREGATE PRINCIPAL AMOUNT OF
2.25% CONVERTIBLE SENIOR NOTES DUE 2012

INDENTURE

DATED AS OF JULY 27, 2005

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* Cross-Reference Table shall not, for any purpose, be deemed a part of this Indenture.

** N.A. means Not Applicable.

THIS INDENTURE, dated as of July 27, 2005 is between Cheniere Energy, Inc., a Delaware corporation (the "COMPANY"), and The Bank of New York, a New York banking corporation, as trustee (the "TRUSTEE").

In consideration of the premises and the purchase of the Securities by the Holders thereof, the parties hereto agree as follows for the benefit of the others and for the equal and ratable benefit of the Holders of the Securities.

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions

"ADDITIONAL INTEREST" has the meaning set forth in Section 5(a) of the Registration Rights Agreement. Unless the context otherwise requires, all references herein or in the Securities to "interest" accrued or payable as of any date shall include, without duplication, any Additional Interest accrued or payable as of such date as provided in the Registration Rights Agreement.

"AFFILIATE" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

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

"AMEX" means the American Stock Exchange.

"APPLICABLE PROCEDURES" means, with respect to any transfer or exchange of beneficial ownership interests in a Global Security, the rules and procedures of the Depository, in each case to the extent applicable to such transfer or exchange.

"APPLICABLE STOCK PRICE" on a Trading Day means the Volume-Weighted Average Price per share of Common Stock (or any security into which the Common Stock has been converted in connection with a Fundamental Change) on such Trading Day; provided, however, that if such Volume-Weighted Average Price is not available, the "Applicable Stock Price" means the market value per share of the Common Stock on such Trading Day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company; provided, however, that for purposes of Section 7.13 hereof, "APPLICABLE STOCK PRICE" means, in respect of a Conversion Date, the arithmetic average of the daily Volume-Weighted Average Prices of the Common Stock (or any security into which the Common Stock has been converted in connection with a Fundamental Change) over Cash Settlement Averaging Period.

“BOARD OF DIRECTORS” means either the board of directors of the Company or any duly authorized committee of such board of directors.

“BUSINESS DAY” means each day that is not a Legal Holiday.

“CALCULATION AGENT” means the calculation agent from time to time appointed by the Company pursuant to Section 6.1 (e).

“CASH” means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“CASH SETTLEMENT AVERAGING PERIOD” means, in respect of a Conversion Date, the five consecutive Trading Day period:

(a) ending on the second Trading Day preceding the Redemption Date, if the Company has called the Securities for redemption;

(b) ending on the second Trading Day preceding the Final Maturity Date, with respect to Conversion Notices received during the period beginning 10 Trading Days preceding the Final Maturity Date and ending one Trading Day preceding the Final Maturity Date (whether or not the Company has irrevocably elected Net Share Settlement);

(c) beginning on the Trading Day following the Company’s receipt of a Conversion Notice, if the Company has elected Net Share Settlement; provided, however, that if the Company has elected Net Share Settlement and the Company receives a Conversion Notice during the period beginning 10 Trading Days preceding the Final Maturity Date and ending one Trading Day preceding the Final Maturity Date, the Cash Settlement Averaging Period for such Securities shall end on the second Trading Day preceding the Final Maturity Date; and

(d) beginning on the Trading Day following the final Trading Day of the Conversion Retraction Period, in all other cases.

“CERTIFICATED SECURITY” means a Security that is in substantially the form attached hereto as Exhibit A and that does not include the information or the schedule called for by footnotes 1 and 4 thereof.

“CLOSING SALE PRICE” of the Common Stock on any Trading Day means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if there is more than one bid or ask price, the average of the average bid and the average ask prices) on such Trading Day as reported in composite transactions for the AMEX or, if the Common Stock is not listed on the AMEX, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, as reported by the National Association of Securities Dealers Automated Quotation system (“Nasdaq”) or, if the Common Stock is not quoted on Nasdaq, on the principal other market on which such Common Stock is then traded. In the absence of a quotation, the Closing Sale Price shall be such price as the Company shall reasonably determine as most accurately reflecting the price that a fully informed buyer, acting

on his own accord, would pay to a fully informed seller, acting on his own accord in an arms-length transaction, for a share of such Common Stock.

“COMMON STOCK” means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 7.11, however, shares issuable on conversion of Securities shall include only shares of the class designated as Common Stock of the Company, par value \$0.003 per share, at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company and which are not subject to redemption by the Company; provided, however, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“COMPANY” means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Company.

“CONVERSION PRICE” means, at any time, an amount equal to \$1,000 divided by the Conversion Rate in effect at such time.

“CONVERSION RATE” means initially 28.2326 shares of Common Stock per \$1,000 principal amount of Securities, subject to adjustment as set forth herein.

“CORPORATE TRUST OFFICE” means the office of the Trustee at which at any time the trust created by this Indenture shall be principally administered, which office at the date of the execution of this Indenture is located at The Bank of New York, Corporate Trust Division, 101 Barclay Street, Floor 8W, New York, New York 10286, or such other office as the Trustee may designate by written notice to the Company.

“COUPON MAKE-WHOLE PAYMENT” means, with respect to each \$1,000 principal amount of Securities, a payment in cash equal to the present value of all remaining scheduled payments of interest on the Securities to be redeemed (not including any portion of the payments of Interest accrued as of the Redemption Date, except as provided in the second sentence of Section 3.1(b) hereof) through August 1, 2012. The present value of the remaining interest payments will be computed using a discount rate equal to the Treasury Yield plus 50 basis points.

“DEFAULT” or “DEFAULT” means, when used with respect to the Securities, any event which is or, after notice or passage of time or both, would be an Event of Default.

“EXCHANGE ACT” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

“EXISTING RIGHTS PLAN” means the Rights Agreement, dated as of October 14, 2004, between the Company and U.S. Stock Transfer Corp., as amended by the First Amendment to Rights Agreement, dated as of January 24, 2005, between the Company and U.S. Stock Transfer Corp., as the same may be amended from time to time.

“FINAL MATURITY DATE” means August 1, 2012.

“GAAP” means generally accepted accounting principles in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession in the United States, which are in effect from time to time and consistently applied.

“GLOBAL SECURITY” means a permanent Global Security that is in substantially the form attached hereto as Exhibit A and that includes the information and schedule called for by footnotes 1 and 5 thereof and which is deposited with the Depository or its custodian and registered in the name of the Depository or its nominee.

“GUARANTEE” means, as applied to any obligation, (1) a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner, of any part or all of such obligation and (2) an agreement, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment or performance (or payment of damages in the event of non-performance) of all or any part of such obligation, including, without limiting the foregoing, the payment of amounts drawn down by letters of credit. A guarantee shall include, without limitation, any agreement to maintain or preserve any other Person’s financial condition or to cause any other Person to achieve certain levels of operating results.

“HOLDER” or “SECURITYHOLDER” means the person in whose name a Security is registered on the Registrar’s books.

“INDENTURE” means this Indenture as amended or supplemented from time to time pursuant to the terms of this Indenture, including the provisions of the TIA that are explicitly incorporated in this Indenture by reference to the TIA.

“INITIAL PURCHASER” means Credit Suisse First Boston LLC.

“INTEREST PAYMENT DATE” has the meaning set forth in the Securities.

“INTEREST PAYMENT RECORD DATE” has the meaning set forth in the Securities.

“NET SHARE SETTLEMENT” means the irrevocable election of the Company to settle the Conversion Obligation in accordance with the provisions of Section 7.13(b) hereof.

“OFFERING CIRCULAR” means the Confidential Offering Circular dated July 22, 2005, relating to the Securities.

“OFFICER” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, Assistant Secretary or any Vice President of such Person.

“OFFICER’S CERTIFICATE” means a certificate signed by at least one Officer of the Company; provided, however, that for purposes of Section 7.11 and Section 9.3, “Officer’s Certificate” means a certificate signed by the principal executive officer, principal financial officer or principal accounting officer of the Company.

“OPINION OF COUNSEL” means a written opinion from legal counsel. The counsel may be an employee of or counsel to the Company who is reasonably satisfactory to the Trustee.

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

“PURCHASE AGREEMENT” means that certain Purchase Agreement, dated July 22, 2005, between the Company and the Initial Purchaser.

“REDEMPTION DATE” when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture.

“REGISTRATION RIGHTS AGREEMENT” means the Registration Rights Agreement, dated as of July 27, 2005, between the Company and the Initial Purchaser.

“RESTRICTED CERTIFICATED SECURITY” means a Certificated Security that is a Restricted Security.

“RESTRICTED GLOBAL SECURITY” means a Global Security that is a Restricted Security.

“RESTRICTED SECURITY” means a Security required to bear the Restricted Legend called for by footnote 2 to the form of Security set forth in Exhibit A of this Indenture.

“RULE 144” means Rule 144 under the Securities Act or any successor to such Rule, as it may be amended from time to time.

“RULE 144A” means Rule 144A under the Securities Act or any successor to such Rule, as it may be amended from time to time.

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

“SECURITY” or “SECURITIES” means the Company’s 2.25% Convertible Senior Notes due 2012, as amended or supplemented from time to time pursuant to the terms of this Indenture, that are issued under this Indenture.

“SECURITIES ACT” means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

“SECURITIES CUSTODIAN” means the Trustee, as custodian with respect to the Global Securities, or any successor thereto.

“SIGNIFICANT SUBSIDIARY” means any of the Subsidiaries of the Company which has: (i) consolidated assets or in which the Company and its other Subsidiaries have investments equal to or greater than 10% of the Company’s total consolidated assets; or (ii) consolidated gross revenue equal to or greater than 10% of the Company’s consolidated gross revenue.

“SUBSIDIARY” means, in respect of any Person, any corporation, association, partnership or other business entity of which more than 50% of the outstanding Voting Stock (as defined in Section 5.1) or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof, or persons performing similar functions, is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“SUBSIDIARY GUARANTOR” means at any time each Subsidiary that has become a Subsidiary Guarantor pursuant to Section 8.1 of this Indenture, in each case so long as it remains a Subsidiary Guarantor.

“TIA” means the United States Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder as in effect on the date of this Indenture and except to the extent any amendment to the Trust Indenture Act expressly provides for application of the Trust Indenture Act as in effect on another date.

“TRADING DAY” means a day during which trading in securities generally occurs on the AMEX or, if the Common Stock is not listed on the AMEX, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the Nasdaq or, if the Common Stock is not quoted on Nasdaq, on the principal other market on which such Common Stock is then traded.

“TREASURY YIELD” means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any publicly available source for similar market data)) most nearly equal to the then remaining term to August 1, 2012; *provided, however*, that if the then remaining term to August 1, 2012 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Yield shall be obtained by linear interpolation

(calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the then remaining term to August 1, 2012 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

“TRUSTEE” means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean such successor Trustee.

“TRUST OFFICER” means, with respect to the Trustee, any officer within the Corporate Trust Division – Corporate Finance Unit (or any successor division or unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this indenture, and for the purposes of Section 12.1(b)(ii) and the second sentence of Section 12.17, any other officer of the Trustee to whom any corporate trust such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“UNRESTRICTED CERTIFICATED SECURITY” means a Certificated Security that is not a Restricted Security.

“UNRESTRICTED GLOBAL SECURITY” means a Global Security that is not a Restricted Security.

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

The “VOLUME-WEIGHTED AVERAGE PRICE,” on any Trading Day, means the volume-weighted average price for the Common Stock on the AMEX, during the period beginning at 9:30:01 a.m., New York City time (or such other time as is the official open of trading at the AMEX) and ending at 4:00:00 p.m., New York City time (or such other time as is the official close of trading at the AMEX), as reported by Bloomberg Financial Services through its “Volume at Price” (LNG A [Equity] VAP [Go]) functions (or any successor function, or if there is no such function or such successor function, then as calculated by a nationally recognized investment bank). The volume-weighted average price shall be rounded to the nearest whole cent.

Section 1.2 Other Definitions

<u>TERM</u>	<u>SECTION</u>
“Additional Premium”	6.1(a)
“Additional Premium Table”	6.1(b)
“Agent Members”	2.1(d)
“Aggregate Amount”	7.6(e)
“Bankruptcy Law”	11.1
“Beneficial Owner”	5.1(a)
“Capital Stock”	7.6(c)

<u>TERM</u>	<u>SECTION</u>
“Cash Amount”	7.13(a)
“Company Order”	2.2(d)
“Continuing Directors”	7.6(c)
“Conversion Agent”	2.3
“Conversion Date”	7.2(a)
“Conversion Notice”	7.2(a)
“Conversion Obligation”	7.13(a)
“Conversion Retraction Period”	7.13(a)
“Current Market Price”	7.6(f)
“Custodian”	11.1
“Depository”	2.1(b)
“Effective Date”	6.1(b)
“Effective Notice Date”	6.1(a)
“Event of Default”	11.1
“‘ex’ date”	7.6(f)
“Existing Shareholders”	5.1(a)
“Expiration Date”	7.6(e)
“Expiration Time”	7.6(e)
“Fundamental Change”	5.1(a)
“Fundamental Change Company Notice”	5.1(a)(11)
“Fundamental Change Purchase Date”	5.1(a)
“Fundamental Change Purchase Notice”	5.1(c)
“Fundamental Change Purchase Price”	5.1(a)
“Legal Holiday”	16.7
“Make-Whole Premium”	6.1(b)
“Maximum Conversion Rate”	7.6(d)
“Nasdaq”	1.1
“Notice of Default”	11.1
“Paying Agent”	2.3
“Purchased Shares”	7.6(e)
“QIB” or “QIBs”	2.1(b)
“Redemption Price”	3.1
“Register”	2.3
“Registrar”	2.3
“Restricted Legend”	2.12(f)
“Settlement Notice Period”	7.13(a)
“Significant Entity”	11.1
“Stock Price”	6.1(b)
“Stock Price Cap”	6.1(b)
“Stock Price Threshold”	6.1(b)
“Underlying Shares”	7.6(b)

Section 1.3 Trust Indenture Act Provisions

Whenever this Indenture refers to a provision of the TIA, that provision is incorporated by reference in and made a part of this Indenture. The Indenture shall also include those provisions of the TIA required to be included herein by the provisions of the TIA. The following TIA terms used in this Indenture have the following meanings:

“COMMISSION” means the SEC.

“INDENTURE SECURITIES” means the Securities;

“INDENTURE SECURITY HOLDER” means a Securityholder;

“INDENTURE TO BE QUALIFIED” means this Indenture;

“INDENTURE TRUSTEE” or “INSTITUTIONAL TRUSTEE” means the Trustee; and

“OBLIGOR” on the indenture securities means the Company and any successor obligor on the Securities.

All other terms used in this Indenture that are defined in the TIA, defined by TIA reference to another statute or defined by any SEC rule and not otherwise defined herein have the meanings assigned to them therein.

Section 1.4 Rules of Construction

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it herein;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) words in the singular include the plural, and words in the plural include the singular;
- (d) provisions apply to successive events and transactions;
- (e) the term “merger” includes a statutory share exchange and the term “merged” has a correlative meaning;
- (f) the masculine gender includes the feminine and the neuter;
- (g) references to agreements and other instruments include subsequent amendments thereto;
- (h) references to “interest” include Additional Interest;

(i) herein,” “hereof,” “hereunder,” hereinafter” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(j) unless context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or Section, as the case may be, of this Indenture.

ARTICLE 2
THE SECURITIES

Section 2.1 Form and Dating

(a) The Securities and the corresponding Trustee’s certificate of authentication shall be substantially in the respective forms set forth in Exhibit A, which Exhibit is incorporated in and made part of this Indenture. The Securities may have notations, legends or endorsements required by law, exchange rule, Applicable Procedures or usage. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication.

The terms and provisions contained in the Securities shall constitute, and are hereby expressly made, a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby; provided, however, to the extent permitted by applicable law, if any provision of any Security conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) Restricted Global Securities. All of the Securities are initially being resold by the Initial Purchaser to qualified institutional buyers as defined in Rule 144A (collectively, “QIBs” or individually, each a “QIB”) in reliance on Rule 144A and shall be issued initially in the form of one or more Restricted Global Securities, which shall be deposited on behalf of the purchasers of the Securities represented thereby with the Securities Custodian, as custodian for the depository, The Depository Trust Company (such depository, or any successor thereto, being hereinafter referred to as the “DEPOSITARY”), and registered in the name of its nominee, Cede & Co., or as otherwise instructed by the Depository, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Restricted Global Securities may from time to time be increased or decreased by adjustments made on the records of the Securities Custodian and the Depository as hereinafter provided, subject in each case to compliance with the Applicable Procedures and the provisions of this Indenture.

(c) Global Securities In General. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, purchases or conversions of such Securities, in each case in accordance with this Indenture. Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or

decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof, or otherwise in accordance with this Indenture, and shall be made on the records of the Trustee and the Depository.

The Company shall issue and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver in accordance with Section 2.2, initially one or more Global Securities that (i) shall be registered in the name of Cede & Co. or as otherwise instructed by the Depository, (ii) shall be delivered by the Trustee to the Depository or to the Securities Custodian pursuant to the Depository's instructions and (iii) shall bear legends required for Global Securities as set forth in Exhibit A hereto.

(d) Book Entry Provisions. Members of, or participants in, the Depository ("AGENT MEMBERS") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository or under the Global Security, and the Depository (including, for this purpose, its nominee) may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (A) prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or such nominee, as the case may be, or (B) impair, as between the Depository and its Agent Members, the Applicable Procedures or the operation of customary practices governing the exercise of the rights of a Holder of any Security.

None of the Company, the Trustee, the Registrar, any Paying Agent or any agent of any of them shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Securities, for maintaining, supervising or reviewing any records relating to such beneficial owner interests, or for any acts or omissions of a Depository or for any transactions between a Depository and any beneficial owner or between or among beneficial owners. No owner of a beneficial interest in the Securities shall have any rights under this Indenture, and the Depository or its nominee, if any, shall be deemed and treated by the Company, the Trustee, the Registrar, any Paying Agent or any agent of any of them as the absolute owner and holder of such Securities for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, the Registrar, any Paying Agent or any agent of any of them from giving effect to any written certification, proxy or other authorization furnished by a Depository, or any of its members and any other Person on whose behalf such member may act, the operation of customary practices of such Persons governing the exercise of the rights of a beneficial owner of any Securities.

(e) Certificated Securities. Certificated Securities will be issued only under the circumstances provided in Section 2.12(a)(i).

Section 2.2 Execution and Authentication

(a) A duly authorized Officer of the Company shall sign the Securities for the Company by manual or facsimile signature. Typographic and other minor errors or defects in

any such facsimile signature shall not affect the validity or enforceability of any Security that has been authenticated and delivered by the Trustee.

(b) If an Officer of the Company whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

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

(d) The Trustee shall authenticate and make available for delivery Securities for original issue in the aggregate principal amount of up to \$325,000,000 upon receipt of a written order or orders of the Company signed by an Officer of the Company (a "COMPANY ORDER"). The aggregate principal amount of Securities outstanding at any time may not exceed \$325,000,000 except as provided in Section 2.7.

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

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

Section 2.3 Registrar, Paying Agent and Conversion Agent

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange ("REGISTRAR"), an office or agency in the Borough of Manhattan, the City of New York, where Securities may be presented for redemption, purchase or payment ("PAYING AGENT"), an office or agency where Securities may be presented for conversion ("CONVERSION AGENT") and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Registrar shall keep a register of the Securities ("REGISTER") and of their transfer and exchange.

The Company may have one or more co-registrars, one or more additional paying agents, and one or more additional conversion agents. The term "Registrar" includes any co-registrar, including any named pursuant to Section 9.6. The term "Paying Agent" includes any additional paying agent, including any named pursuant to Section 9.6. The term "Conversion Agent" includes any additional conversion agent, including any named pursuant to Section 9.6.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent,

or Conversion Agent or agent for service of notices and demands in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent.

The Company hereby initially appoints the Trustee as Registrar, Paying Agent and Conversion Agent in connection with the Securities.

Section 2.4 Paying Agent to Hold Money and Securities in Trust

Prior to 1:00 p.m., New York City time, on each due date of payments in respect of, or delivery of Common Stock, cash or other consideration, or any combination thereof, as applicable and as provided herein, upon conversion of, any Security, the Company shall deposit with the Paying Agent cash (in immediately available funds if deposited on the due date) and/or with the Conversion Agent such number of shares of Common Stock and/or other consideration sufficient to make such payments or deliveries when so becoming due. The Company shall require each Paying Agent or Conversion Agent, as applicable (other than the Trustee), to agree in writing that such Agent shall hold in trust for the benefit of Securityholders or the Trustee all cash, Common Stock and/or other consideration, as applicable, held by such Agent for the making of payments or deliveries in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment or delivery. If the Company or an Affiliate of the Company acts as Paying Agent or Conversion Agent, as applicable, it shall segregate the cash, Common Stock and other consideration, as applicable, held by it as Paying Agent or Conversion Agent, as applicable, and hold it as a separate trust fund.

The Company at any time may require a Paying Agent or Conversion Agent, as applicable, to pay all cash, Common Stock or other consideration, as applicable, held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to the Paying Agent or the Conversion Agent, as applicable, require such Paying Agent or Conversion Agent, as applicable, to pay forthwith to the Trustee all cash, Common Stock or other consideration, as applicable, so held in trust by such Paying Agent or Conversion Agent. Upon doing so, the Paying Agent or the Conversion Agent, as applicable, shall have no further liability for such cash, Common Stock or other consideration, as applicable.

Section 2.5 Securityholder Lists

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee on or before each Interest Payment Date, and at such other times as the Trustee may request in writing, a list of the names and addresses of the Securityholders in such form and as of such date as the Trustee may reasonably request .

Section 2.6 Transfer and Exchange

(a) Subject to compliance with any applicable additional requirements contained in Section 2.12, when a Security is presented to a Registrar with a request to register a transfer thereof or to exchange such Security for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as

requested; provided, however, that every Security presented or surrendered for registration of transfer or exchange shall, if such Security is a Certificated Security, be duly endorsed or accompanied by an assignment form, in the form included in Exhibit A attached hereto and, if applicable, a transfer certificate, in the form included in Exhibit B attached hereto, and in form reasonably satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Security for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.3, the Company shall execute and the Trustee shall authenticate Securities of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto, other than exchanges pursuant to Section 2.10, Section 13.5, Article 3, Article 5 or Article 7, in each case, not involving any transfer.

Neither the Company, any Registrar nor the Trustee shall be required to exchange or register a transfer of (i) any Securities for a period of 15 days preceding any mailing of a notice of Securities to be redeemed, (ii) any Securities or portions thereof selected or called for redemption (except, in the case of redemption of a Security in part, the portion thereof not to be redeemed) or (iii) any Securities or portions thereof in respect of which a Fundamental Change Purchase Notice has been delivered and not validly withdrawn by the Holder thereof (except, in the case of the purchase of a Security in part, the portion thereof not to be purchased).

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

(b) Any Registrar appointed pursuant to Section 2.3 or Section 9.6 hereof shall provide to the Trustee such information as the Trustee may reasonably request in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Security) other than to require delivery of such opinions of counsel, certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture (including if so requested by the Company exercising a right to require the delivery of such items), and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.7 Replacement Securities

If (a) any mutilated security is surrendered to the Company, a Registrar or the Trustee, or (b) the Company, the Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and, in either case, there is delivered to the Company, the Registrar and the Trustee such security or indemnity as shall be reasonably

required by them to save each of them harmless, then, in the absence of notice to the Company, such Registrar or the Trustee that such Security has been acquired by a bona fide or protected purchaser, the Company shall issue, and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be redeemed pursuant to Article 3 or purchased by the Company pursuant to Article 5, the Company in its discretion may, instead of issuing a new Security, pay, redeem or purchase such Security, as the case may be, in accordance herewith.

Upon the issuance of any new Securities under this Section 2.7, the Company may require the payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued and outstanding hereunder.

The provisions of this Section 2.7 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.8 Outstanding Securities

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those paid, redeemed or repurchased pursuant to Section 2.7, those delivered to it for cancellation and those described in this Section 2.8 as not outstanding.

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives, subsequent to the new Security's authentication, proof satisfactory to the Company that the replaced Security is held by a bona fide or protected purchaser.

If the Paying Agent holds, in accordance with the terms of this Indenture, prior to 1:00 p.m., New York City time, on the Final Maturity Date or a Redemption Date or on a Fundamental Change Purchase Date, as the case may be, cash sufficient to pay all Securities then payable, then on and after such Final Maturity Date, Redemption Date or Fundamental Change Purchase Date, as the case may be, such Securities shall cease to be outstanding and interest on such Securities shall cease to accrue.

If a Security is converted in accordance with Article 7, then on the Conversion Date, such Security shall cease to be outstanding and interest on such Security shall cease to

accrue, unless there shall be a default in the delivery of the consideration payable hereunder upon such conversion.

Subject to the restrictions contained in Section 2.9, a Security does not cease to be outstanding solely because the Company or an Affiliate of the Company holds the Security.

Section 2.9 Treasury Securities

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

Section 2.10 Temporary Securities

Until definitive Securities are ready for delivery, the Company may prepare and execute, and, upon receipt of a Company Order, the Trustee shall authenticate and deliver, temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company with the consent of the Trustee reasonably considers appropriate for temporary Securities. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.3, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.11 Cancellation

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee or its agent any Securities surrendered to them for transfer, exchange, redemption, payment or conversion. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Securities surrendered for transfer, exchange, redemption, payment, conversion or cancellation and shall deliver the canceled Securities to the Company. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 7.

All Securities that are redeemed or purchased pursuant to Articles 3 or 5 or otherwise acquired by the Company shall be delivered to the Trustee for cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a repurchase or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.12 Legend: Additional Transfer and Exchange Requirements

(a) Transfer and Exchange of Global Securities

(i) Certificated Securities shall be issued in exchange for interests in the Global Securities only (x) if the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Securities or if it at any time ceases to be a “clearing agency” registered under the Exchange Act, if so required by applicable law or regulation, and a successor Depositary is not appointed by the Company within 90 days of such notice, (y) if an Event of Default has occurred and is continuing, or (z) by the Company in accordance with the Applicable Procedures. In any such case, the Company shall execute, and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver Certificated Securities in an aggregate principal amount equal to the principal amount of such Global Securities in exchange therefor. Only Restricted Certificated Securities shall be issued in exchange for beneficial interests in Restricted Global Securities, and only Unrestricted Certificated Securities shall be issued in exchange for beneficial interests in Unrestricted Global Securities. Certificated Securities issued in exchange for beneficial interests in Global Securities shall be registered in such names and shall be in such authorized denominations as the Depositary, pursuant to instructions from its Agent Members or otherwise in accordance with the Applicable Procedures, shall instruct the Trustee. The Trustee shall deliver or cause to be delivered such Certificated Securities to the Persons in whose name such Securities are so registered. Such exchange shall be effected in accordance with the Applicable Procedures. In the event that the Certificated Notes are not issued to each such beneficial owner promptly after the Registrar has received a request from the Depositary to issue such Certificated Securities, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 11.6 or 11.7 hereof, the right of any beneficial holder of Securities to pursue such remedy with respect to the portion of the Global Security that represents such Beneficial Owner’s Securities as if such Certificated Notes had been issued.

(ii) Notwithstanding any other provisions of this Indenture other than the provisions set forth in Section 2.12(a)(i), a Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(b) Transfer and Exchange of Certificated Securities In the event that Certificated Securities are issued in exchange for beneficial interests in Global Securities in

accordance with Section 2.12(a)(i), and, on or after such event, Certificated Securities are presented by a Holder to the Registrar with a request:

- (x) to register the transfer of the Certificated Securities to a person who will take delivery thereof in the form of Certificated Securities only; or
- (y) to exchange such Certificated Securities for an equal principal amount of Certificated Securities of other authorized denominations,

such Registrar shall register the transfer or make the exchange as requested; provided, however, that the Certificated Securities presented or surrendered for register of transfer or exchange:

- (i) shall be duly endorsed or accompanied by a written instrument of transfer in accordance with the proviso to the first sentence of Section 2.6(a); and
- (ii) in the case of a Restricted Certificated Security, such request shall be accompanied by the following additional information and documents, as applicable:

(1) if such Restricted Certificated Security is being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, or such Restricted Certificated Security is being transferred to the Company or a Subsidiary of the Company, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B);

(2) if such Restricted Certificated Security is being transferred to a person the Holder reasonably believes is a QIB in accordance with Rule 144A, or pursuant to an effective registration statement under the Securities Act or in compliance with Rule 904 of Regulation S under the Securities Act, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B);

(3) if such Restricted Certificated Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 or pursuant to and in compliance with another exemption from the registration requirements under the Securities Act, a certification to that effect from the Holder (in substantially the form set forth in Exhibit B) and, if the Company or the Registrar so requests, an opinion of counsel, certificates and other information reasonably acceptable to the Company and the Registrar to the effect that such transfer does not require registration under the Securities Act.

(c) Transfer of a Beneficial Interest in a Restricted Global Security for a Beneficial Interest in an Unrestricted Global Security Any person having a beneficial interest in a Restricted Global Security may upon request, subject to the Applicable Procedures, transfer such beneficial interest to a Person who is required or permitted to take delivery thereof in the form of an Unrestricted Global Security. Upon receipt by the Trustee of written instructions, or such other form of instructions as is customary for the Depositary, from the Depositary or its nominee on behalf of any Person having a beneficial interest in a Restricted Global Security and the following additional information and documents in such form as is customary for the

Depository from the Depository or its nominee on behalf of the Person having such beneficial interest in the Restricted Global Security (all of which may be submitted by facsimile or electronically):

(i) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certification to that effect from the Holder (in substantially the form set forth in Exhibit B); or

(ii) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certification to that effect from the Holder (in substantially the form set forth in Exhibit B) and, if the Company or the Trustee so requests, an opinion of counsel, certificates and order information reasonably acceptable to the Company and the Registrar to the effect that such transfer does not require registration under the Securities Act,

the Registrar shall reduce or cause to be reduced the aggregate principal amount of the Restricted Global Security by the appropriate principal amount and shall increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security by a like principal amount. Such transfer shall otherwise be effected in accordance with the Applicable Procedures. If no Unrestricted Global Security is then outstanding, the Company shall execute and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver an Unrestricted Global Security.

(d) Transfer of a Beneficial Interest in an Unrestricted Global Security for a Beneficial Interest in a Restricted Global Security Any person having a beneficial interest in an Unrestricted Global Security may upon request, subject to the Applicable Procedures, transfer such beneficial interest to a person who is required or permitted to take delivery thereof in the form of a Restricted Global Security. Upon receipt by the Trustee of written instructions, or such other form of instructions as is customary for the Depository, from the Depository or its nominee on behalf of any person having a beneficial interest in an Unrestricted Global Security and the following additional information and documents in such form as is customary for the Depository, from the Depository or its nominee on behalf of the person having such beneficial interest in the Unrestricted Global Security (all of which may be submitted by facsimile or electronically):

(i) a certification from the Holder (in substantially the form set forth in Exhibit B) to the effect that such beneficial interest is being transferred to a person that the transferor reasonably believes is a QIB in accordance with Rule 144A;

(ii) a certification from the Holder (in substantially the form set forth in Exhibit B) to the effect that such beneficial interest is being transferred in compliance with Rule 904 of Regulation S under the Securities Act;

(iii) if such beneficial interest in such Unrestricted Global Security is being transferred in compliance with any other exemption from registration under the Securities Act, certification to that effect from such Holder (in substantially the form set forth in Exhibit B) and, if the Company or the Trustee so requests, an opinion of counsel, certificates and other information reasonably acceptable to the Company and the

Registrar to the effect that such transfer does not require registration under the Securities Act; or

(iv) a certification (in substantially the form set forth in Exhibit B) to the effect that such beneficial interest is being transferred to the Company or a Subsidiary of the Company,

the Registrar shall reduce or cause to be reduced the aggregate principal amount of the Unrestricted Global Security by the appropriate principal amount and shall increase or cause to be increased the aggregate principal amount of the Restricted Global Security by a like principal amount. Such transfer shall otherwise be effected in accordance with the Applicable Procedures. If no Restricted Global Security is then outstanding, the Company shall execute and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver a Restricted Global Security.

(c) Transfers of Certificated Securities for Beneficial Interest in Global Securities In the event that Certificated Securities are issued in exchange for beneficial interests in Global Securities and, thereafter, the events or conditions specified in Section 2.12(a)(i) which required such exchange shall cease to exist, the Company shall mail notice to the Trustee and to the Holders (i) stating that Holders may exchange Certificated Securities for interests in Global Securities by complying with the procedures set forth in this Indenture and (ii) briefly describing such procedures and the events or circumstances requiring that such notice be given. Thereafter, if Certificated Securities are presented by a Holder to a Registrar with a request:

(x) to register the transfer of such Certificated Securities to a Person who will take delivery thereof in the form of a beneficial interest in a Global Security, which request shall specify whether such Global Security will be a Restricted Global Security or an Unrestricted Global Security, or

(y) to exchange such Certificated Securities for an equal principal amount of beneficial interests in a Global Security, which beneficial interests will be owned by the Holder transferring such Certificated Securities (provided that in the case of such an exchange, Restricted Certificated Securities may be exchanged only for Restricted Global Securities and Unrestricted Certificated Securities may be exchanged only for Unrestricted Global Securities),

the Registrar shall register the transfer or make the exchange as requested by canceling such Certificated Security and causing the aggregate principal amount of the applicable Global Security to be increased accordingly and, if no such Global Security is then outstanding, the Company shall issue and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly) authenticate and deliver a new Global Security; provided, however, that the Certificated Securities presented or surrendered for registration of transfer or exchange:

(i) shall be duly endorsed or accompanied by a written instrument of transfer in accordance with the proviso to Section 2.6(a);

(ii) in the case of a Restricted Certificated Security to be transferred for a beneficial interest in an Unrestricted Global Security, shall be accompanied by the following additional information and documents, as applicable:

(1) if such Restricted Certificated Security is being transferred pursuant to an effective registration statement under the Securities Act, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B); or

(2) if such Restricted Certificated Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B) and, if the Company or the Registrar so requests, an opinion of counsel, certificates and other information reasonably acceptable to the Company and the Trustee to the effect that such transfer does not require registration under of the Securities Act;

(iii) in the case of a Restricted Certificated Security to be transferred to another person for a beneficial interest in a Restricted Global Security, shall be accompanied by the following information and documents, as applicable:

(1) if such Restricted Certificated Security is being transferred to a person the Holder reasonably believes is a QIB in accordance with Rule 144A, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B); or

(2) if such Restricted Certificated Security is being transferred in compliance with Rule 904 of Regulation S under the Securities Act, certification to that effect from such Holder (in substantially the form set forth in Exhibit B);

(iv) in the case of an Unrestricted Certificated Security to be transferred or exchanged for a beneficial interest in an Unrestricted Global Security, or in the case of a Restricted Certificated Security to be exchanged (and not transferred) for a beneficial interest in a Restricted Global Security, such request need not be accompanied by any additional information or documents; and

(v) in the case of an Unrestricted Certificated Security to be transferred or exchanged for a beneficial interest in a Restricted Global Security, such request shall be accompanied by the following additional information and documents, as applicable:

(1) if such Unrestricted Certificated Security is being transferred to a person the Holder reasonably believes is a QIB (which, in the case of an exchange, shall be such Holder) in accordance with Rule 144A, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B);

(2) if such Unrestricted Certificated Security is being transferred in compliance with Rule 904 of Regulation S under the Securities Act, certification to that effect from such Holder (in substantially the form set forth in Exhibit B);

(3) if such Unrestricted Certificated Security is being transferred in compliance with any other exemption from registration under the Securities Act, certification to that effect from such Holder (in substantially the form set forth in Exhibit B) and, if the Company or the Trustee so requests, an opinion of counsel, certificates and other information reasonably acceptable to the Company and the Registrar to the effect that such transfer does not require registration under the Securities Act; or

(4) if such Unrestricted Certificated Security is being transferred to the Company or a Subsidiary of the Company, a certification to that effect from such Holder (in substantially the form set forth in Exhibit B).

(f) Legends.

(i) Except as permitted by the following paragraphs (ii), (iii) and (iv), each Global Security and Certificated Security (and all Securities issued in exchange therefor or upon registration of transfer or replacement thereof) shall bear a legend in substantially the form called for by footnote 2 to Exhibit A attached hereto (the "RESTRICTED LEGEND"), for so long as it is required by this Indenture to bear such legend.

(ii) Upon any sale or transfer of a Restricted Security (x) after the expiration of the holding period applicable to sales of the Securities under Rule 144(k) of the Securities Act, (y) pursuant to Rule 144 or (z) pursuant to an effective registration statement under the Securities Act:

(1) in the case of any Restricted Certificated Security, each Registrar shall permit the Holder thereof to transfer such Restricted Certificated Security to a transferee who shall take such Security in the form of an Unrestricted Certificated Security or (under the circumstances described in Section 2.12(e)) an Unrestricted Global Security, and in each case shall rescind any restriction on the transfer of such Security; provided, however, that the Holder of such Restricted Certificated Security shall, in connection with such exchange or transfer, comply with the other applicable provisions of this Section 2.12; and

(2) in the case of a Restricted Global Security, each Registrar shall permit the Holder thereof to transfer such Restricted Global Security to a transferee who shall take such Security in the form of an Unrestricted Global Security and shall rescind any restriction on transfer of such Security; provided, however, that such Unrestricted Global Security shall continue to be subject to the provisions of Section 2.12(a)(ii); and provided further, however, that the owner of such beneficial interest shall, in connection with such transfer, comply with the other applicable provisions of this Section 2.12.

(iii) Upon the exchange, registration of transfer or replacement of Securities not bearing the Restricted Legend, the Company shall issue, and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver, Securities that do not bear such Restricted Legend.

(iv) After the expiration of the holding period pursuant to Rule 144(k) of the Securities Act, the Company may with the consent of the Holder of a Restricted Global Security or a Restricted Certificated Security, remove any restriction of transfer on such Security, and the Company shall issue, and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver Securities that do not bear the Restricted Legend.

(v) Until the expiration of the holding period applicable to sales of the Securities under Rule 144(k) of the Securities Act or a transfer pursuant to Rule 144 or pursuant to an effective registration statement under the Securities Act, the shares of Common Stock issued upon conversion of the Securities shall bear a legend substantially to the same effect as the Restricted Legend.

(g) Transfers to the Company. Nothing contained in this Indenture or in the Securities shall prohibit the sale or other transfer of any Securities (including beneficial interests in Global Securities) to the Company or any of its Subsidiaries.

Section 2.13 CUSIP Numbers

The Company in issuing the Securities may use one or more “CUSIP,” “ISIN” or other similar numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP,” “ISIN” or other similar numbers in notices of redemption or purchase as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption or purchase and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption or purchase 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,” “ISIN” or other similar numbers.

Section 2.14 Ranking

The obligations of the Company arising under or in connection with this Indenture and every outstanding Security issued under this Indenture from time to time constitutes and shall constitute a senior unsecured general obligation of the Company, ranking equally with existing and future senior unsecured indebtedness of the Company and ranking senior in right of payment to any future indebtedness of the Company that is expressly made subordinate to the Securities by the terms of such indebtedness.

Section 2.15 Persons Deemed Owners

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of, Redemption Price or Fundamental Change Purchase Price, and interest on the Security, for the purpose of receiving Common Stock, cash and, if applicable, any Make-Whole Premium upon conversion and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. The registered Holder of a Global Security may grant

proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

ARTICLE 3
REDEMPTION

Section 3.1 Provisional Redemption of Securities; Notice to Trustee

(a) On or prior to August 1, 2012, the Securities may be redeemed at any time or from time to time at the option of the Company in whole or in part as described below, if (i) in the previous ten Trading Days ending on the Trading Day before the date of the mailing of the redemption notice the Volume-Weighted Average Price of the Common Stock exceeds 150% of the Conversion Price for at least five consecutive Trading Days and (ii) the shelf registration statement covering resales of the Securities and the Common Stock issuable upon conversion of the Securities required to be filed pursuant to the Registration Rights Agreement is effective and available for use and is expected to remain effective and available for use for the 30 days following the Redemption Date, unless registration is no longer required. Upon any redemption pursuant to this Section 3.1, the Company shall provide the notice required by Section 3.3 hereof (which notice may be revoked at any time prior to the time at which the Company or the Trustee, as the case may be, has given such notice to Securityholders) and shall pay a redemption price (the "REDEMPTION PRICE") equal to \$1,000 per \$1,000 principal amount of the Securities being redeemed, plus any accrued and unpaid interest (including Additional Interest, if any) to, but excluding, the date fixed for redemption, payable in cash, plus, if applicable, the Coupon Make-Whole Payment.

(b) The Coupon Make-Whole Payment, if any, shall be paid on all Securities being redeemed by the Company, including any Securities that may have been converted after the date of the notice of redemption and prior to the Redemption Date. The Coupon Make-Whole Payment for such Securities converted shall not be reduced by accrued and unpaid interest.

(c) If a Holder converts the Securities after the Company delivers the notice of redemption and prior to the Redemption Date, the Company shall deliver the Coupon Make-Whole Payment on the same date as it satisfies its Conversion Obligation to such Holder in accordance with Article 7 hereof. If the Company redeems such Holder's Securities, the Company shall deliver the Coupon Make-Whole Payment to such Holder on the Redemption Date.

(d) In the event that the Company elects to redeem the Securities on a Redemption Date that is after any Interest Payment Record Date but on or before the corresponding Interest Payment Date or that results in the conversion of the Securities prior to that Interest Payment Date, the Company shall be required to pay any accrued and unpaid interest to the same Holder to whom the Company pays the principal of such Security regardless of whether such Holder was the registered Holder on the Interest Payment Record Date immediately preceding such Redemption Date and, if the Holder to whom the Company pays the

principal and interest was not the registered Holder on the Interest Payment Record Date, such payment of interest shall be in lieu of payment to the registered Holder on such Interest Payment Record Date.

(e) If the Company elects to redeem Securities pursuant to this Section 3.1 and paragraph 5 of the Securities, it shall notify the Trustee of the Redemption Date and the principal amount of Securities to be redeemed at least 15 days prior to the date notice of the Redemption Date is given to the Holders pursuant to Section 3.3 (unless a shorter notice shall be satisfactory to the Trustee).

Section 3.2 Selection of Securities to be Redeemed

If less than all of the Securities are to be redeemed, unless the Applicable Procedures provide otherwise, the Trustee shall select the Securities to be redeemed. The Trustee shall make the selection by lot, on a pro rata basis or by any other method the Trustee considers fair and appropriate or in accordance with the Applicable Procedures to the extent the Securities are issued as Global Securities. The Trustee shall make the selection within five Business Days after it receives the notice provided for in Section 3.1 from outstanding Securities not previously called for redemption. Securities in denominations of \$1,000 principal amount may only be redeemed in whole. The Trustee may select for redemption portions (equal to \$1,000 principal amount or any integral multiple thereof) of the principal of Securities that have denominations larger than \$1,000 principal amount. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of the Securities to be redeemed.

Securities and portions of Securities that are to be redeemed are convertible by the Holder until 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be taken from the portion selected for redemption. Securities that have been converted subsequent to the Trustee commencing selection of Securities to be redeemed but prior to redemption of such Securities shall be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.3 Notice of Redemption

At least 15 days but not more than 60 days before a Redemption Date, the Company shall mail or cause to be mailed a notice of redemption to each Holder of Securities to be redeemed in accordance with Section 16.2.

The notice shall identify the Securities (including the CUSIP number(s) of the Securities) to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;

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- (3) the then current Conversion Rate;
 - (4) the names and addresses of the Paying Agent and Conversion Agent;
 - (5) that Securities called for redemption must be presented and surrendered to the Paying Agent to collect the Redemption Price;
 - (6) that Holders who wish to convert Securities must surrender such Securities for conversion prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date and must satisfy the other requirements set forth in paragraph 7 of the Securities and Article 7 hereof;
 - (7) that, unless the Company defaults in making the payment of the Redemption Price, interest on Securities called for redemption shall cease accruing on and after the Redemption Date; and
 - (8) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the Redemption Date, upon presentation and surrender of such Security, a new Security or Securities in aggregate principal amount equal to the unredeemed portion thereof shall be issued.

If any of the Securities to be redeemed is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the Applicable Procedures applicable to redemptions.

At the Company's written request, the Trustee shall give the notice of redemption to each Holder in the Company's name and at the Company's expense; provided, however, that the Company makes such request at least three Business Days (unless a shorter period shall be satisfactory to the Trustee) prior to the date by which such notice of redemption must be given to Holders in accordance with this Section 3.3; provided further, however, that the text of the notice of redemption shall be prepared by the Company.

Section 3.4 Effect of Notice of Redemption

Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice, except for Securities that are converted in accordance with the provisions of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price.

Section 3.5 Deposit of Redemption Price

Prior to 1:00 p.m., New York City time, on the applicable Redemption Date, the Company shall deposit with the Paying Agent (or, if the Company or an Affiliate acts as Paying Agent, shall segregate and hold in trust as provided in Section 2.4) an amount of cash (in immediately available funds if deposited on such Redemption Date) sufficient to pay the aggregate Redemption Price of all Securities or portions thereof that are to be redeemed on that Redemption Date, other than Securities or portions thereof called for redemption on that date that

have been delivered by the Company to the Trustee for cancellation or have been delivered by the Holder thereof for conversion.

If the Paying Agent holds, in accordance with the terms hereof, at 1:00 p.m., New York City time, on the applicable Redemption Date, cash sufficient to pay the Redemption Price of all Securities to be redeemed on such date, then, on and after such Redemption Date, such Securities shall cease to be outstanding and interest on such Securities shall cease to accrue, whether or not such Securities are delivered by their Holders to the Paying Agent, and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Redemption Price upon delivery of such Securities by their Holders to the Paying Agent).

Section 3.6 Securities Redeemed in Part

Any Certificated Security that is to be redeemed only in part shall be surrendered at the office of the Paying Agent and promptly after the Redemption Date, the Company shall issue and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver to the Holder of such Security without service charge a new Security or Securities, of such authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered that is not redeemed.

Section 3.7 Repayment to the Company

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.5 exceeds the aggregate Redemption Price of the Securities or portions thereof that the Company is obligated to redeem on the Redemption Date (because of the conversion of Securities pursuant to Article 7 or otherwise) then, promptly after the Redemption Date, the Paying Agent shall return any such excess cash to the Company.

ARTICLE 4
[RESERVED]

ARTICLE 5
PUT OPTION UPON FUNDAMENTAL CHANGE

Section 5.1 Purchase of Securities at Option of the Holder upon a Fundamental Change

(a) In the event a Fundamental Change shall occur at any time when any Securities remain outstanding, the Securities shall be purchased by the Company, at the option of any Holder thereof, in accordance with the provisions of paragraph 6 of the Securities on a date specified by the Company (the "FUNDAMENTAL CHANGE PURCHASE DATE") that is not less than 20 nor more than 45 Business Days after the date the Company mails the Fundamental Change Company Notice pursuant to Section 5.1(b), at a purchase price in cash equal to 100% of

the principal amount of the Securities tendered for purchase, plus accrued and unpaid interest (including Additional Interest, if any) to, but not including, the Fundamental Change Purchase Date (the "FUNDAMENTAL CHANGE PURCHASE PRICE"), subject to satisfaction by or on behalf of any Holder of the requirements set forth in Section 5.1(c).

A "FUNDAMENTAL CHANGE" shall be deemed to have occurred upon the occurrence of any of the following:

(1) any "person" or "group" files a Schedule 13D or Schedule TO, or any successor schedule, form or report under the Exchange Act, disclosing, or the Company otherwise becomes aware, that such person or group is or has become the "beneficial owner," directly or indirectly, of shares of the Company's Voting Stock representing 50% or more of the total voting power of all outstanding classes of the Company's Voting Stock or has the power, directly or indirectly, to elect a majority of the members of the "board of directors" of the Company;

(2) the Company consolidates with, or merges with or into, another Person or the Company sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of the Company's assets, or any Person consolidates with, or merges with or into, the Company, in any such event other than pursuant to a transaction in which the Persons (the "EXISTING SHAREHOLDERS") that "beneficially owned," directly or indirectly, shares of the Company's Voting Stock immediately prior to such transaction beneficially own, directly or indirectly, shares of Voting Stock representing a majority of the total voting power of all outstanding classes of Voting Stock of the surviving or transferee person in substantially the same proportion amongst such Existing Shareholders as such ownership immediately prior to such transaction;

(3) a majority of the members of the "board of directors" of the Company are not Continuing Directors; or

(4) the Company's Common Stock ceases to be listed on a national securities exchange or quoted on The Nasdaq National Market or another established automated over-the-counter trading market in the United States.

Notwithstanding anything to the contrary set forth in this Section 5.1, a merger or consolidation shall be deemed not to constitute a Fundamental Change if at least 90% of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' appraisal rights) in the merger or consolidation constituting the Fundamental Change consists of common stock traded on a national securities exchange or quoted on The Nasdaq National Market (or which shall be so traded or quoted when issued or exchanged in connection with such merger or consolidation) and as a result of such transaction or transactions the Securities become convertible solely into shares of such common stock.

For purposes of this Section 5.1:

(5) "PERSON" and "GROUP" shall have the meanings given to them for purposes of Sections 13(d) and 14(d) of the Exchange Act or any successor provisions, and the term "group" includes any group acting for the purpose of acquiring, holding or

disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, or any successor provision;

(6) a “BENEFICIAL OWNER” shall be determined in accordance with Rule 13d-3 under the Exchange Act, as in effect on the date of this Indenture;

(7) “BENEFICIALLY OWN” and “beneficially owned” have meanings correlative to that of beneficial owner;

(8) “BOARD OF DIRECTORS” means the board of directors or other governing body charged with the ultimate management of any person;

(9) “CONTINUING DIRECTOR” means, as of any date of determination, any member of the Company’s “board of directors” who was a member of such board of directors on the date of this Indenture; or was nominated for election or elected to such board of directors with the approval of: (a) a majority of the Continuing Directors who were members of such board at the time of such nomination or election or (b) a nominating committee, a majority of which committee were Continuing Directors at the time of such nomination or election;

(10) “VOTING STOCK” means any class or classes of Capital Stock or other interests then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of the board of directors, managers or trustees; and

(11) “CAPITAL STOCK” means: (i) in the case of a corporation, corporate stock; (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (iii) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; or (iv) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

(b) Notice of Fundamental Change. Within 10 Business Days after the effective date of each Fundamental Change, the Company shall notify the Trustee of the Fundamental Change Purchase Date and shall mail a written notice of the Fundamental Change (the “FUNDAMENTAL CHANGE COMPANY NOTICE”) to each Holder (and to beneficial owners as required by applicable law) in accordance with Section 16.2. The notice shall include the form of a Fundamental Change Purchase Notice to be completed by the Holder and shall state, as applicable:

(1) the events causing such Fundamental Change and the date of such Fundamental Change;

(2) that the Holder has a right to require the Company to purchase the Holder’s Securities;

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- (3) the date by which the Fundamental Change Purchase Notice must be delivered to the Paying Agent in order for a Holder to exercise the Fundamental Change purchase right;
- (4) the Fundamental Change Purchase Date;
- (5) the Fundamental Change Purchase Price;
- (6) the procedures that the Holder must follow to exercise its Fundamental Change purchase right under this Section 5.1;
- (7) the names and addresses of the Paying Agent and the Conversion Agent;
- (8) that the Securities must be surrendered to the Paying Agent to collect payment of the Fundamental Change Purchase Price;
- (9) that the Fundamental Change Purchase Price for any Security as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn shall be paid promptly following the later of the Fundamental Change Purchase Date and the time of surrender of such Security;
- (10) whether a Make-Whole Premium is payable in accordance herewith on Securities that are converted in connection with such Fundamental Change, and, if so, that the Company shall, in accordance with Section 6.1(e), mail or cause to be mailed a notice, and disseminate a press release, in each case on the date that is the seventh Trading Day after the Effective Notice Date with respect to such Fundamental Change, setting forth the Applicable Stock Price and Make-Whole Premium per \$1,000 principal amount of Securities (including the amount and kind of consideration per \$1,000 principal amount in which such Make-Whole Premium is payable);
- (11) the current Conversion Rate, including any adjustments to the Conversion Rate that resulted from the Fundamental Change;
- (12) that the Securities with respect to which a Fundamental Change Purchase Notice has been given may be converted pursuant to Article 7 of this Indenture only if either (i) the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Indenture or (ii) there shall be a default in the payment of the Fundamental Change Purchase Price;
- (13) the procedures for withdrawing a Fundamental Change Purchase Notice;
- (14) that, unless the Company defaults in making payment of such Fundamental Change Purchase Price, interest on Securities surrendered for purchase by the Company shall cease to accrue on and after the Fundamental Change Purchase Date; and
- (15) the CUSIP number(s) of the Securities.

If any of the Securities are in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the Applicable Procedures applicable to repurchases.

At the Company's request, the Trustee shall give the Fundamental Change Company Notice on behalf of the Company and at the Company's expense; provided, however, that the Company makes such request at least three Business Days (unless a shorter period shall be satisfactory to the Trustee) prior to the date by which such Fundamental Change Company Notice must be given to the Holders in accordance with this Section 5.1(b); provided further, however, that the text of such notice shall be prepared by the Company.

(c) **Fundamental Change Purchase Notice.** A Holder may exercise its right specified in Section 5.1(a) upon delivery of a written notice (which shall be in substantially the form included in Exhibit A hereto and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Applicable Procedures) of the exercise of such rights (a "FUNDAMENTAL CHANGE PURCHASE NOTICE") to a Paying Agent at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Purchase Date. The Fundamental Change Purchase Notice must state:

(1) if Certificated securities are to be delivered, the certificate numbers of the Securities that the Holder shall deliver to be purchased;

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

(3) that such Securities shall be purchased by the Company on the Fundamental Change Purchase Date pursuant to the terms and conditions specified in paragraph 6 of the Securities and in this Indenture.

The delivery of such Security to any Paying Agent (together with all necessary endorsements) at the office of such Paying Agent shall be a condition to the receipt by the Holder of the Fundamental Change Purchase Price; provided, however, that such Fundamental Change Purchase Price shall be paid pursuant to this Section 5.1 only if the Security so delivered to the Paying Agent shall conform in all material respects to the description thereof in the related Fundamental Change Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 5.1, a portion of a Security if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Article 5 that apply to the purchase of all of a Security also apply to the purchase of such a portion of such Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 5.1(c) shall have the right to withdraw such Fundamental Change Purchase Notice at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental

Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 5.2(b).

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

(d) Notwithstanding anything herein to the contrary, in the case of Global Securities, any Fundamental Change Purchase Notice may be delivered or withdrawn, and such Securities may be surrendered or delivered for purchase, in accordance with the Applicable Procedures.

Section 5.2 Effect of Fundamental Change Purchase Notice

(a) Upon receipt by any Paying Agent of the Fundamental Change Purchase Notice specified in Section 5.1(c), the Holder of the Security in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified below) thereafter be entitled to receive the Fundamental Change Purchase Price with respect to such Security. Such Fundamental Change Purchase Price shall be paid to such Holder promptly following the later of (i) the Fundamental Change Purchase Date with respect to such Security (provided such Holder has satisfied the conditions in Section 5.1(c)) and (ii) the time of delivery of such Security to a Paying Agent by the Holder thereof in the manner required by Section 5.1(c). A Security in respect of which a Fundamental Change Purchase Notice has been given by the Holder thereof may not be converted into shares of Common Stock pursuant to Article 7 hereof on or after the date of the delivery of such Fundamental Change Purchase Notice, unless either (i) such Fundamental Change Purchase Notice has first been validly withdrawn in accordance with Section 5.2(b); or (ii) there shall be a default in the payment of the Fundamental Change Purchase Price, provided, that the conversion right with respect to such Security shall terminate at 5:00 p.m., New York City time, on the date such default is cured and such Security is purchased in accordance herewith.

(b) A Fundamental Change Purchase Notice may be withdrawn by any Holder delivering such Fundamental Change Purchase Notice upon delivery of a written notice of withdrawal (which may be delivered by mail, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Applicable Procedures) to a Paying Agent at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Purchase Date, specifying:

- (1) if Certificated Securities are to be withdrawn, the certificate numbers of the Securities in respect of which such notice of withdrawal is being submitted;
- (2) the principal amount of the Securities in respect of which such notice of withdrawal is being submitted, which principal amount must be \$1,000 or an integral multiple thereof; and

(3) the principal amount, if any, of the Securities that remains subject to the original Fundamental Change Purchase Notice and that has been or shall be delivered for purchase by the Company.

Section 5.3 Deposit of Fundamental Change Purchase Price

Prior to 1:00 p.m., New York City time, on the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.4) an amount in cash (in immediately available funds if deposited on such Fundamental Change Purchase Date) sufficient to pay the aggregate Fundamental Change Purchase Price of all the Securities or portions thereof that are to be purchased on that Fundamental Change Purchase Date.

If a Paying Agent holds, in accordance with the terms hereof, at 1:00 p.m., New York City time, on the applicable Fundamental Change Purchase Date, cash sufficient to pay the aggregate Fundamental Change Purchase Price of all Securities for which a Fundamental Change Purchase Notice has been delivered and not validly withdrawn in accordance with Section 5.2(b) of this Indenture, then, on and after such Fundamental Change Purchase Date, such Securities shall cease to be outstanding and interest on such Securities shall cease to accrue, whether or not such Securities are delivered to the Paying Agent, and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Fundamental Change Purchase Price upon delivery of such Securities by their Holders to the Paying Agent).

Section 5.4 Securities Purchased in Part

Any Certificated Security that is to be purchased only in part shall be surrendered at the office of a Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form reasonably satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and promptly after the Fundamental Change Purchase Date, the Company shall issue and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of such authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered that is not purchased.

Section 5.5 Repayment to the Company

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 5.3 exceeds the aggregate Fundamental Change Purchase Price of the Securities or portions thereof that the Company is obligated to purchase on the Fundamental Change Purchase Date, then, promptly after the Fundamental Change Purchase Date, the Paying Agent shall return any such excess cash to the Company.

Section 5.6 Compliance with Securities Laws upon Purchase of Securities

When complying with the provisions of Article 5 hereof (provided that such offer or purchase constitutes an “issuer tender offer” for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), and subject to any exemptions available under applicable law, the Company shall:

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

(b) otherwise comply with all federal and state securities laws so as to permit the rights and obligations in connection with any purchase pursuant to a Fundamental Change to be exercised in the time and in the manner specified therein.

ARTICLE 6
MAKE-WHOLE PREMIUM

Section 6.1 Make-Whole Premium

(a) If a Fundamental Change occurs, the Company shall pay the Make-Whole Premium to Holders of the Securities who convert their Securities on a Conversion Date that falls within a period that (i) begins at the opening of business on the date (the “EFFECTIVE NOTICE DATE”) the Fundamental Change Company Notice with respect to such Fundamental Change is mailed in accordance with Section 5.1(b) and (ii) ends at the close of business on the second Trading Day immediately preceding the Fundamental Change Purchase Date corresponding to such Fundamental Change. The Make-Whole Premium shall be paid to such Holders on such Fundamental Change Purchase Date. The Make-Whole Premium will be in addition to, and not in substitution for, any cash, securities or other assets otherwise due to Holders of Securities upon conversion as provided in this Indenture.

(b) The Make-Whole Premium with respect to a Fundamental Change shall be determined by reference to the Additional Premium Table and is based on the Effective Date of such Fundamental Change and the Stock Price with respect to such Fundamental Change.

(i) “EFFECTIVE DATE” with respect to a Fundamental Change means the date that such Fundamental Change becomes effective.

(ii) “STOCK PRICE” with respect to a Fundamental Change means the price paid (or deemed to be paid) per share of Common Stock in the transaction constituting such Fundamental Change, determined as follows:

(1) if holders of the Common Stock receive only cash in such Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock; or

(2) otherwise, the Stock Price shall be the average of the Applicable Stock Prices for the five consecutive Trading Days beginning on the second Trading Day after the Effective Notice Date with respect to such Fundamental Change (which average shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a resolution of the Board of Directors), to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the “ex” date of such event occurs, at any time during such five consecutive Trading Days).

(iii) “ADDITIONAL PREMIUM” means, with respect to a Fundamental Change, the percentage set forth on the table below (the “ADDITIONAL PREMIUM TABLE”) for the Stock Price and the Effective Date of such Fundamental Change:

ADDITIONAL PREMIUM APPLICABLE TO
THE SECURITIES UPON FUNDAMENTAL CHANGE
(PERCENTAGE OF PRINCIPAL AMOUNT)

STOCK PRICE	EFFECTIVE DATE								
	August 1, 2005	August 1, 2006	August 1, 2007	August 1, 2008	August 1, 2009	August 1, 2010	August 1, 2011	August 1, 2012	
\$32.20	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%	9.1%	0.0%
\$35.00	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	0.0
\$40.00	9.1	9.1	9.1	9.1	9.1	9.1	9.1	8.7	0.0
\$45.00	9.1	9.1	9.1	9.1	9.1	9.1	9.1	5.9	0.0
\$50.00	9.1	9.1	9.1	9.1	9.1	9.1	8.2	4.1	0.0
\$55.00	9.1	9.1	9.1	9.1	9.1	9.1	6.8	2.9	0.0
\$60.00	9.1	9.1	9.1	9.1	9.1	8.4	5.7	2.1	0.0
\$65.00	9.1	9.1	9.1	9.1	9.1	7.4	4.9	1.6	0.0
\$70.00	9.1	9.1	9.1	8.6	6.7	4.2	1.3	0.0	
\$85.00	9.1	9.1	8.3	6.9	5.1	3.1	0.9	0.0	
\$100.00	8.9	8.0	7.0	5.7	4.2	2.4	0.7	0.0	
\$115.00	7.8	7.0	6.0	4.8	3.5	2.1	0.7	0.0	
\$130.00	6.8	6.1	5.2	4.2	3.0	1.8	0.6	0.0	
\$145.00	6.0	5.3	4.5	3.6	2.6	1.6	0.5	0.0	
\$160.00	5.3	4.7	4.0	3.2	2.3	1.4	0.5	0.0	
\$175.00	4.7	4.2	3.5	2.8	2.0	1.2	0.4	0.0	
\$190.00	4.2	3.7	3.1	2.4	1.7	1.1	0.4	0.0	
\$205.00	3.7	3.2	2.7	2.1	1.5	0.9	0.3	0.0	
\$220.00	3.2	2.8	2.3	1.8	1.3	0.8	0.3	0.0	
\$235.00	2.8	2.4	2.0	1.5	1.1	0.7	0.2	0.0	
\$250.00	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	

provided, however, that:

(1) if at any time the Conversion Rate shall be adjusted pursuant to this Indenture, then, on the date and at the time such adjustment is so required to be made pursuant hereto, each price set forth in the Additional Premium Table above under the column titled “Stock Price” shall be deemed to be adjusted so that such price, at and after such time, shall be equal to the product of (1) such

price as in effect immediately before such adjustment to such price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to be in effect, in accordance herewith, immediately after such adjustment to the Conversion Rate;

(2) if the Stock Price is between two Stock Prices on the Additional Premium Table or the Effective Date is between two Effective Dates on the Additional Premium Table, the Additional Premium shall be determined by straight-line interpolation between the Additional Premium amounts set forth for the higher and lower Stock Prices and the two Effective Dates, as applicable, based on a 365-day year;

(3) if the Stock Price is equal to or in excess of \$250.00 per share (subject to adjustment in the same manner as the Stock Price as set forth in Section 6.1(b)(iii)(1)) the Additional Premium shall be deemed to be equal to zero; and

(4) if the Stock Price is less than \$32.20 per share (subject to adjustment in the same manner as the Stock Price as set forth in Section 6.1(b)(iii)(1)), the Additional Premium shall be deemed to be equal to zero.

(iv) The Make-Whole Premium payable on a Security with respect to a Fundamental Change shall have a value (determined in accordance with Section 6.1(d)) equal to the product of (1) the principal amount of such Security and (2) the Additional Premium with respect to such Fundamental Change.

(c) The Make-Whole Premium with respect to a Fundamental Change shall be paid solely in shares of Common Stock (other than cash paid in lieu of fractional shares); provided, however, that if, in connection with such Fundamental Change, all or substantially all of the shares of Common Stock have been converted into or exchanged for cash, other securities or other property, then such Make-Whole Premium shall be paid in the same form of consideration into which all or substantially all of the shares of Common Stock have been converted or exchanged in connection with such Fundamental Change (other than cash paid in lieu of fractional interests in any security or pursuant to dissenters' rights), in accordance herewith; provided, further, that if holders of the Common Stock receive or have the right to receive more than one form of consideration in connection with such Fundamental Change, then, for purposes of the immediately preceding proviso, the forms of consideration in which the Make-Whole Premium shall be paid shall be in proportion to the relative value, determined in accordance with Section 6.1(d), of the different forms of consideration paid to holders of Common Stock in connection with such Fundamental Change; provided further, that, in all cases, any fractional interests in any security (including Common Stock) or other property constituting a portion of the Make-Whole Premium payable to a Holder shall be paid exclusively in cash (such fractional interest to be valued in accordance with Section 6.1(d)).

(d) The value of the shares of Common Stock or other consideration for purposes of determining the number of shares of Common Stock or other consideration to be

issued or delivered, as the case may be, in respect of a Make-Whole Premium with respect to a Fundamental Change shall be calculated as follows:

(i) in the case such Fundamental Change is a transaction in which all or substantially all of the shares of Common Stock have been, as of the Effective Date of such Fundamental Change, converted into or exchanged for the right to receive securities or other assets or property (including cash), the consideration shall be valued as follows:

(1) securities that are traded on a U.S. national securities exchange or approved for quotation on Nasdaq or any similar system of automated dissemination of quotations of securities prices shall be valued at 98% of the average of the volume-weighted average prices of such securities (determined in the same manner in which the Volume-Weighted Average Price is calculated in accordance herewith; provided, however, that if such volume-weighted average prices are not available, then the closing sales prices of such securities on such exchange or system shall instead be used) for the five consecutive Trading Days beginning on the second Trading Day after the Effective Notice Date of such Fundamental Change; provided, however, that the Board of Directors shall, in its good faith determination (which determination shall be described in a resolution of the Board of Directors), make appropriate adjustments to account for any event that, assuming such securities were Common Stock, would require, pursuant hereto, an adjustment to the Conversion Rate to become effective, or any such event whose "ex" date occurs, at any time during such five consecutive Trading Days,

(2) other securities, assets or property (other than cash) shall be valued at 98% of the average of the fair market value of such securities, assets or property (other than cash) as of the close of business on the sixth Trading Day after the Effective Notice Date of such Fundamental Change, as determined by two independent nationally recognized investment banks selected by the Company, and

(3) 100% of any cash.

(ii) in all other cases, the value of each share of Common Stock shall equal 98% of the average of the Applicable Stock Prices per share of Common Stock for the five consecutive Trading Days beginning on the second Trading Day after the Effective Notice Date of such Fundamental Change, which average shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a resolution of the Board of Directors), to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the "ex" date of such event occurs, at any time during such five consecutive Trading Days (provided, however, that in no event shall the value of each share of Common Stock determined pursuant to this Section 6.1(d)(ii) be less than 50% of the per share Stock Price with respect to such Fundamental Change).

(e) A Calculation Agent appointed from time to time by the Company shall, on behalf of and on request by the Company, calculate (A) the Stock Price and (B) the Additional Premium and Make-Whole Premium with respect to such Stock Price, based on the Effective Date specified by the Company, and shall deliver its calculation of the Stock Price, Additional Premium and Make-Whole Premium to the Company and the Trustee within three Business Days of the request by the Company or the Trustee. In addition, the Calculation Agent shall, on behalf of and upon request by the Company or the Trustee, make the determinations described in Section 6.1(d) above and deliver its calculations to the Company or the Trustee by 9:00 p.m., New York City time, on the Business Day prior to the applicable Fundamental Change Purchase Date. The Company or, at the Company's request, the Trustee, in the name and at the expense of the Company, shall, on the date that is the seventh Trading Day after the Effective Notice Date with respect to a Fundamental Change in connection with which a Make-Whole Premium is payable, mail to each Holder, in accordance with Section 16.2, and the Company shall disseminate on such day a press release, setting forth the Stock Price and Make-Whole Premium per \$1,000 principal amount of Securities (including the amount and kind of consideration per \$1,000 principal amount in which such Make-Whole Premium is payable) with respect to such Fundamental Change. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. The Company shall verify, in writing, to the Trustee all calculations made by the Calculation Agent pursuant to this Section 6.1(e). A Calculation Agent shall have the same rights as an Agent to deal with the Company or an Affiliate of the Company. The Trustee shall not be responsible for any of the aforementioned calculations and shall be entitled to rely on an Officer's Certificate with respect to the same.

(f) Prior to 1:00 p.m., New York City time, on each Fundamental Change Purchase Date on which a Make-Whole Premium is payable, the Company shall deposit with the Trustee or with one or more Paying Agents (or, if the Company or an Affiliate or Subsidiary of the Company is acting as the Paying Agent, set aside, segregate and hold in trust as provided in Section 2.4) an amount of shares of Common Stock (or other consideration in which such Make-Whole Premium is payable as herein provided), plus an amount in cash for fractional interests in accordance with Section 6.1(c), sufficient to pay the aggregate Make-Whole Premium due on such Fundamental Change Purchase Date. Payment of the Make-Whole Premium for Securities surrendered for conversion within the period described in Section 6.1(a) shall be made promptly on the applicable Fundamental Change Purchase Date by mailing checks in respect of cash (or delivering such cash by wire transfer if permitted in accordance with Section 9.1) and otherwise delivering entitlements to securities, other assets or property for the amount payable to the Holders of such Securities entitled thereto as they shall appear in the Register.

ARTICLE 7 CONVERSION

Section 7.1 Conversion Privilege

Subject to the further provisions of this Article 7, a Holder of a Security may convert the principal amount of such Security (or any portion thereof equal to \$1,000 principal amount or an integral multiple of \$1,000 principal amount) into Common Stock, or cash or a

combination of cash and shares of Common Stock if the Company shall so elect pursuant to Section 7.13 hereof, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Final Maturity Date, at the Conversion Rate then in effect; provided, however, that, if such Security is called for redemption pursuant to Article 3, such conversion right with respect to such Security shall terminate at the close of business on the Business Day immediately preceding the Redemption Date, unless there shall be a default in the payment of the Redemption Price, in which case the conversion right with respect to such Security shall terminate at 5:00 p.m., New York City time, on the date such default is cured and such Security is redeemed in accordance herewith; provided further, that, if a Fundamental Change Purchase Notice with respect to a Security is delivered in accordance herewith, such Security shall not be convertible pursuant to this Article 7 unless such Fundamental Change Purchase Notice is duly withdrawn in accordance herewith or unless there shall be a default in the payment of the Fundamental Change Purchase Price, as the case may be, in which case the conversion right with respect to such Security shall terminate at 5:00 p.m., New York City time, on the date such default is cured and such Security is purchased in accordance herewith.

The initial Conversion Rate shall be 28.2326 shares of Common Stock per \$1,000 principal amount of Securities. The Conversion Rate shall be subject to adjustment in accordance with this Article 7.

Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

Securities delivered for conversion will be deemed to have been converted at immediately prior to 5:00 p.m. on the Conversion Date. A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted (or, in accordance with the immediately preceding sentence or with Section 7.2(b), is deemed to have converted or become a record holder of Common Stock) its Securities to Common Stock and only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article 7.

Section 7.2 Conversion Procedure

(a) The right of conversion attaching to any Security may be exercised (i) if such Security is represented by a Global Security, by book-entry transfer to the Conversion Agent through the facilities of the Depository in accordance with the Applicable Procedures, or (ii) if such Security is represented by a Certificated Security, by delivery of such Security at the specified office of the Conversion Agent, accompanied, in either case, by: (1) a duly signed and completed conversion notice, in the form as set forth on the reverse of Security attached hereto as Exhibit A (a "CONVERSION NOTICE"); (2) if such Certificated Security has been lost, stolen, destroyed or mutilated, a notice to the Conversion Agent in accordance with Section 2.7 regarding the loss, theft, destruction or mutilation of the Security; (3) appropriate endorsements and transfer documents if required by the Conversion Agent; and (4) payment of any tax or duty, in accordance with Section 7.4, which may be payable in respect of any transfer involving the issue or delivery of the Common Stock in the name of a Person other than the Holder of the Security. The date on which the Holder satisfies all of those requirements is the "CONVERSION DATE." The Company shall deliver to the Holder through a Conversion Agent

cash, if applicable, and a certificate for the number of whole shares of Common Stock issuable upon the conversion (and cash in lieu of any fractional shares pursuant to Section 7.3) on the applicable date specified for such delivery in the third paragraph of Section 7.13(a) hereof.

(b) The person in whose name the Security is registered shall be deemed to be a stockholder of record on the Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; provided further, however, that such conversion shall be at the Conversion Rate in effect on the date on which such Security was delivered as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security. No separate payment or adjustment will be made for accrued and unpaid interest on a converted Security or for dividends or distributions on shares of Common Stock issued upon conversion of a Security except as provided in this Indenture.

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

Section 7.3 Fractional Shares

The Company will not issue fractional shares of Common Stock upon conversion of Securities and instead will deliver cash in an amount equal to the value of such fraction computed on the basis of the Applicable Stock Price on the Trading Day immediately before the Conversion Date.

Section 7.4 Taxes on Conversion

If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer taxes or duties relating to the issuance or delivery of shares of Common Stock upon exercise of such conversion rights. However, the Holder shall pay any tax or duty which may be payable relating to any transfer involving the issuance or delivery of the Common Stock in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificate representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax or duties which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulation.

Section 7.5 Company to Provide Stock

(a) The Company shall, prior to the issuance of any Securities hereunder, and from time to time as may be necessary, reserve at all times and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock deliverable upon conversion of all of the Securities.

(b) All shares of Common Stock that may be issued upon conversion of the Securities shall be newly issued shares or shares held in the treasury of the Company, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free of any preemptive rights and free of any lien or adverse claim.

(c) The Company shall comply with all applicable securities laws regulating the offer and delivery of any Common Stock upon conversion of Securities and shall list or cause to have quoted such shares of Common Stock on each national and regional securities exchange or on Nasdaq or such other market on which the Common Stock is then listed or quoted; provided, however, that, if the rules of such automated quotation system or exchange permit the Company to defer the listing of such Common Stock until the first conversion of the Securities into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Securities in accordance with the requirements of such automated quotation system or exchange at such time.

(d) Notwithstanding anything herein to the contrary, nothing herein shall give to any Holder any rights as a creditor in respect solely of its right to conversion.

Section 7.6 Adjustment of Conversion Rate

The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall (i) issue shares of its Common Stock as a dividend or distribution on its Common Stock or (ii) subdivide, combine or reclassify its outstanding Common Stock, the Conversion Rate in effect immediately prior thereto shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive that number of shares of Common Stock which it would have been entitled to (without giving effect to any arrangement pursuant to such dividend, distribution, subdivision, combination or reclassification not to issue fractional shares of Common Stock) had such Security been converted immediately prior to the record date of such event or the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or reclassification.

(b) In case the Company shall issue rights or warrants to all holders of its Common Stock entitling them (for a period of not more than 45 days) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or a conversion price per share) less than the Current Market Price per share (as determined in accordance with subsection (f) of this Section 7.6) of Common Stock on the record date for such issuance, the Conversion Rate in effect immediately prior to the close of business on the record date for the issuance shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on such record date by a fraction of which (A) the numerator shall be the sum of (I) the number of shares of Common Stock outstanding (excluding shares held in the treasury of the Company) at the close of business on such record date and (II) the aggregate number

of shares (the "UNDERLYING SHARES") of Common Stock underlying all such issued rights or warrants (whether by exercise, conversion, exchange or otherwise) and (B) the denominator shall be the sum of (I) number of shares of Common Stock outstanding (excluding shares held in the treasury of the Company) at the close of business on such record date and (II) the number of shares of Common Stock which the aggregate exercise, conversion, exchange or other price at which the Underlying Shares may be subscribed for or purchased pursuant to such rights or warrants would purchase at such Current Market Price per share of Common Stock. Such increase shall become effective immediately prior to the opening of business on the Business Day following such record date. In no event shall the Conversion Rate be decreased pursuant to this Section 7.6(b).

(c) In case the Company shall distribute to all holders of its Common Stock any shares of capital stock of the Company, evidences of indebtedness or other non-cash assets, or rights or warrants (excluding (i) dividends, distributions and rights or warrants referred to in subsection (a) or (b) of this Section 7.6, (ii) distributions referred to in subsection (e) of this Section 7.6, and (iii) the distribution of rights pursuant to a stockholder rights plan (including the Existing Rights Plan) for which provision has been made in accordance with the third paragraph of this Section 7.6(c)), the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the distribution by a fraction of which (A) the numerator shall be the Current Market Price per share (as defined in subsection (f) of this Section 7.6) of the Common Stock on such record date and (B) the denominator shall be an amount equal to (I) such Current Market Price per share less (II) the fair market value on such record date (as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value and which shall be evidenced by an Officer's Certificate delivered to the Trustee) of the portion of the capital stock, evidences of indebtedness or other non-cash assets so distributed or of such rights or warrants applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding at the close of business on the record date); provided, however, that, in the event the then fair market value (as so determined) of the portion of the capital stock, evidences of indebtedness or other non-cash assets so distributed or of such rights or warrants applicable to one share of Common Stock is equal to or greater than the Current Market Price per share of the Common Stock on such record date, then, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion (in addition to any other consideration payable hereunder upon conversion) the amount of capital stock, evidences of indebtedness or other non-cash assets so distributed or of such rights or warrants such holder would have received had such holder converted each Security on such record date. In no event shall the Conversion Rate be decreased pursuant to this Section 7.6(c). Such adjustment (if any) shall be made successively whenever any such distribution is made and shall become effective immediately after such record date.

In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors of the Company determines the fair market value of any distribution for purposes of this Section 7.6(c) by reference to the actual or when issued trading market for any securities,

it must in doing so consider the prices in such market over the same period used in computing the applicable Current Market Price per share of Common Stock.

The Company shall make adequate provisions such that, upon conversion of the Securities into Common Stock, to the extent that the Existing Rights Plan or any new shareholder rights plan (i.e. poison pill) hereafter implemented by the Company is in effect upon such conversion, the Holders of Securities will receive, in addition to the Common Stock and other consideration payable hereunder upon conversion, the rights described in such Existing Rights Plan or new rights plan (whether or not the rights have separated from the Common Stock at the time of conversion), subject to the limitations set forth in such Existing Rights Plan or new rights plan. Any distribution of rights or warrants pursuant to such Existing Rights Plan or new rights plan complying with the requirements set forth in the immediately preceding sentence of this paragraph shall not constitute a distribution of rights or warrants pursuant to this Section 7.6(c).

(d) In case the Company shall dividend or distribute (other than in connection with a liquidation, dissolution or winding up of the Company) cash to all holders of Common Stock (other than a distribution requiring an adjustment to the Conversion Rate pursuant to Section 7.6(e)), the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the determination of holders of Common Stock entitled to such dividend or distribution by a fraction (A) whose numerator shall be the average of the Volume-Weighted Average Prices per share of Common Stock (or, if such Volume-Weighted Average Prices are not available, the Closing Sale Prices) for the five consecutive Trading Days ending on the date immediately preceding the "ex" date (as defined in Section 7.6(f) for such dividend or distribution (which average shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a resolution of the Board of Directors), to account for any adjustment, pursuant hereto, to the Conversion Rate that shall become effective, or any event requiring, pursuant hereto, an adjustment to the Conversion Rate where the "ex" date of such event occurs, at any time during such five consecutive Trading Days); and (B) whose denominator shall be an amount equal to (I) such average Volume-Weighted Average Price (or, if applicable, average Closing Sale Price) per share of Common Stock less (II) the amount per share of Common Stock of such dividend or distribution; provided, however, that the Conversion Rate shall not be adjusted pursuant to this Section 7.6(d) to the extent, and only to the extent, such adjustment would cause the Conversion Price to be less than par value of the Common Stock (which minimum amount shall be appropriately adjusted to reflect stock dividends on, and subdivisions, combinations or reclassifications of, Common Stock); provided further that, if the denominator of such fraction shall be equal to or less than zero, the Conversion Rate shall be instead adjusted so that the Conversion Price is equal to par value of the Common Stock (as adjusted in accordance with the immediately preceding proviso). An adjustment to the Conversion Rate pursuant to this Section 7.6(d) shall become effective immediately prior to the opening of business on the Business Day immediately following such record date. In no event shall the Conversion Rate be decreased pursuant to this Section 7.6(d). Notwithstanding anything herein to the contrary, no adjustment to the Conversion Rate shall be made pursuant to this Section 7.6(d) to the extent, and only to

the extent, such adjustment would cause the Conversion Rate to exceed 31.0559 shares per \$1,000 principal amount (the "MAXIMUM CONVERSION RATE"); provided, however, that the Maximum Conversion Rate shall be adjusted from time to time in the same manner in which the Conversion Rate is adjusted pursuant to subsections (a), (b), (c) and (e) of this Section 7.6.

(e) In case the Company or any Subsidiary of the Company shall distribute cash or other consideration in respect of a tender offer or exchange offer made by the Company or any Subsidiary of the Company for all or any portion of the Common Stock where the sum of the aggregate amount of such cash distributed and the aggregate fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and set forth in a resolution of the Board of Directors), as of the Expiration Date (as defined below), of such other consideration distributed (such sum, the "AGGREGATE AMOUNT") expressed as an amount per share of Common Stock validly tendered or exchanged, and not withdrawn, pursuant to such tender offer or exchange offer as of the Expiration Time (as defined below) (such tendered or exchanged shares of Common Stock, the "PURCHASED SHARES") exceeds the Current Market Price per share (as determined in accordance with subsection (f) of this Section 7.6) of Common Stock on the last date (such last date, the "EXPIRATION DATE") on which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as the same may be amended through the Expiration Date), then the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the Expiration Date by a fraction (A) whose numerator is equal to the sum of (I) the Aggregate Amount and (II) the product of (a) the Current Market Price per share of Common Stock (as determined in accordance with subsection (f) of this Section 7.6) on the Expiration Date and (b) an amount equal to (i) the number of shares of Common Stock outstanding as of the last time (the "EXPIRATION TIME") at which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (including all Purchased Shares but excluding shares held at such time in the treasury of the Company) less (ii) the Purchased Shares and (B) whose denominator is equal to the product of (I) the number of shares of Common Stock outstanding as of the Expiration Time (including all Purchased Shares but excluding shares held at such time in the treasury of the Company) and (II) such Current Market Price per share of Common Stock on the Expiration Date. An increase, if any, to the Conversion Rate pursuant to this Section 7.6(e) shall become effective immediately prior to the opening of business on the Business Day following the Expiration Date. In the event that the Company or a Subsidiary of the Company is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such tender offer or exchange offer had not been made. If the application of this Section 7.6(e) to any tender offer or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this Section 7.6(e).

(f) For the purpose of making a computation pursuant to this Section 7.6, the current market price (the "CURRENT MARKET PRICE") on a date of determination

shall mean the average of the Closing Sale Prices per share of Common Stock for the five consecutive Trading Days ending on the date of determination; provided, however, that such Current Market Price shall be appropriately adjusted by the Board of Directors, in its good faith determination (which determination shall be described in a resolution of the Board of Directors), to account for any adjustment pursuant hereto (other than the adjustment requiring such computation) to the Conversion Rate that shall become effective, or any event (other than the event requiring such computation) requiring, pursuant hereto, an adjustment to the Conversion Rate where the "ex" date of such event occurs, at any time during such five consecutive Trading Days. For purposes hereof, the term "ex" date means (i) when used with respect to any dividend or distribution, the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such dividend or distribution; and (ii) when used with respect to any tender offer or exchange offer, the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained after the expiration time of such tender offer or exchange offer (as it may be amended or extended).

(g) In any case in which this Section 7.6 shall require that an adjustment be made following a record date or Expiration Date, as the case may be, established for purposes of this Section 7.6, the Company may elect to defer (but only until five Business Days following the filing by the Company with the Trustee of the certificate described in Section 7.9) issuing to the Holder of any Security converted after such record date or Expiration Date the shares of Common Stock and other capital stock of the Company, evidences of indebtedness or other non-cash assets or rights or warrants issuable upon such conversion over and above the shares of Common Stock and other capital stock of the Company, evidences of indebtedness or other non-cash assets or rights or warrants the issuance of which, or cash payable, upon such conversion only on the basis of the Conversion Rate prior to adjustment; and, in lieu of the shares, evidences of indebtedness or other non-cash assets or rights or warrants the issuance of which, or cash the payment of which, is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence prepared by the Company of the right to receive such shares or cash, as the case may be. If any distribution in respect of which an adjustment to the Conversion Rate is required to be made as of the record date or Expiration Date therefor is not thereafter made or paid by the Company for any reason, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect if such record date had not been fixed or such effective date or Expiration Date had not occurred.

Section 7.7 No Adjustment

No adjustment in the Conversion Rate shall be required unless the adjustment would result in a change in the Conversion Rate of at least 1%; provided, however, that any adjustment which by reason of this Section 7.7 is not required to be made shall be carried forward and taken into account in subsequent adjustments. All calculations under this Article 7 shall be made to the nearest one-thousandth of a cent or to the nearest one-thousandth of a share, as the case may be.

Except as otherwise provided for in this Indenture, the Company shall not be required to adjust the Conversion Rate for the issuance of its Common Stock or any securities convertible or exchangeable for its Common Stock or the right to purchase its Common Stock or such convertible or exchangeable securities.

No adjustment need be made for issuances of Common Stock pursuant to a Company plan for reinvestment of dividends or interest or for a change in the par value or a change to no par value of the Common Stock.

To the extent that the Securities become convertible into the right to receive cash, interest will not accrue on such cash.

No adjustment to the Conversion Rate need be made pursuant to Section 7.6 for a transaction if Holders are to participate in the transaction without conversion on a basis and with notice that the Board of Directors of the Company determines in good faith to be fair and appropriate in light of the basis and notice on which holders of Common Stock participate in the transaction.

No adjustment to the Conversion Rate need be made upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Notes were first issued.

No adjustment to the Conversion Rate need be made for accrued and unpaid interest, including additional interest, if any.

Section 7.8 Other Adjustments

Subject to applicable stock exchange rules and listing standards, the Company shall be entitled to increase the Conversion Rate by any amount for a period of at least 20 days if the Company's Board of Directors determines that such increase would be in the best interests in the Company, provided the Company has given to holders at least 15 days' prior notice, in accordance with Section 16.2, of any such increase in the Conversion Rate. Subject to applicable stock exchange rules and listing standards, the Company shall be entitled to increase the Conversion Rate, in addition to the events requiring an increase in the Conversion Rate pursuant to Section 7.6, as it in its discretion shall determine to be advisable in order to avoid or diminish any tax to stockholders in connection with any stock dividends, subdivisions of shares, distributions of rights to purchase stock or securities or distributions of securities convertible into or exchangeable for stock hereafter made by the Company to its stockholders.

Section 7.9 Notice of Adjustment

Whenever the Conversion Rate or conversion privilege is adjusted, the Company shall promptly mail to Securityholders a notice of the adjustment in accordance with Section 16.2, and file with the Trustee an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. Unless and until the Trustee shall receive an Officer's Certificate setting forth an adjustment of the Conversion Rate, the Trustee may assume

without inquiry that the Conversion Rate has not been adjusted and that the last Conversion Rate of which it has knowledge remains in effect.

Section 7.10 Notice of Certain Transactions

If not otherwise required in connection with a Fundamental Change, in the event that:

- (a) the Company takes any action which would require an adjustment in the Conversion Rate;
- (b) the Company consolidates or merges with, or transfers all or substantially all of its property and assets to, another corporation and stockholders of the Company must approve the transaction; or
- (c) there is a dissolution or liquidation of the Company,

the Company shall mail to Holders in accordance with Section 16.2 and file with the Trustee a notice stating the proposed record or effective date, as the case may be. The Company shall mail the notice at least ten days before such date. Failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in clause (a), (b) or (c) of this Section 7.10.

Section 7.11 Effect of Reclassification, Consolidation, Merger or Sale on Conversion Privilege

If (1) there shall occur (a) any reclassification of the Company's Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination); (b) a statutory share exchange, consolidation, merger or combination involving the Company other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of Common Stock; or (c) a sale or conveyance as an entirety or substantially as an entirety of the property and assets of the Company, directly or indirectly, to another Person; and (2) pursuant to such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance, holders of outstanding shares of Common Stock would be entitled to receive stock, other securities, other property, assets or cash for such shares of Common Stock, then the Company, or such successor or surviving, purchasing or transferee Person, as the case may be, shall, as a condition precedent to such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that, at and after the effective time of such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance, the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, statutory share exchange, consolidation, merger, combination, sale or

conveyance, assuming that such Holder would not have exercised any rights of election that such Holder would have had as a holder of Common Stock to select a particular type of consideration. Such supplemental indenture shall provide for adjustments of the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this Article 7. If, in the case of any such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock include shares of stock or other securities and property of a Person other than the successor or surviving, purchasing or transferee Person, as the case may be, in such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing. The provisions of this Section 7.11 shall similarly apply to successive reclassifications, statutory share exchanges, consolidations, mergers, combinations, sales and conveyances. The foregoing, however, shall not in any way affect the right a Holder of a Security may otherwise have pursuant to Section 7.6(c) to receive rights and warrants in accordance therewith.

In the event the Company shall execute a supplemental indenture pursuant to this Section 7.11, the Company shall promptly file with the Trustee (x) an Officer's Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or other securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, statutory share exchange, consolidation, merger, combination, sale or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been satisfied and (y) an Opinion of Counsel that all conditions precedent have been satisfied, and shall promptly mail notice thereof to all Holders.

Section 7.12 Trustee's Disclaimer

The Trustee shall have no duty to determine when an adjustment under this Article 7 should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment set forth in, and shall be protected in relying upon, an Officer's Certificate, including the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 7.9. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article 7.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 7.11, but may accept as conclusive evidence of the correctness thereof, and shall be fully protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 7.11.

Section 7.13 Option to Satisfy Conversion Obligation with Cash, Common Stock or Combination Thereof

(a) Except to the extent that the Company has irrevocably elected Net Share Settlement upon conversion of the Securities pursuant to Section 7.13(b), in lieu of delivery of shares of Common Stock in satisfaction of the Company's obligation upon conversion of the Securities (the "CONVERSION OBLIGATION"), the Company may elect to deliver cash or a combination of cash and shares of Common Stock in accordance with the provisions of this Indenture. Except to the extent that the Company has irrevocably elected Net Share Settlement upon conversion of the Securities pursuant to Section 7.13(b), the Company shall notify the Holders through the Trustee of the method the Company chooses to satisfy its Conversion Obligation as follows: (i) in the Company's notice of redemption, if the Company has called the Securities for redemption; (ii) no later than 11 Trading Days immediately preceding the Final Maturity Date, in respect of Securities to be converted during the period beginning 10 Trading Days immediately preceding the Final Maturity Date and ending one Trading Day immediately preceding the Maturity Date; and (iii) no later than two Trading Days immediately following the Conversion Date in all other cases (such period, the "SETTLEMENT NOTICE PERIOD"). Except to the extent that the Company has irrevocably elected Net Share Settlement upon conversion of the Securities pursuant to Section 7.13(b), if the Company fails to give the notice described in the preceding sentence within the prescribed time periods, then the Company shall satisfy its Conversion Obligation only in shares of Common Stock (and cash in lieu of fractional shares). If the Company elects to satisfy any portion of its Conversion Obligation in cash, the Company shall specify in such notice the amount to be satisfied in cash either as a percentage of the Conversion Obligation or as a fixed dollar amount. The Company shall treat all holders converting on the same Trading Day in the same manner. The Company shall not have any obligation to satisfy its Conversion Obligations arising on different Trading Days in the same manner.

If the Company elects to satisfy any portion of the Conversion Obligation in cash (other than cash in lieu of fractional shares), a Holder may retract its Conversion Notice at any time during the two Trading Day period beginning on the Trading Day after the date the Company gives notice to the Trustee of its chosen method of settlement (the "CONVERSION RETRACTION PERIOD"); *provided*, that no such retraction can be made (and a holder's Conversion Notice shall be irrevocable) (x) if the Company has irrevocably elected Net Share Settlement pursuant to Section 7.13(b) before such Holder delivers its Conversion Notice, (y) if the Holder is converting its Securities in connection with a redemption; or (z) if the Holder delivers the Conversion Notice during the period beginning 10 Trading Days immediately preceding the Final Maturity Date and ending one Trading Day immediately preceding the Final Maturity Date. No retraction can be made and a holder's Conversion Notice shall be irrevocable if the Company does not elect to deliver cash in lieu of shares of Common Stock.

With respect to each Holder that exercises its conversion right in accordance with this Indenture, if such Holder's Conversion Notice has not been retracted as provided herein, assuming all of the other requirements for conversion have been satisfied by such Holder, then settlement (a) in shares of Common Stock only shall occur as soon as practicable after the Company notifies the Trustee that settlement shall be in Common Stock only, and (b) in cash or in a combination of cash and shares of Common Stock shall occur on the second Trading Day following the final Trading Day of the Cash Settlement Averaging Period.

Settlement amounts will be computed as follows:

(i) if the Company elects to satisfy the entire Conversion Obligation in Common Stock, the Company will deliver to such Holder a number of shares of Common Stock equal to (1) the aggregate principal amount of the Securities to be converted divided by 1,000 and multiplied by (2) the applicable Conversion Rate (plus cash in lieu of any fractional shares);

(ii) if the Company elects to satisfy the entire Conversion Obligation in cash, the Company will deliver to such holder cash in an amount equal to the product of:

- (1) a number equal to (A) the aggregate principal amount of Securities to be converted divided by 1,000 and multiplied by (B) the applicable Conversion Rate; and
- (2) the Applicable Stock Price.

(iii) if the Company elects to satisfy the Conversion Obligation in a combination of cash (the "CASH AMOUNT") (excluding any cash paid in lieu of any fractional shares) and Common Stock, the Company will deliver to such holder:

- (1) a Cash Amount equal to either (A) the fixed dollar amount per \$1,000 principal amount of Securities specified in the Company's notice regarding its chosen method of settlement multiplied by the quotient of the aggregate principal amount of Securities to be converted divided by 1,000, in the case where such notice has specified a fixed dollar amount or (B) the percentage of the Conversion Obligation to be paid in cash specified in the notice regarding the Company's chosen method of settlement, in the case where such notice has specified such a percentage, multiplied by the amount of cash that would be calculated pursuant to clause (ii) above in this paragraph; and
- (2) a number of whole shares of Common Stock equal to (A) (x) the aggregate principal amount of Securities to be converted divided by 1,000 and multiplied by (y) the applicable Conversion Rate minus (B) the Cash Amount per \$1,000 principal amount of Securities divided by the Applicable Stock Price.

(b) *Net Share Settlement.* Notwithstanding anything to the contrary in the Indenture, at any time on or prior to the eleventh Trading Day preceding the Final Maturity Date, the Company may irrevocably elect, in its sole discretion without the consent of the Holders of the Securities, by written notice to the Trustee and the Holders of the Securities, to satisfy in cash its Conversion Obligation with respect to the principal amount of Securities to be converted after the date of such election, with any remaining amount to be satisfied in cash, shares of Common Stock or a combination of both. The settlement amount to be made pursuant to this Section 7.13(b) shall be computed as follows:

(i) a cash amount equal to lesser of (1) the aggregate principal amount of the Securities to be converted or (2) the product of (A) a number equal to (x) the aggregate

principal amount of Securities to be converted divided by 1,000 and multiplied by (y) the applicable Conversion Rate and (B) the Applicable Stock Price; and

(ii) (1) if the Company elects to satisfy any remaining amount in shares of Common Stock, the Company will deliver to the Holder a number of shares of Common Stock equal to (A) (x) the aggregate principal amount of Securities to be converted divided by 1,000 and multiplied by (y) the applicable Conversion Rate minus (B) the cash amount per \$1,000 principal amount of Securities divided by the Applicable Stock Price, plus cash in lieu of fractional shares;

(2) if the Company elects to satisfy any remaining amount in cash, the Company will deliver to the Holder cash in an amount equal to the product of:

(A) a number equal to (x) the aggregate principal amount of Securities to be converted divided by 1,000 and multiplied by (y) (I) the applicable Conversion Rate minus (II) \$1,000 divided by the Applicable Stock Price; and

(B) the Applicable Stock Price; and

(3) if the Company elects to satisfy any remaining amount in a combination of cash and shares of Common Stock, the Company will deliver to the Holder such combination in the respective amounts calculated in a manner comparable to that used to settle any conversion (as described above), and with the amount of cash specified by the Company as contemplated in connection with any such conversion.

Section 7.14 [Reserved]

Section 7.15 Effect of Conversion: Conversion After Record Date

Except as provided in this Section 7.15, a converting Holder of Securities shall not be entitled to receive any separate cash payments with respect to accrued and unpaid interest on any such Securities being converted. By delivery to the Holder of the number of shares of Common Stock or other consideration issuable or cash payable upon conversion in accordance with this Article 7, any accrued and unpaid interest on such Securities shall be deemed to have been paid in full. If any Securities are converted after the close of business on an Interest Payment Record Date but prior to the corresponding Interest Payment Date, the Holder of such Securities as of the close of business on such Interest Payment Record Date shall receive, on such Interest Payment Date, the interest payable on such Security on such Interest Payment Date notwithstanding the conversion thereof; provided, however, each Security surrendered for conversion after the close of business on an Interest Payment Record Date but prior to the corresponding Interest Payment Date shall be accompanied by payment from the converting Holder thereof, for the account of the Company, in cash, an amount equal to the interest payable on such Security on such Interest Payment Date; provided further that no such payment need be made (a) if the Company has specified a Redemption Date that is after the close of business on an Interest Payment Record Date but prior to the corresponding Interest Payment Date or that results in conversion prior to that Interest Payment Date, (b) any overdue interest exists at the

time of conversion with respect to such Security, but only to the extent of the amount of such overdue interest or (c) the Holder surrenders any Securities for conversion after the close of business on the Interest Payment Record Date relating to the final Interest Payment Date.

Except as otherwise provided in this Indenture, no payment or adjustments in respect of payments of interest on Securities surrendered for conversion or any dividends or distributions on the Common Stock issued upon conversion shall be made upon the conversion of any Securities.

Section 7.16 [Reserved]

ARTICLE 8 SUBSIDIARY GUARANTEE

Section 8.1 Subsidiary Guarantors

If any Subsidiary of the Company shall guarantee any obligation of the Company evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses by the Company, (each such obligation a "DEBT SECURITY") the Company shall (i) cause each of (1) such Subsidiary and (2) any Subsidiary to which the Company has transferred all or substantially all of its assets concurrently to become a Subsidiary Guarantor by executing and delivering to the Trustee a supplemental indenture pursuant to which such Subsidiary shall unconditionally guarantee (a "SUBSIDIARY GUARANTEE") all of the Company's obligations under the Securities and this Indenture on a senior unsecured basis, on terms substantially consistent with guarantees of substantially similar debt obligations, to the same extent as the Subsidiary referred to above in (1) guaranteed such other Debt Securities and (ii) cause an Opinion of Counsel to be delivered to the Trustee to the effect that such supplemental indenture has been duly authorized and executed by each such Person and constitutes the valid, binding and enforceable obligation of each such Person (subject to customary exceptions concerning creditors' rights and equitable principles).

Such supplemental indenture shall be executed by manual signature on behalf of each respective Subsidiary Guarantor by any one of such Subsidiary Guarantor's Chairman of the Board of Directors, Vice Chairman of the Board of Directors, Chief Executive Officer, President or Chief Financial Officer or Vice Presidents, attested by its Secretary or Assistant Secretary.

Such supplemental indenture bearing the manual signatures of individuals who were at any time the proper officers of a Subsidiary Guarantor shall bind such Subsidiary Guarantor, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the execution and delivery of the supplemental indenture or did not hold such offices at the date of such supplemental indenture.

Section 8.2 Subsidiary Guarantors May Consolidate, Etc., on Certain Terms

Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of any Subsidiary Guarantor with or into the Company or any other Subsidiary Guarantor or shall prevent any sale or conveyance of the property of any Subsidiary Guarantor as an entirety or substantially as an entirety to the Company or any other Subsidiary Guarantor.

Section 8.3 Release of Subsidiary Guarantors

If (i) subject to Article 10 hereof, any sale or other disposition of all or substantially all of the assets of any Subsidiary Guarantor occurs (by way of merger, consolidation or otherwise) or a sale or other disposition of all of the Capital Stock of any Subsidiary Guarantor, in each case to a Person that is not (either before or after giving effect to such transactions) the Company or a Subsidiary of the Company, (ii) in the case of a Subsidiary referred to in Section 8.1(i)(1) hereof, such Subsidiary is no longer a guarantor of any Debt Securities, or (iii) in the case of a Subsidiary referred to in Section 8.1(i)(2) hereof, no Subsidiary of the Company is a guarantor of any Debt Securities, and, in any such case, if the Company shall deliver to the Trustee an Officer's Certificate certifying to that effect as of the date of such Officer's Certificate, then automatically, without the requirement of any further action by the Company, such Subsidiary or the Trustee, such Subsidiary shall cease to be a Subsidiary Guarantor hereunder and such Subsidiary or, as applicable in the case of clause (i) above, the acquiring Person shall have no continuing obligation or liability under its Subsidiary Guarantee. The Trustee shall, at the Company's expense, execute and deliver such instruments as the Company may reasonably request to evidence such termination.

ARTICLE 9
COVENANTS

Section 9.1 Payment of Securities

The Company shall promptly make all payments in respect of the Securities on the dates and in the manner provided in the Securities and this Indenture. The principal amount, Redemption Price and Fundamental Change Purchase Price and accrued and unpaid interest shall be considered paid on the date it is due if the Paying Agent holds by 1:00 p.m., New York City time, on such date, in accordance with this Indenture, cash designated and sufficient for the payment of all such amounts then due. The Company shall, to the fullest extent permitted by law, pay interest on overdue principal and overdue installments of interest at the rate borne by the Securities per annum. Except as otherwise specified, all references in this Indenture or the Securities to interest shall be deemed to include, without duplication, Additional Interest, if any, payable pursuant to the Registration Rights Agreement.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue amounts from time to time on demand at the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace

periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 9.2 Reports and Certain Information

(a) The Company shall file with the Trustee, within 15 days after it files them with the SEC, copies of its annual report and the information, documents and other reports which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company shall comply with the provisions of TIA Section 314(a), whether or not the Company is required to file reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. Notwithstanding anything to the contrary herein, the Trustee shall have no duty to review such documents for purposes of determining compliance with any provisions of this Indenture.

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

Section 9.3 Compliance Certificates

The Company will deliver to the Trustee, within 90 days after the end of each fiscal year of the Company ending after the date hereof, an Officer's Certificate signed by 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 terms, conditions and covenants under this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which he or she may have knowledge.

Section 9.4 Maintenance of Corporate Existence

The Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence or, following any consolidation, merger, conveyance, transfer or lease in accordance with Section 10.1, its legal existence as a Person permitted to be the resulting, surviving or transferee Person in accordance with Section 10.1.

Section 9.5 Stay, Extension and Usury Laws

The Company covenants, to the extent it may lawfully do so, that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal amount, Redemption Price or Fundamental

Change Purchase Price in respect of Securities, or any interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture, and the Company, to the extent it may lawfully do so, hereby expressly waives all benefit or advantage of any such law and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee or any Agent, but shall suffer and permit the execution of every such power as though no such law had been enacted.

Section 9.6 Maintenance of Office or Agency of the Trustee, Registrar, Paying Agent and Conversion Agent

The Company shall maintain an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent in the Borough of Manhattan, the City of New York where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, redemption, purchase or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company hereby designates the Corporate Trust Office as one such office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 16.2.

Section 9.7 Notice of Default

In the event that any Default or Event of Default shall occur, the Company shall give prompt written notice of such Default or Event of Default, and any remedial action proposed to be taken, to the Trustee.

ARTICLE 10
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 10.1 Company May Consolidate, Etc., Only on Certain Terms

The Company shall not consolidate with or merge into any other Person (in a transaction in which the Company is not the surviving Person) or convey, transfer or lease all or substantially all of the Company's properties and assets to any successor Person, unless:

(1) either:

(A) the resulting, surviving or transferee Person is the Company or

(B) the resulting, surviving or transferee Person is organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably

satisfactory to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

(2) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Notwithstanding the foregoing, the Company may transfer all or substantially all of its assets to a wholly-owned Subsidiary without such Subsidiary assuming the obligations of the Company under the Securities and this Indenture, provided that (i) such Subsidiary shall be required to become a Subsidiary Guarantor pursuant to Section 8.1 hereof if the Company issues Debt Securities and any of the Company's Subsidiaries guarantee such Debt Securities, (ii) such Subsidiary is organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia, (iii) immediately after giving effect to such transfer, no Default or Event of Default shall have occurred and be continuing and (iv) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such transfer complies with this Article and that all conditions precedent herein provided for relating to such transfer have been complied with.

Section 10.2 Successor Substituted

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all of the properties and assets of the Company in accordance with Section 10.1, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 11 DEFAULT AND REMEDIES

Section 11.1 Events of Default

An "Event of Default" shall occur if:

(1) the Company defaults in the payment of any principal of any of the Securities when the same becomes due and payable (whether at maturity, upon Redemption, on a Fundamental Change Purchase Date or otherwise);

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- (2) the Company defaults in the payment of any accrued and unpaid interest (including Additional Interest, if any, and any Make-Whole Premium) or Coupon Make-Whole Payment, in each case, when due and payable, and such default continues for a period of 30 days;
- (3) the Company fails to satisfy its conversion obligations upon exercise of a Holder's conversion rights pursuant hereto;
- (4) the Company fails to provide the Fundamental Change Company Notice when required by this Indenture;
- (5) the Company fails to comply with any of its other agreements contained in the Securities or in this Indenture (other than those referred to in clauses 1 through 4 above) and such failure continues for 60 days after receipt by the Company of a Notice of Default;
- (6) the Company or any Significant Subsidiary, fails to make any payment of principal in excess of \$25,000,000 in respect of indebtedness for borrowed money, when and as the same shall become due and payable, whether at maturity or upon acceleration, and such indebtedness is not paid, or such acceleration is not rescinded, by the end of the 30th day after receipt by the Company or such Significant Subsidiary of a Notice of Default;
- (7) the Company or Sabine Pass LNG, L.P., Corpus Christi LNG, L.P., Creole Trail LNG, L.P., or any other Significant Subsidiary (each a "SIGNIFICANT ENTITY") pursuant to or within the meaning of any Bankruptcy Law:
- (A) commences a voluntary case or proceeding;
 - (B) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it;
 - (C) consents to the appointment of a Custodian of it or for any substantial part of its property; or
 - (D) makes a general assignment for the benefit of its creditors; or
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (A) is for relief against the Company or a Significant Entity in an involuntary case or proceeding;
 - (B) appoints a Custodian of the Company or a Significant Entity for any substantial part of the property of the Company or such Significant Entity; or
 - (C) orders the winding up or liquidation of the Company or a Significant Entity;

and in each case of this subclause (8) the order or decree remains unstayed and in effect for 60 consecutive days.

The term "BANKRUPTCY LAW" means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors. The term "CUSTODIAN" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

(9) The Company fails to perform or comply with Article 8 hereof, or any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of this Indenture) or is declared to be null and void and unenforceable or the Subsidiary Guarantee is found to be invalid or a Subsidiary Guarantor that is a Significant Subsidiary denies its liability under its Subsidiary Guarantee (other than by reason of release of the Subsidiary Guarantor in accordance with the terms of this Indenture).

A default under clause (5) or (6) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding notify the Company and the Trustee, in writing of the Default, and the Company does not cure the Default (and such Default is not waived) within the time period specified in clauses (5) or (6) above, as applicable, after actual receipt of such notice. The notice given pursuant to this Section 11.1 must specify the Default, demand that it be remedied and state that the notice is a "NOTICE OF DEFAULT." When any Default under this Section 11.1 is cured in accordance herewith, it shall cease to be a Default.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Trust Officer at the Corporate Trust Office of the Trustee by the Company (including, without limitation, pursuant to Section 9.3 or Section 9.7), a Paying Agent, any Holder or any agent of any Holder.

Section 11.2 Acceleration

If an Event of Default (other than an Event of Default with respect to the Company specified in clause (7) or (8) of Section 11.1) occurs and is continuing, the Trustee may, by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding may, by notice to the Company and the Trustee, declare all unpaid principal of plus interest (including Additional Interest, if any) accrued and unpaid through the date of such declaration on all the Securities then outstanding to be due and payable upon any such declaration, and the same shall become and be immediately due and payable.

If an Event of Default with respect to the Company specified in clause (7) or (8) of Section 11.1 occurs, all unpaid principal of plus accrued and unpaid interest (including Additional Interest, if any) on all the Securities then outstanding shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Holders of a majority in aggregate principal amount of the Securities then outstanding or the Holders originally causing the acceleration by notice to the Trustee may rescind an acceleration of Securities and its consequences before a judgment or decree for the

payment of money has been obtained by the Trustee if (a) the rescission would not conflict with any existing order or decree, (b) all existing Events of Default, other than the nonpayment of the principal of plus accrued and unpaid interest on the Securities that has become due solely by such declaration of acceleration, have been cured or waived and (c) all payments due to the Trustee and any predecessor Trustee under Section 12.6 have been made. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 11.3 Other Remedies

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of or accrued and unpaid interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Section 11.4 Waiver of Defaults and Events of Default

Subject to Sections 11.7 and 13.2, the Holders of a majority in aggregate principal amount of the Securities then outstanding by notice to the Trustee may waive an existing Default or Event of Default and its consequence, except a Default or Event of Default in the payment of the principal of, or any interest (including Additional Interest, if any) on any Security, or the payment of any applicable Fundamental Change Purchase Price or Redemption Price, or a failure by the Company to convert any Securities in accordance with Article 7 or any Default or Event of Default in respect of any provision of this Indenture or the Securities that, under Section 13.2, cannot be modified or amended without the consent of the Holders of each outstanding Security. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. This Section 11.4 shall be in lieu of Section 316(a)(1)(B) of the TIA and such Section 316(a)(1)(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 11.5 Control by Majority

The Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of another Holder or the Trustee, or that may involve the Trustee in personal liability unless the Trustee is offered security or indemnity reasonably satisfactory to it; provided that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. This Section 11.5 shall be in lieu of

Section 316(a)(1)(A) of the TIA and such Section 316(a)(1)(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 11.6 Limitations on Suits

Subject to Section 11.7, a Holder of a Security may not pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default;
- (2) the Holders of at least 25% in aggregate principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the notice, request and the offer of security or indemnity; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over such other Securityholder.

Section 11.7 Rights of Holders to Receive Payment and to Convert

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of the principal amount, Redemption Price, Fundamental Change Purchase Price or interest (including Additional Interest, if any) on any Security, on or after the respective due dates expressed in the Security and this Indenture, to convert such Security in accordance with Article 7 and to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

Section 11.8 Collection Suit by Trustee

If an Event of Default in the payment of principal or interest specified in clause (1) or (2) of Section 11.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Securities for the whole amount owing with respect to the Securities and the amounts provided for in Section 12.6.

Section 11.9 Trustee May File Proofs of Claim

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 12.6, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or, on behalf of any Holder, to authorize, accept or adopt any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 11.10 Priorities

Any money or property collected by the Trustee pursuant to this Article 11, and after an Event of Default, any money or other property distributable in respect of the Company's obligations under this Indenture shall be paid out in the following order:

First, to the Trustee (including any predecessor Trustee) for amounts due under Section 12.6;

Second, to Security holders for amounts due and unpaid on the Securities for the principal amount, Redemption Price, Fundamental Change Purchase Price or interest (including Additional Interest, if any) or Make-Whole Premium, if any, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities; and

Third, the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 11.10. At least 15 days before such record date, the Trustee shall mail to each Holder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 11.11 Undertaking for Costs

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 11.11 does not apply to a suit made by the Trustee, a suit by a Holder pursuant to Section 11.7, or a suit by Holders of more than 25% in aggregate principal amount of the Securities then outstanding. This Section 11.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

ARTICLE 12
TRUSTEE

Section 12.1 Certain Duties and Responsibilities of Trustee

(a) The Trustee, prior to the occurrence of an Event of Default with respect to the Securities and after the curing or waiving of all Events of Default with respect to the Securities that may have occurred, shall undertake to perform with respect to the Securities such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default with respect to the Securities has occurred (that has not been cured or waived), the Trustee shall exercise with respect to the Securities 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 person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) 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:

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

(1) the duties and obligations of the Trustee shall with respect to the Securities be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable with respect to the Securities except for the performance of 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

(2) in the absence of bad faith on the part of the Trustee, the Trustee may with respect to the Securities conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the

requirements of this Indenture; but in the case of any such certificates or opinions that by any provision hereof 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 (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

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

(iii) 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 of not less than a majority in principal amount of the Securities at the time Outstanding (determined as provided in Section 2.8) 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 with respect to the Securities; and

(iv) 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 is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it.

Section 12.2 Certain Rights of Trustee

Except as otherwise provided in Section 12.1:

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security or other paper or document (whether in original or facsimile form) believed by it in good faith 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 resolution of the Company's Board of Directors or an instrument signed in the name of the Company, by one or more Officers thereof (unless other evidence in respect thereof is specifically prescribed herein);

(c) The Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted hereunder in good faith and in reliance thereon;

(d) The Trustee shall be under no obligation to exercise any of the rights 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 reasonably satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby;

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

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security, or other papers or documents, but the Trustee, in its discretion, may make even further inquiry or investigation into such facts or matters as it may see fit;

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

(h) Except with respect to Section 9.1, the Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 9. In addition, the Trustee shall not be deemed to have knowledge or be charged with knowledge of an Event of Default except (i) if the Trustee is acting as Paying Agent, any Default or Event of Default occurring pursuant to Sections 9.1, 11.1(1) or 11.1(2) and (ii) any Default or Event of Default of which the Trustee shall have received written notification which references the Securities and this Indenture or obtained actual knowledge. Delivery of reports, information and documents to the Trustee under Section 9.2 is for informational purposes only and the Trustee's receipt of the foregoing 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 Officer's Certificates, except as otherwise provided herein); and

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

(j) The permissive right of the Trustee to take or refrain from taking any actions enumerated in this Indenture shall not be construed as a duty.

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

(l) Anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind

whatsoever (including but not limited to loss of profit), even if the Company has been advised as to the likelihood of such loss or damage and regardless of the form of action.

Section 12.3 Trustee Not Responsible for Recitals or Issuance of Securities

(a) The recitals contained herein and in the Securities shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture or established pursuant to Section 2.1, or for the use or application of any moneys received by any Paying Agent other than the Trustee.

(d) The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the Securities or the proceeds from the Securities, it shall not be responsible for the correctness of any recital contained, or for any statement of the Company, in this Indenture or any document issued in connection with the sale of Securities or any statement in the Securities other than the Trustee's certificate of authentication, or the determination as to which beneficial owners are entitled to receive any notices hereunder. The Trustee makes no representations with respect to the effectiveness or adequacy of this Indenture or the Securities or any document issued in connection with the sale of Securities.

Section 12.4 May Hold Securities

The Trustee or any Paying Agent or Security Registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, Paying Agent or Security Registrar.

Section 12.5 Moneys Held in Trust

Subject to the provisions of Section 11.5, 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 law. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon.

Section 12.6 Compensation and Reimbursement

(a) The Company covenants and agrees to pay to the Trustee, and the Trustee shall be entitled to, such compensation (which shall not be limited by any provision of law in

regard to the compensation of a trustee of an express trust), as the Company, and the Trustee may from time to time agree in writing, for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, and, except as otherwise expressly provided herein, the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee 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 Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from the Trustee's gross negligence, bad faith or willful misconduct. The Company also covenants to indemnify the Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence or bad faith or willful misconduct on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section shall survive the discharge of this Indenture and resignation or removal of the Trustee.

(b) The obligations of the Company under this Section to compensate and indemnify the Trustee and to pay or reimburse the Trustee for reasonable expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior 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.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 11.1(7) or (8) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

For the purposes of this Section 12.6, the "Trustee" shall include any predecessor Trustee; provided, however, that the gross negligence, bad faith or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 12.7 Reliance on Officer's Certificate

Except as otherwise provided in Section 12.1, whenever in the administration of the provisions 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 to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate or Opinion of Counsel delivered to the Trustee and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

Section 12.8 Disqualification: Conflicting Interests

If the Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the TIA, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the TIA.

Section 12.9 Corporate Trustee Required: Eligibility

There shall at all times be a Trustee with respect to the Securities issued hereunder which shall at all times be a corporation or banking association organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or other Person permitted to act as trustee by the SEC, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus, or being a member of a bank holding company with a combined capital and surplus, of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. 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, 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. The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 12.10.

Section 12.10 Resignation and Removal: Appointment of Successor

(a) The Trustee or any successor hereafter appointed, may at any time resign with respect to the Securities by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Securityholders, as their names and addresses appear upon the Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to the Securities by or pursuant to a resolution of the Board of Directors. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to the Securities, or any Securityholder who has been a bona fide holder of a Security or Securities for at least six months may 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.

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

(i) the Trustee shall fail to comply with the provisions of Section 12.8 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 12.9 and shall fail to resign after written request therefor by the Company or by any such Securityholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or commence a voluntary bankruptcy proceeding, or a receiver of the Trustee or of its property shall be appointed or consented to, 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 all Securities and appoint a successor trustee by or pursuant to a resolution of the Company's Board of Directors, or, unless the Trustee's duty to resign is stayed as provided herein, any Securityholder who has been a bona fide holder of a Security or Securities for at least six months may, on behalf of that holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities at the time outstanding may at any time remove the Trustee by so notifying the Trustee and the Company and may appoint a successor Trustee with the consent of the Company. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after such notification of removal by the Holders, the Trustee to be removed may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to the Securities, or any Securityholder who has been a bona fide holder of a Security or Securities for at least six months may on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may, as it may deem proper prescribe or appoint a successor trustee.

(d) Notwithstanding anything herein to the contrary, any resignation or removal of the Trustee and appointment of a successor trustee with respect to the Securities pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 12.11.

(e) So long as no event which is, or after notice or lapse of time, or both, would become, an Event of Default shall have occurred and be continuing, and except with respect to a Trustee appointed by the Holders of a majority in principal amount of the Securities at that time outstanding pursuant to Subsection (c) of this Section, if the Company shall have delivered to the Trustee (i) a resolution of the Company's Board of Directors appointing a successor Trustee, effective as of a date specified therein, and (ii) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee in accordance with Section 12.11, the Trustee shall be deemed to have resigned as contemplated in Subsection (a) of this Section, the successor Trustee shall be deemed to have been appointed by the Company pursuant to Subsection (a) of this Section and such appointment shall be deemed to have been accepted as contemplated in Section 12.11, all as of such date, and all other provisions of this Section and Section 12.11 shall be applicable to such resignation, appointment and acceptance except to the extent inconsistent with this Subsection (e).

(f) At any time there shall be only one Trustee with respect to the Securities.

Section 12.11 Acceptance of Appointment By Successor

(a) In case of the appointment hereunder of a successor trustee with respect to the Securities, every such successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges and all other amounts payable to it hereunder, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and trusts referred to in paragraph (a) of this Section.

(c) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified and eligible under this Article 12.

(d) Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Securityholders, as their names and addresses appear upon the Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

Section 12.12 Merger, Conversion, Consolidation or Succession to Business

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 12.8 and eligible under the provisions of Section 12.9, 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 any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 12.13 Preferential Collection of Claims Against the Company

The Trustee shall comply with Section 311(a) of the TIA, excluding any creditor relationship described in Section 311(b) of the TIA. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the TIA to the extent included therein.

Section 12.14 Notice of Defaults

If a Default occurs and is continuing hereunder and if it is actually known to a Trust Officer of the Trustee, the Trustee shall mail to each Holder notice of the default within 45 days after the Trustee receives notice of such a Default. Except in the case of a default in payment of principal of or interest (including Additional Interest, if any) on any Security, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is not opposed to the interest of the holders of such Securities.

ARTICLE 13
AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 13.1 Without Consent of Holders

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to, or consent of, any Securityholder:

(a) to cure any ambiguity, defect, omission, mistake or inconsistency, to correct or supplement any provision herein or in any Subsidiary Guarantee which may be inconsistent with any other provision herein or in any Subsidiary Guarantee, or to make any other provisions with respect to matters or questions arising under this Indenture or any Subsidiary Guarantee which shall not be inconsistent with the provisions of this Indenture, provided that such action pursuant to this Clause (a) shall not adversely affect the interests of the Holders in any material respect;

(b) to provide for uncertificated Securities in addition to or in place of Certificated Securities;

(c) to provide for the assumption of the Company's obligations to Holders of Securities in the case of a share exchange, merger or consolidation or sale of all or substantially all of the Company's assets;

(d) to make any change that would provide any additional rights or benefits to the Holders of Securities or that does not adversely affect in any material respect the legal rights under this Indenture of any Securityholder;

(e) to add a guarantor;

(f) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(g) to secure the Securities;

(h) to comply with the rules of any applicable securities depository, including the Depositary;

(i) to conform the text of this Indenture or the Securities to any provision of the "Description of the Notes" contained in the Offering Circular to the extent that the text of this Indenture or the Securities was intended to be a recitation of the text of such "Description of the Notes"; or

(j) to provide for a successor Trustee in accordance with the terms of this Indenture or to otherwise comply with any requirement of this Indenture.

Section 13.2 With Consent of Holders

The Company and the Trustee may amend or supplement the Securities, this Indenture or any Subsidiary Guarantee with the consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding. Subject to Section 11.4 and Section 11.7, the Holders of at least a majority in aggregate principal amount of the Securities then outstanding may waive compliance in any instance by the Company with any provision of the Securities or this Indenture without notice to any Securityholder. However, notwithstanding the foregoing but subject to Section 13.4, without the consent of the Holders of each Security then outstanding, an amendment, supplement or waiver may not:

(a) change the stated maturity of the principal of or the payment date of any installment of interest (including Additional Interest, if any) on or with respect to the Securities;

(b) reduce the principal amount of, the Redemption Price or Fundamental Change Purchase Price of, or the Make-Whole Premium, the Coupon Make-Whole Payment or rate of interest on any Security;

(c) reduce the amount of principal payable upon acceleration of the maturity of any Security;

(d) change the currency of payment of principal of, the Redemption Price or Fundamental Change Purchase Price of, or interest with respect to which the Securities is payable;

(e) impair the right to institute suit for the enforcement of any payment on, or with respect to, any Security;

(f) modify the provisions with respect to the purchase rights of Holders as provided in Article 5 or modify the provisions of any Subsidiary Guarantee or the provisions of this Indenture relating to any such Subsidiary Guarantee in a manner adverse to Holders;

(g) adversely affect the right of Holders to convert Securities other than as provided in this Indenture;

(h) reduce the percentage in principal amount of the outstanding Securities, the consent of whose Holders is required to take specific actions including, but not

limited to, the waiver of past defaults or the modification or amendment of this Indenture; or

(i) alter the manner of calculation or rate of accrual of interest or Additional Interest, Redemption Price or Fundamental Change Purchase Price, the Make-Whole Premium or Coupon Make-Whole Payment on any Security or extend the time for payment of any such amount.

It shall not be necessary for the consent of the Holders under this Section 13.2 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under Section 13.1 or this Section 13.2 becomes effective, the Company shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. 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 amendment, supplement or waiver.

Section 13.3 Compliance with Trust Indenture Act

Every amendment to or supplement of this Indenture or the Securities shall comply with the TIA as in effect at the date of such amendment or supplement.

Section 13.4 Revocation and Effect of Consents

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

After an amendment, supplement or waiver becomes effective, it shall bind every applicable Securityholder.

Section 13.5 Notation on or Exchange of Securities

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Section 13.6 Trustee to Sign Amendments, Etc.

The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article 13 if the amendment or supplemental indenture does not adversely affect

the rights, duties, liabilities or immunities of the Trustee. If it does adversely affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may, in its sole discretion, but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be provided with and, subject to Section 12.1, shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment or supplemental indenture is authorized or permitted by this Indenture.

Section 13.7 Effect of Supplemental Indentures

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

ARTICLE 14
[RESERVED]

ARTICLE 15
SATISFACTION AND DISCHARGE

Section 15.1 Satisfaction and Discharge of the Indenture

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

(a) either

(i) all Securities theretofore authenticated and delivered (other than Securities that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation have become due and payable whether at the Final Maturity Date or upon acceleration, or on any Redemption Date (including under arrangements satisfactory to the Trustee with respect to the delivery of the notice of redemption), or with respect to any Fundamental Change Purchase Date, and the Company deposits with the Paying Agent or Conversion Agent, as the case may be, cash, Common Stock or other consideration, as applicable hereunder, sufficient to pay on such date all amounts due and owing on all outstanding Securities (other than Securities replaced pursuant to Section 2.7) on such date;

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

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 12.6 and, if money shall have been deposited with the Trustee pursuant to Section 15.1(a)(ii), the obligations of the Trustee under Section 15.2 shall survive such satisfaction and discharge.

Notwithstanding anything herein to the contrary, Article 7, Article 15, and Section 2.4, Section 2.6, Section 2.7, Section 2.8, Section 2.14, Section 9.1, Section 9.5 and Section 9.6 shall survive any discharge of this Indenture until such time as there are no Securities outstanding.

Section 15.2 Repayment to the Company

The Trustee, the Paying Agent and the Conversion Agent shall return to the Company upon written request any cash or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the cash or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and the Trustee, the Paying Agent and the Conversion Agent shall have no further liability to the Securityholders with respect to such cash or securities for that period commencing after the return thereof.

ARTICLE 16
MISCELLANEOUS

Section 16.1 Trust Indenture Act Controls

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision of the TIA shall control.

Section 16.2 Notices

Any demand, authorization notice, request, consent or communication shall be given in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by delivery in person or mail by first-class mail, postage prepaid, or by guaranteed overnight courier) to the following facsimile numbers:

If to the Company, to:

Cheniere Energy, Inc.
717 Texas Avenue, Suite 3100
Houston, TX 77002
Attention: Corporate Secretary
Fax No.: (713) 659-5459

if to the Trustee, to:

The Bank of New York
101 Barclay Street, Floor 8W
New York, NY 10286
Attention: Corporate Trust Division – Corporate Finance Unit
Facsimile No.: 212-815-5707

Such notices or communications to the Trustee shall be effective when received.

The Company or the Trustee by notice to the other in the manner prescribed above may designate additional or different addresses or facsimile numbers for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be mailed by first-class mail, postage prepaid, or delivered by an overnight delivery service to it at its address shown on the Register and shall be sufficiently given if so mailed or delivered within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. Except as set forth about as to the Trustee, if a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 16.3 Communications by Holders with Other Holders

Securityholders may communicate pursuant to TIA Section 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and any other person shall have the protection of TIA Section 312(c).

Section 16.4 Certificate and Opinion as to Conditions Precedent

(a) Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee at the request of the Trustee:

(1) an Officer's Certificate stating that, in the opinion of the signers, all conditions precedent (including any covenants, compliance with which constitutes a

condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including any covenants, compliance with which constitutes a condition precedent) have been complied with.

(b) Each Officer's Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that the person making such certificate or opinion has read such covenant or condition;

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

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

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with;

provided that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Section 16.5 Record Date for Vote or Consent of Securityholders

The Company may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall not be more than 30 days prior to the date of the commencement of solicitation of such action. Notwithstanding the provisions of Section 13.4, if a record date is fixed, those persons who were Holders of Securities at the close of business on such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

Section 16.6 Rules by Trustee, Paying Agent, Registrar and Conversion Agent

The Trustee may make reasonable rules (not inconsistent with the terms of this Indenture) for action by or at a meeting of Holders. Any Registrar, Paying Agent or Conversion Agent may make reasonable rules for its functions.

Section 16.7 Legal Holidays

A "LEGAL HOLIDAY" is a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York and the state in which the

Corporate Trust Office is located are not required to be open. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If an Interest Payment Record Date is a Legal Holiday, the record date shall not be affected.

Section 16.8 Governing Law; JURY TRIAL WAIVER

This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

Section 16.9 No Adverse Interpretation of Other Agreements

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 16.10 No Recourse Against Others

All liability described in paragraph 15 of the Securities of any director, officer, employee or shareholder, as such, of the Company is waived and released.

Section 16.11 Successors

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successor.

Section 16.12 Multiple Counterparts

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent the same agreement.

Section 16.13 Separability

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

Section 16.14 Calculations in Respect of the Securities

The Company or its agents shall make all calculations under this Indenture and the Securities in good faith. In the absence of manifest error, such calculations shall be final and binding on all Holders. The Company or its agents shall provide a copy of such calculations to

the Trustee as required hereunder, the Trustee shall be entitled to rely on the accuracy of any such calculation without independent verification.

Section 16.15 Table of Contents, Headings, Etc.

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date and year first above written.

CHENIERE ENERGY, INC.

By: /s/ Don A. Turkleson

Name: Don A. Turkleson

Title: Senior Vice President and Chief Financial Officer

THE BANK OF NEW YORK, as Trustee

By: /s/ Remo J. Reale

Name: Remo J. Reale

Title: Vice President

[FORM OF FACE OF SECURITY]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]¹

[THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 , AS AMENDED (THE “SECURITIES ACT”), AND THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.]²

[THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST

¹ This legend to be included only if the Security is a Global Security.

² This legend to be included only if the Security is a Restricted Security.

DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES WHERE REGISTRATION OR TRANSFER OF THIS SECURITY IS REQUIRED, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER THE RESALE RESTRICTION TERMINATION DATE UPON THE REQUEST OF THE HOLDER AND THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATES AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY.]²

CHENIERE ENERGY, INC.

2.25% Convertible Senior Notes due 2012

No.

CUSIP: [16411R AD 1]³

Cheniere Energy, Inc., a Delaware corporation (the "Company," which term shall include any successor Person under the Indenture referred to on the reverse hereof), promises to pay to, or registered assigns, the principal amount of (\$) on August 1, 2012, and to pay interest thereon, in arrears, from and including the most recent Interest Payment Date to which interest has been paid or duly provided for (or if no interest has been paid, from, and including July 27, 2005), to, but excluding, February 1 and August 1 of each year (each, an "Interest Payment Date"), beginning on February 1, 2006, at a rate of 2.25% per annum until the principal hereof is paid or made available for payment at August 1, 2012, or upon acceleration, or until such date on which this security is converted, redeemed or purchased as provided herein. The interest so payable and punctually paid or duly provided for on any Interest Payment Date shall, as provided in the Indenture (as hereinafter defined), be paid to the Person in whose name this Security is registered at the close of business on the regular record date for such interest, which shall be the January 15 or July 15 (whether or not a Business Day), as the case may be, immediately preceding the relevant Interest Payment Date (each, an "INTEREST PAYMENT RECORD DATE"); provided, however, that interest shall be paid to a Person other than the Person in whose name this Security is registered at the close of business on the Interest Payment Record Date as provided herein.

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

[Signature page follows]

³ 144A CUSIP

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

Dated: _____

CHENIERE ENERGY, INC.

By: _____

Name:

Title:

Trustee's Certificate of Authentication: This is one of the Securities referred to in the within-mentioned Indenture.

THE BANK OF NEW YORK as Trustee

By: _____

Authorized Signatory

[FORM OF REVERSE SIDE OF SECURITY]

CHENIERE ENERGY, INC.

2.25% CONVERTIBLE SENIOR NOTES DUE 2012

This Security is one of a duly authorized issue of 2.25% Convertible Senior Notes due 2012 (the "SECURITIES") of the Company issued under an Indenture, dated as of July 27, 2005 (the "INDENTURE"), between the Company and The Bank of New York, as trustee (the "TRUSTEE"). The terms of the Security include those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the "TIA"), and those set forth in this Security. This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, if any provision of this Security conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture unless otherwise indicated.

1. Interest.

Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

If this Security is redeemed pursuant to paragraph 5 of this Security, or the Holder elects to require the Company to purchase this Security pursuant to paragraph 6 of this Security, on a date that is after an Interest Payment Record Date but on or before the corresponding Interest Payment Date, interest and Additional Interest, if any, accrued and unpaid hereon to, but not including, the applicable Redemption Date or Fundamental Change Purchase Date shall be paid to the same Holder to whom the Company pays the principal of this Security. Interest and Additional Interest, if any, accrued and unpaid hereon at the Final Maturity Date also shall be paid to the same Holder to whom the Company pays the principal of this Security.

Interest and Additional Interest, if any, on Securities converted after the close of business on an Interest Payment Record Date but prior to the corresponding Interest Payment Date shall be paid, on such Interest Payment Date, to the Holder of the Securities as of the close of business on the Interest Payment Record Date but, upon conversion, the converting Holder must pay the Company an amount equal to the interest that shall be payable on such Interest Payment Date. No such payment need be made with respect to Securities converted after an Interest Payment Record Date and prior to the corresponding Interest Payment Date (1) if the Company has specified a Redemption Date that is after the close of business on an Interest Payment Record Date but prior to the corresponding Interest Payment Date or (2) any overdue interest exists at the time of conversion with respect to the Securities being converted, but only to the extent of the amount of such overdue interest.

Except as otherwise stated herein, any reference herein to interest accrued or payable as of any date shall include Additional Interest, if any, accrued or payable on such date as provided in the Indenture or the Registration Rights Agreement.

2. Method of Payment

Payment of the principal of, and interest on, the Securities shall be made at the office of the Paying Agent in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. The Holder must surrender this Security to a Paying Agent to collect payment of principal. Payment of interest on Certificated Securities shall be made by check mailed to the address of the Person entitled thereto as such address appears in the Register; provided, however, that Holders with Securities in an aggregate principal amount in excess of \$2.0 million shall be paid, at their written election, by wire transfer of immediately available funds. Notwithstanding the foregoing, so long as the Securities are registered in the name of a Depository or its nominee, all payments with respect to the Securities shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee.

3. Paying Agent, Registrar, Conversion Agent

Initially, the Trustee will act as Paying Agent, Registrar and Conversion Agent. The Company or any Affiliate of the Company may act as Paying Agent, Registrar or Conversion Agent, subject to the terms of the Indenture.

4. Indenture

The Securities are general unsecured obligations of the Company limited to \$325,000,000 aggregate principal amount. The Indenture does not limit other debt of the Company, secured or unsecured.

5. Provisional Redemption at the Option of the Company

On or prior to August 1, 2012, the Securities may be redeemed at any time or from time to time at the option of the Company in whole or in part in accordance with Article 3 of the Indenture, if (i) in the previous ten Trading Days ending on the Trading Day before the date of the mailing of the redemption notice the Volume-Weighted Average Price of the Common Stock exceeds 150% of the Conversion Price for at least five consecutive Trading Days and (ii) the shelf registration statement covering resales of the Securities and the Common Stock issuable upon conversion of the Securities required to be filed pursuant to the Registration Rights Agreement is effective and available for use and is expected to remain effective and available for use for the 30 days following the Redemption Date, unless registration is no longer required. Upon any redemption pursuant to Section 3.1 of the Indenture, the Company shall pay a Redemption Price equal to \$1,000 per \$1,000 principal amount of the Securities being redeemed, plus any accrued and unpaid interest (including Additional Interest, if any) to, but excluding, the date fixed for redemption, payable in cash, plus, if applicable, the Coupon Make-Whole Payment.

A notice of redemption pursuant to this Section of this Security shall be mailed at least 15 days but not more than 60 days before a Redemption Date to each Holder of Securities to be redeemed at the Holder's address as such address appears in the Register. If cash sufficient to pay the Redemption Price of all Securities for which notice of redemption is given is deposited with the Paying Agent by 1:00 p.m., New York City time, on the Redemption Date, then, on and

after such Redemption Date, such Securities shall cease to be outstanding and interest on such Securities shall cease to accrue, whether or not such Securities are delivered by their Holders to the Paying Agent, and the Holders thereof shall have no rights as such other than the right to receive the Redemption Price upon delivery of such Securities to the Paying Agent. Securities in denominations larger than \$1,000 principal amount may be redeemed in part but only in multiples of \$1,000 principal amount.

6. Purchase by the Company Upon a Fundamental Change.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase for cash, at the option of any Holder, all or any portion of the Securities held by such Holder upon a Fundamental Change in multiples of \$1,000 at the Fundamental Change Purchase Price. To exercise such right, a Holder shall deliver to the Paying Agent a Fundamental Change Purchase Notice containing the information set forth in the Indenture, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Purchase Date, and shall deliver the Securities to the Paying Agent as set forth in the Indenture.

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

If cash sufficient to pay the Fundamental Change Purchase Price, as the case may be, of all Securities or portions thereof to be purchased with respect to a Fundamental Change Purchase Date is deposited with the Paying Agent by 1:00 p.m., New York City time, on the Fundamental Change Purchase Date, as the case may be, then, on and after such Fundamental Change Purchase Date such Securities shall cease to be outstanding and interest on such Securities shall cease to accrue, whether or not such Securities are delivered by their Holders to the Paying Agent, and the Holders thereof shall have no rights as such other than the right to receive the Fundamental Change Purchase Price, as the case may be, upon delivery of such Securities to the Paying Agent.

7. Conversion.

Subject to the terms and conditions of the Indenture, a Holder of a Security may convert the principal amount of such Security (or any portion thereof equal to \$1,000 principal amount or any integral multiple of \$1,000 principal amount in excess thereof) into common Stock, or cash or a combination of cash and shares of Common Stock if the Company shall so elect pursuant to Section 7.13 of the Indenture, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Final Maturity Date, at the Conversion Rate then in effect; provided, however, that, if such Security is called for redemption pursuant to paragraph 5, such conversion right shall terminate at the close of business on the Business Day immediately preceding the Redemption Date, unless there shall be a default in the payment of the Redemption Price, in which case the conversion right with respect to such Security shall terminate at 5:00 p.m., New York City time, on the date such default is cured and such Security is redeemed in accordance herewith; provided further, that, if a Fundamental Change Purchase Notice with respect to a Security is delivered in accordance with the Indenture, such Security

shall not be convertible unless such Fundamental Change Purchase Notice is duly withdrawn in accordance with the Indenture or unless there shall be a default in the payment of the Fundamental Change Purchase Price, in which case the conversion right with respect to such Security shall terminate at 5:00 p.m., New York City time, on the date such default is cured and such Security is purchased in accordance with the Indenture.

The initial Conversion Rate is 28.2326 shares of Common Stock per \$1,000 principal amount of Securities, which represents an initial Conversion Price of approximately \$35.42 per share of Common Stock. The Conversion Rate is subject to adjustment under certain circumstances as provided in the Indenture. No fractional shares will be issued upon conversion. In lieu thereof, the Company shall deliver cash in an amount equal to the value of such fraction computed on the basis of the Applicable Stock Price on the Trading Day immediately before the Conversion Date.

In lieu of issuing shares of Common Stock upon conversion of any Securities, the Company in its discretion has the right to settle to its Conversion Obligation in cash or a combination of cash and shares of Common Stock as provided in Section 7.13 of the Indenture.

To convert a Security, a Holder must (i) if the Security is represented by a Global Security, comply with the Applicable Procedures, or (ii) if the Security is represented by a Certificated Security, (a) deliver to the Conversion Agent a duly signed and completed Conversion Notice set forth below, (b) deliver the Security to the Conversion Agent, (c) deliver to the Conversion Agent appropriate endorsements and transfer documents if required by the Conversion Agent and (d) pay any tax or duty, if required pursuant to the Indenture. A Holder may convert a portion of a Security equal to \$1,000 or any integral multiple thereof.

The Company will furnish to any Holder, upon request and without charge, copies of the certificate of incorporation and by-laws of the Company then in effect. Any such request may be addressed to the Company or to the Registrar.

8. Make-Whole Premium.

If a Fundamental Change occurs, the Company shall pay the Make-Whole Premium to Holders of the Securities who convert their Securities on a Conversion Date that falls within a period that (i) begins at the opening of business on the date (the "EFFECTIVE NOTICE DATE") the Fundamental Change Company Notice with respect to such Fundamental Change is mailed in accordance with Section 5.1(b) of the Indenture and (ii) ends at the close of business on the second Trading Day immediately preceding the Fundamental Change Purchase Date corresponding to such Fundamental Change. The Make-Whole Premium with respect to a Fundamental Change shall be paid solely in shares of the Common Stock (other than cash paid in lieu of fractional shares); provided, however, that if, in connection with such Fundamental Change, all or substantially all of the shares of Common Stock have been converted into or exchanged for cash, other securities or other property, then such Make-Whole Premium shall be paid in the same form of consideration into which all or substantially all of the shares of Common Stock have been converted or exchanged in connection with such Fundamental Change (other than cash paid in lieu of fractional interests in any security or pursuant to dissenters' rights), in accordance with the Indenture. The value of the Make-Whole Premium shall be equal

to an applicable percentage of the principal amount of the Securities specified in the Indenture. The Make-Whole Premium will be in addition to, and not in substitution for, any cash, securities or other assets otherwise due to Holders of Securities upon conversion as described in the Indenture.

9. Denominations; Transfer; Exchange.

The Securities are in registered form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000. A Holder may register the transfer of or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay certain taxes, assessments or other governmental charges that may be imposed in relation thereto by law or permitted by the Indenture.

10. Persons Deemed Owners

The registered Holder of a Security may be treated as the owner of such Security for all purposes.

11. Unclaimed Money or Securities.

The Trustee and the Paying Agent shall return to the Company upon written request any cash or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the cash or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

12. Amendment, Supplement and Waiver.

Subject to certain exceptions, the Securities or the Indenture may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding, and, subject to certain exceptions, an existing Default or Event of Default with respect to the Securities and its consequences or compliance with any provision of the Securities or the Indenture may be waived with the consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding. Subject to the terms of the Indenture, without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Securities to, among other things, cure any ambiguity, defect, omission, mistake or inconsistency or make any change that does not adversely affect in any material respect the legal rights under the Indenture of any Holder.

13. Defaults and Remedies.

If any Event of Default other than as a result of certain events of bankruptcy, insolvency or reorganization of the Company occurs and is continuing, the principal of all the Securities then outstanding plus accrued and unpaid interest may be declared due and payable in the manner and with the effect provided in the Indenture. If an Event of Default occurs as a result of certain events of bankruptcy, insolvency or reorganization of the Company, the

principal amount of the Securities plus accrued and unpaid interest shall become due and payable immediately without any declaration or other act on the part of the Trustee or any Holder, all to the extent provided in the Indenture.

14. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not the Trustee.

15. No Recourse Against Others.

No recourse under or upon any obligation, covenant or agreement of the Company contained in the Indenture, or in this Security, or because of any indebtedness evidenced thereby or hereby, shall be had against any incorporator, as such, or against any past, present or future employee, stockholder, officer or director, as such, of the Company or of any successor, either directly or through the Company or any 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 by the Holders and as part of the consideration for the issuance of the Securities.

16. Authentication.

This Security shall not be valid until the Trustee or an authenticating agent manually signs the certificate of authentication on the other side of this Security.

17. Abbreviations.

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

18. Indenture to Control; Governing Law.

To the extent permitted by applicable law, if any provision of this Security conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Copies of Indenture.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: Cheniere Energy, Inc., 717 Texas Avenue, Suite 3100, Houston, TX 77002, Fax no.: (713) 659-5459, Attention: Corporate Secretary.

[20. Registration Rights.

The Holders of the Securities are entitled to the benefits of a Registration Rights Agreement, dated as of July 27, 2005, between the Company and the Initial Purchaser, including, in certain circumstances, the receipt of Additional Interest upon a registration default (as defined in such agreement).]⁴

⁴ This Section to be included only if the Security is a Restricted Security.

SCHEDULE OF EXCHANGES OF SECURITIES⁵

The following exchanges, redemptions, purchases or conversions of a part of this Global Security have been made:

<u>DATE OF DECREASE OR INCREASE</u>	<u>AUTHORIZED SIGNATORY OF SECURITIES CUSTODIAN</u>	<u>DECREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY</u>	<u>INCREASE IN PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY</u>	<u>PRINCIPAL AMOUNT OF THIS GLOBAL SECURITY FOLLOWING SUCH DECREASE OR INCREASE</u>
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⁵ This schedule to be included only if the Security is a Global Security.

ASSIGNMENT FORM⁶

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

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

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

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

Your Signature:

Date: _____

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

Signature Guaranteed

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

⁶ This Form and the following Forms to be included only if the Security is a Certificated Security.

FORM OF CONVERSION NOTICE

To convert this Security into shares of Common Stock of the Company, or cash or a combination of cash and shares if the Company shall so elect, and cash for fractional shares, check the box

To convert only part of this Security, state the principal amount to be converted (which must be \$1,000 or a multiple of \$1,000):

If you want the stock certificate made out in another person's name, fill in the form below:

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

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

The undersigned (the "Applicant") hereby makes application for the issuance of record to the name of the Applicant of shares of Common Stock.

Date: _____

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

Signature Guaranteed
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE

The Bank of New York
101 Barclay Street, Floor 8W
New York, NY 10286

Attention: Corporate Trust Division,
Corporate Finance Unit

Re: Cheniere Energy, Inc. (the "Company")
2.25% Convertible Senior Notes due 2012

This is a Fundamental Change Purchase Notice as defined in Section 5.1(c) of the Indenture, dated as of July 27, 2005 (the "Indenture"), between the Company and The Bank of New York, as Trustee. Terms used but not defined herein shall have the meanings ascribed to them in the Indenture.

Certificate No(s). of Securities:

I intend to deliver the following aggregate principal amount of Securities for purchase by the Company pursuant to Article 5 of the Indenture (in multiples of \$1,000):

\$

I hereby agree that the Securities will be purchased on the Fundamental Change Purchase Date pursuant to the terms and conditions specified in paragraph 6 of the Securities and in the Indenture.

Signed: _____

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR
REGISTRATION OF TRANSFER OF RESTRICTED SECURITIES⁷

Re: 2.25% Convertible Senior Notes due 2012
(the "Securities") of Cheniere Energy, Inc.

This certificate relates to \$ _____ principal amount of Securities owned in (check applicable box):

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

The Transferor has requested a Registrar or the Trustee to exchange or register the transfer of such Securities. In connection with such request and in respect of each such Security, the Transferor does hereby certify that the Transferor is familiar with transfer restrictions relating to the Securities as provided in Section 2.12 of the Indenture, dated as of July 27, 2005, between Cheniere Energy, Inc. and The Bank of New York, as trustee (the "Indenture"), and either the transfer of such Security is being made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act") (check applicable box) or the transfer or exchange, as the case may be, of such Security does not require registration under the Securities Act because (check applicable box):

- Such Security is being transferred pursuant to an effective registration statement under the Securities Act.
- Such Security is being acquired for the Transferor's own account, without transfer.
- Such Security is being transferred to the Company or a Subsidiary (as defined in the Indenture) of the Company.
- Such Security is being transferred to a person the Transferor reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A or any successor provision thereto ("Rule 144A") under the Securities Act) to whom notice has been given that the transfer is being made in reliance on such Rule 144A, in reliance on Rule 144A.
- Such Security is being transferred pursuant to and in compliance with an exemption from the registration requirements under the Securities Act in accordance with Rule 144 (or any successor thereto) ("Rule 144") under the Securities Act.
- Such Security is being transferred to a non-U.S. Person in an offshore transaction in compliance with Rule 904 of Regulation S under the Securities Act (or any successor thereto).

⁷ This certificate to be included only if the Security is a Restricted Security.

Such Security is being transferred pursuant to and in compliance with an exemption from the registration requirements of the Securities Act (other than an exemption referred to above).

The Transferor acknowledges and agrees that, if the transferee will hold any such Securities in the form of beneficial interests in a Global Security that is a "restricted security" within the meaning of Rule 144 under the Securities Act, then such transfer can be made only (x) pursuant to Rule 144A under the Securities Act to a transferee that the transferor reasonably believes is a "qualified institutional buyer," as defined in Rule 144A, or (y) pursuant to Regulation S under the Securities Act.

Date: _____

Signature(s) of Transferor

(If the registered owner is a corporation, partnership or fiduciary, the title of the person signing on behalf of such registered owner must be stated.)

Signature Guaranteed

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

[]

By:

Name:
Title:

CHENIERE ENERGY INC. NEWS RELEASE

CONTACT: DAVID CASTANEDA
VICE PRESIDENT INVESTOR RELATIONS
DIRECT: 713-265-0202
E-mail: Info@Cheniere.com

Cheniere Energy Closes Private Placement of 2.25% Senior Unsecured Convertible Notes due 2012

Houston – July 27, 2005 – Cheniere Energy, Inc. (AMEX: LNG) announced that it has closed its previously announced private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, of its 2.25% Senior Unsecured Convertible Notes due 2012. The initial purchaser of the notes has also exercised its option to purchase an additional \$25 million aggregate principal amount of notes for a total offering of \$325 million.

The company utilized approximately \$75.7 million of the proceeds of the offering for the cost of hedge transactions with an affiliate of the initial purchaser. The hedges have a term of two years and are expected to offset potential dilution of the company's common stock from conversion of the notes up to a market price of \$70.00 per share, subject to adjustments.

Net proceeds to the company for general corporate purposes are approximately \$240 million after deduction of the hedge costs, underwriting discounts, and expenses.

Cheniere Energy, Inc. is a Houston based energy company engaged in developing LNG Receiving Terminals and Gulf of Mexico Exploration & Production. Cheniere is building a 100% owned Gulf Coast LNG Receiving Terminal near Sabine Pass in Cameron Parish, LA and developing 100% owned Gulf Coast LNG Receiving Terminals near Corpus Christi, TX, and near the Creole Trail in Cameron Parish, LA. Cheniere is also a 30% limited partner in Freeport LNG Development, L.P., which is building an LNG Receiving Terminal in Freeport, Texas. Cheniere explores for oil and gas in the Gulf of Mexico using a regional database of 7,000 square miles of PSTM 3D seismic data. Cheniere owns 9% of Gryphon Exploration Company, along with Warburg, Pincus Equity Partners, L.P., which owns 91%. Additional information about Cheniere Energy, Inc. may be found on its web site at www.cheniere.com.

This press release contains certain statements that may include "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements, other than statements of historical facts, included herein are "forward-looking statements." Included among "forward-looking statements" are, among other things, (i) statements regarding Cheniere's business strategy, plans and objectives and (ii) statements expressing beliefs and expectations regarding the development of Cheniere's LNG receiving terminal business. Although Cheniere believes that the expectations reflected in these forward-looking statements are reasonable, they do involve assumptions, risks and uncertainties, and these expectations may prove to be incorrect. Cheniere's actual results could differ materially from those anticipated in these forward-looking statements as a result of a variety of factors, including those discussed in Cheniere's periodic reports that are filed with and available from the Securities and Exchange Commission. You should not place undue reliance on these forward-looking statements, which speak only as of the date of this press release. Other than as required under the securities laws, Cheniere does not assume a duty to update these forward-looking statements.

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