

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

THE TJX COMPANIES, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

04-2207613  
(I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

770 COCHITUATE ROAD  
FRAMINGHAM, MASSACHUSETTS 01701  
(508) 390-1000  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING AREA CODE, OF  
REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

DONALD G. CAMPBELL  
EXECUTIVE VICE PRESIDENT, CHIEF FINANCIAL OFFICER  
THE TJX COMPANIES, INC.  
770 COCHITUATE ROAD  
FRAMINGHAM, MASSACHUSETTS 01701  
(508) 390-1000  
(NAME AND ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING AREA  
CODE, OF AGENT FOR SERVICE OF PROCESS)

COPIES TO:

MARY E. WEBER, ESQ.  
ROPES & GRAY  
ONE INTERNATIONAL PLACE  
BOSTON, MASSACHUSETTS 02110  
(617) 951-7000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this Registration Statement as determined by market conditions.

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

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

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box: [ ]

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED	PROPOSED MAXIMUM OFFERING PRICE PER UNIT OR SHARE(1)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE(1)	AMOUNT OF REGISTRATION FEE
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Liquid Yield Option Notes (Zero Coupon -- Subordinated) due 2021(2).....	\$517,500,000	72.5%	\$375,187,500	\$93,796.88
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Common Stock, \$1.00 par value..... (3) (3) (3) (4)  
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- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) on the basis of the average of the bid and asked prices of the Liquid Yield Option Notes (Zero Coupon -- Subordinated) on the PORTAL system on May 2, 2001.
- (2) Issued at an original price of \$671.65 per \$1,000 principal at maturity, which represents an aggregate initial offering price of \$347,578,875 and a principal amount at maturity of \$517,500,000.
- (3) Includes 8,452,586 shares of Common Stock issuable upon conversion of the LYONs at the rate of 16.3335 shares of Common Stock per \$1,000 principal amount at maturity of the LYONs. Under Rule 416 under the Securities Act, the number of shares of Common Stock registered includes an indeterminate number of shares of Common Stock that may be issued in connection with a stock split, stock dividend, recapitalization or similar event.
- (4) Under Rule 457(i), there is no additional filing fee with respect to the shares of Common Stock issuable upon conversion of the LYONs because no additional consideration will be received in connection with the exercise of the conversion privilege.

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THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.  
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INFORMATION CONTAINED IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. WE MAY NOT SELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IT IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

PROSPECTUS (Subject to Completion)

Dated May 9, 2001

\$517,500,000

[TJX LOGO]

LIQUID YIELD OPTION(TM) NOTES DUE 2021  
(ZERO COUPON -- SUBORDINATED)  
AND  
COMMON STOCK ISSUABLE UPON CONVERSION OF THE LYONS  
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The TJX Companies, Inc. issued the LYONS in a private placement in February 2001 at an issue price of \$671.65 per LYON. This prospectus will be used by selling securityholders to resell their LYONS and the common stock issuable upon conversion of their LYONS.

We will not pay interest on the LYONS prior to maturity. Instead, on February 13, 2021, the maturity date of the LYONS, holders will receive \$1,000 per LYON. The issue price of each LYON represents a yield to maturity of 2% per year, calculated from February 13, 2001. The LYONS are subordinated to all existing and future senior indebtedness of TJX and will be effectively subordinated to all existing and future liabilities of our subsidiaries.

Prior to maturity, holders may convert their LYONS only if (1) the sale price of our common stock reaches specified thresholds, (2) the credit rating of the LYONS is below investment grade, (3) the LYONS are called for redemption, or (4) specified corporate transactions have occurred. Each LYON is convertible into 16.3335 shares of common stock, subject to adjustments. Our common stock is listed on the New York Stock Exchange under the symbol "TJX." The last reported sale price on the NYSE for our common stock was \$31.68 per share on May 8, 2001.

We may redeem for cash all or a portion of the LYONS at any time on or after February 13, 2007 at a price equal to the sum of the issue price and accrued original issue discount of such LYONS on the applicable redemption date. Each holder may require us to repurchase all or a portion of such holder's LYONS on February 13, 2002 at a price of \$681.76 per LYON, on February 13, 2004 at a price of \$712.97 per LYON, on February 13, 2007 at a price of \$756.83 per LYON, or on February 13, 2013 at a price of \$852.82 per LYON. We may choose to pay the purchase price of such LYONS in cash or common stock or a combination of cash and common stock. In addition, if a change of control of TJX occurs on or before February 13, 2007, each holder may require us to purchase for cash all or a portion of such holder's LYONS at a price equal to the sum of the issue price and accrued original issue discount of such LYONS on the applicable redemption date.

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NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.  
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The date of this Prospectus is \_\_\_\_\_, 2001.

## ABOUT THIS PROSPECTUS

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone else to provide you with different information. If anyone provides you with different information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus or any documents incorporated by reference is accurate only as of the date on the front cover of the applicable document or as specifically indicated in the document. Our business, financial condition, results of operations and prospects may have changed since that date.

In this prospectus, the terms "TJX," "we," "us" and "our" refer to The TJX Companies, Inc. and its consolidated subsidiaries, except in "Summary -- The Offering" and "Description of LYONS," where such terms refer only to The TJX Companies, Inc.

TJX, T.J. Maxx, Marshalls, HomeGoods, Winners, T.K. Maxx, A.J Wright and HomeSense are trademarks, trade names or service marks, registered or unregistered, of TJX or an affiliate.

Liquid Yield Option is a registered trademark of Merrill Lynch & Co., Inc.

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## WHERE YOU CAN FIND MORE INFORMATION

TJX files annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission, or SEC under the Securities Exchange Act of 1934. You may read and copy this information at the following locations of the SEC:

Public Reference Room 450 Fifth Street, N.W. Room 1024 Washington, D.C. 20549	North East Regional Office 7 World Trade Center Suite 1300 New York, NY 10048	Midwest Regional Office 500 West Madison Street Suite 1400 Chicago, IL 60661
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You may also obtain copies of the information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, DC 20549, at prescribed rates. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains a web site that contains reports, proxy statements and other information about issuers, like TJX, who file electronically with the SEC. The address of the site is [www.sec.gov](http://www.sec.gov).

You can also inspect reports, proxy statements and other information about TJX at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We are "incorporating by reference" into this prospectus some information we file with the SEC. This means that we are disclosing important information to you by referring you to those documents. The information incorporated by reference is deemed to be part of this prospectus, except for any information superseded by information contained directly in this prospectus. This prospectus incorporates by reference the documents set forth below that we have filed previously with the SEC. These documents contain important information about us.

TJX SEC FILINGS (FILE NO. 1-4908)	PERIOD
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Annual Report on Form 10-K.....	Fiscal year ended January 27, 2001
Amendment No. 5 to Form 8-A/A to the Registration	
Statement on Form 8-A.....	Dated September 9, 1999

All documents we file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act from the date of this prospectus to the end of the offering of the LYONs and common stock under this document shall also be deemed to be incorporated in this prospectus by reference and will automatically update information in this prospectus.

For a description of our capital stock, please see Amendment No. 5 to Form 8-A/A.

You may request a copy of these filings at no cost by writing or calling us at the following address or telephone number:

The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, MA 01701  
Tel (508) 390-1000  
Attn: Sherry Lang,  
Vice President Investor & Public Relations

Exhibits to the filings will not be sent unless those exhibits have specifically been incorporated by reference in this document.

## FORWARD LOOKING INFORMATION

Some of the statements contained in this prospectus are forward looking and involve a number of risks and uncertainties. All statements included in this prospectus, including in the summary and in the documents incorporated by reference, that address activities, events or developments that we intend or expect to or believe may occur in the future are forward looking statements. Such statements are characterized by terminology such as "believe," "anticipate," "should," "intend," "plan," "may," "expects," "estimates," "projects," "positioned," "strategy" and similar words. Among the factors that could cause actual results to differ materially from the forward looking statements contained in this prospectus are the following:

- general economic conditions and consumer demand and preferences;
- weather patterns in areas where we have concentrations of stores;
- competitive factors, including pressure from pricing and promotional activities of competitors;
- the impact of excess retail capacity and the availability of desirable store and distribution center locations on suitable terms;
- our ability to recruit quality sales associates;
- the availability, selection and purchase of attractive merchandise on favorable terms;
- potential disruptions in supply, and duties, tariffs and quotas on imported merchandise, as well as economic and political problems in countries from which merchandise is imported;
- currency and exchange rate factors in our foreign operations;
- expansion of our store base, development of new businesses and application of our off-price strategies in foreign countries;
- our acquisition and divestiture activities; and
- other factors that are or may be described in our filings with the SEC incorporated by reference in this prospectus.

In addition, there are risks related to the LYONs, including the following:

- we may not have the funds necessary to finance the purchase of the LYONs at the option of the holder or in a change in control purchase;
- the price of the LYONs or the shares of common stock issuable upon conversion of the LYONs could vary significantly over time;
- the change in control purchase feature of the LYONs may delay or prevent a possible takeover attempt of TJX which would otherwise be beneficial to investors;
- the value a holder may realize could be adversely affected if the conditions for convertibility are not met; and
- because the LYONs will be subordinated to our senior indebtedness and effectively subordinated to liabilities of our subsidiaries, in the event of our bankruptcy, dissolution or reorganization, holders of senior indebtedness may receive more ratably and holders of the LYONs may receive less ratably than our other creditors.

## SUMMARY

The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference in this prospectus. Because this is a summary, it may not contain all the information that is important to you. You should read the entire prospectus, including the information incorporated by reference, before making an investment decision.

## THE TJX COMPANIES

We are the leading off-price retailer of apparel and home fashions in the United States and worldwide. We offer off-price family apparel and home fashions through our T.J. Maxx, Marshalls and A.J. Wright chains in the United States, our Winners chain in Canada and our T.K. Maxx chain primarily in the United Kingdom. We also operate the HomeGoods chain in the United States, which focuses exclusively on off-price home fashions, and we are opening a Canadian home fashions chain called HomeSense in 2001. Our chains target the middle to upper-middle income shopper with a profile like a department or specialty store customer. The exception is our A.J. Wright stores which target a more moderate income customer.

## THE OFFERING

LYONS.....	\$517,500,000 aggregate principal amount at maturity of LYONS due February 13, 2021. We will not pay any interest on the LYONS prior to maturity. Each LYON was issued at a price of \$671.65 per LYON and has a principal amount at maturity of \$1,000.
Maturity of the LYONS.....	February 13, 2021.
Yield to Maturity of LYONS....	2% per year, computed on the original issue price on a semiannual bond equivalent basis from February 13, 2001.
Original Issue Discount.....	We sold the LYONS at an issue price significantly below their principal amount at maturity. The original issue discount for U.S. federal income tax purposes is equal to the principal amount at maturity less the issue price to the initial purchasers of the LYONS. Original issue discount accrues daily at a rate of 2% per year from the date of issuance of the LYONS, calculated on a semiannual bond equivalent basis at the yield to maturity of the LYONS, using a 360-day year comprised of twelve 30-day months.  Although we will not pay interest on the LYONS, U.S. Holders must include original issue discount, as it accrues, in their gross income for United States federal income tax purposes. See "Material United States Federal Income Tax Consequences."
Conversion Rights.....	If the conditions for conversion are satisfied, you may surrender each LYON held by you for conversion into 16.3335 shares of our common stock. The conversion rate is subject to adjustment as provided in the indenture, but will not be adjusted for accrued original issue discount. Upon conversion, a holder will not receive any cash payment representing accrued original issue discount. Instead, accrued original issue discount will be deemed paid by the shares of common stock received by the holder on conversion.

Holders may surrender LYONS for conversion into shares of our common stock in any fiscal quarter, if, as of the last day of the preceding fiscal quarter, the closing sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of such preceding fiscal quarter is more than a specified percentage of the accreted conversion price per share of common stock on the last trading day of such preceding fiscal quarter. The specified target percentage begins at 135% in the quarter ended April 28, 2001 and declines 0.3125% per quarter until it reaches 110.3125% for the quarter beginning January 31, 2021. The accreted conversion price per share as of any day will equal the issue price of a LYON plus the accrued original discount to that day, divided by 16.3335, subject to any adjustments to the conversion rate through that day.

Holders may also surrender a LYON for conversion during any period in which the credit rating assigned to the LYONS by either Moody's or Standard & Poor's is below investment grade (Ba1 or lower for Moody's or BB+ or lower for Standard & Poor's).

Holders may surrender for conversion LYONS called for redemption until the close of business on the second business day prior to the redemption date. In addition, if we make a significant distribution to our stockholders or if we are a party to specified consolidations, mergers or binding share exchanges, LYONS may be surrendered for conversion, as described in "Description of LYONS -- Conversion Rights." The ability to surrender LYONS for conversion will expire at the close of business on February 13, 2021.

Subordination.....	The LYONS are subordinated in right of payment to all of our existing and future senior indebtedness. As of January 27, 2001, we had approximately \$425 million of senior indebtedness outstanding, excluding contingent liabilities not reflected on our balance sheet. The LYONS are also effectively subordinated to all other liabilities, including trade payables, of our subsidiaries. The term "senior indebtedness" is defined in the "Description of LYONS -- Subordination" section of this prospectus.
Sinking Fund.....	None.
Redemption of the LYONS at the Option of TJX.....	We may redeem for cash all or a portion of the LYONS at any time on or after February 13, 2007, at redemption prices equal to the sum of the issue price and accrued original issue discount for the LYONS on the applicable redemption date.
Purchase of the LYONS by TJX at the Option of the Holder...	Each holder may require us to purchase all or a portion of such holder's LYONS on each of the following dates at the following prices: <ul style="list-style-type: none"> <li>- February 13, 2002, at a price of \$681.76 per LYON;</li> <li>- February 13, 2004, at a price of \$712.97 per LYON;</li> </ul>



- February 13, 2007, at a price of \$756.83 per LYON; and

- February 13, 2013, at a price of \$852.82 per LYON.

These prices are equal to the sum of the issue price and accrued original issue discount for the LYONS on such dates, except for the price at February 13, 2002, which is a lower price.

We may pay the purchase price in cash or shares of our common stock or in a combination of cash and shares of our common stock.

Change in Control..... Upon a change in control of TJX occurring on or before February 13, 2007, each holder may require us to purchase for cash all or a portion of such holder's LYONS at a price equal to the sum of the issue price and accrued original issue discount for the LYONS on the date of purchase.

Optional Conversion to  
Semiannual Coupon Notes upon  
Tax Event..... If there are specified changes in the tax laws, we may choose to pay interest instead of future accrued original issue discount on each LYON. Such interest would be payable semiannually from the option exercise date at 2% per year on the restated principal amount. In such event, the redemption price, purchase price and change in control purchase price will be adjusted, as described in this prospectus. However, there will be no change in the holder's conversion rights. This is described in more detail under "Description of LYONS -- Optional Conversion to Semiannual Coupon Notes Upon Tax Event."

DTC Eligibility..... The LYONS were issued in fully registered book-entry form and will be represented by one or more permanent global LYONS without coupons deposited with a custodian for and registered in the name of a nominee of The Depository Trust Company in New York, New York. Beneficial interests in global LYONS are shown on, and transfers will be effected only through, records maintained by DTC and its direct and indirect participants. Your interest in any global LYON may not be exchanged for certificated LYONS, except in limited circumstances. Settlement and all secondary market trading activity for the LYONS will be in same day funds.

Trading..... The LYONS issued in the initial private placement are eligible for trading in the PORTAL system. However, LYONS sold using this prospectus will no longer be eligible for trading in the PORTAL system. We do not intend to list the LYONS on any national securities exchange. Our common stock is traded on the NYSE under the symbol "TJX."

## USE OF PROCEEDS

We will not receive any proceeds from the sale by any selling securityholders of the LYONs or the underlying common stock.

## RATIO OF EARNINGS TO FIXED CHARGES

For purposes of computing our ratio of earnings to fixed charges, "earnings" represent income from continuing operations before provision for taxes, interest expense and the interest portion of rentals. "Fixed charges" represent interest expense, capitalized interest and the interest portion of rentals.

	FISCAL YEAR ENDED				
	JAN. 25, 1997	JAN. 31, 1998	JAN. 30, 1999	JAN. 29, 2000	JAN. 27, 2001
	-----				
	(53 WEEKS)				
	-----	-----	-----	-----	-----
Ratio of earnings to fixed charges.....	3.03x	4.28x	5.33x	6.29x	5.71x

## DESCRIPTION OF LYONS

The following summary is not complete. You should review the indenture that has been filed as an exhibit to this registration statement. The indenture defines your rights as a LYONS holder. As used in this description of LYONS, the words "we," "us," "our" or "TJX" mean The TJX Companies, Inc. and do not include any current or future subsidiary or other affiliate.

## GENERAL

We issued \$517,500,000 aggregate principal amount at maturity of LYONS in a February 2001 private placement. The LYONS will mature on February 13, 2021. The principal amount at maturity of each LYON is initially \$1,000. The LYONS are payable at the principal corporate trust office of the paying agent, which initially is an office or agency of the trustee, or an office or agency maintained by us for such purpose, in the Borough of Manhattan, The City of New York.

We sold the LYONS at a substantial discount from their principal amount at maturity. We will not make periodic payments of interest on the LYONS. The issue price of the LYONS was \$671.65 per LYON. The LYONS accrue original issue discount while they remain outstanding. Original issue discount is the difference between the issue price to the initial purchasers and the principal amount at maturity of a LYON. Original issue discount accrues at a rate of 2% per year, beginning on the date of original issuance of the LYONS. The calculation of the accrual of original issue discount is based on the original issue price on a semiannual bond equivalent basis, using a 360-day year composed of twelve 30-day months.

Original issue discount will cease to accrue on a LYON upon its maturity, conversion, purchase by us at your option or redemption. We may not reissue a LYON that has matured or been converted, purchased by us at your option, redeemed or otherwise cancelled, except for registration of transfer, exchange or replacement of such LYON.

LYONS may be presented for conversion at the office of the conversion agent and for exchange or registration of transfer at the office of the registrar. The conversion agent and the registrar are initially the trustee. No service charge will be made for any registration of transfer or exchange of LYONS. However, we may require the holder to pay any tax, assessment or other governmental charge payable as a result of such transfer or exchange.

## SUBORDINATION

Payment on the LYONS is, to the extent provided in the indenture, subordinated in right of payment to the prior payment in full of all of our existing and future senior indebtedness. Payment on the LYONS is also effectively subordinated to all existing and future indebtedness of our subsidiaries.

Upon any payment or distribution of our assets to our creditors upon any dissolution, winding up, liquidation or reorganization, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other similar proceedings, the holders of our senior indebtedness will first be entitled to receive payment in full of all amounts due or to become due on their indebtedness, or payment of such amounts shall have been provided for, before the holders of the LYONS will be entitled to receive any payment or distribution with respect to the LYONS.

By reason of this subordination, in the event of our bankruptcy, dissolution or reorganization, holders of senior indebtedness may receive more ratably and holders of the LYONS may receive less ratably than our other creditors. The LYONS are also subordinated by operation of law to all indebtedness and other liabilities, including trade payables, of our subsidiaries.

In addition, no payment of the principal amount at the maturity of the LYONS (or if the LYONS have been converted to semiannual coupon notes following a tax event, as described below, the restated principal amount), issue price, accrued original issue discount, redemption price, change in control purchase price or interest, if any, with respect to any LYONS may be made by us, nor may we pay cash

with respect to the purchase price of any LYONs (other than for fractional shares) or acquire any LYONs for cash or property (except as set forth in the indenture) if:

- any payment default on any senior indebtedness has occurred and is continuing beyond any applicable grace period; or
- any default other than a payment default with respect to senior indebtedness has occurred and is continuing that permits the acceleration of the maturity of such senior indebtedness and such default is either the subject of judicial proceedings or we receive a written notice of the default from the holders of the senior indebtedness.

Notwithstanding the foregoing, the payment blockage period will end and we may resume payments with respect to the LYONs and may acquire LYONs:

- when the default with respect to the senior indebtedness is cured or waived; or
- in the case of a default described in the second bullet above, 179 or more days pass after we receive notice of the default, provided that the terms of the indenture otherwise permit the payment or acquisition of the LYONs at that time.

No new period of payment blockage may be commenced pursuant to a similar notice relating to the same default on the same issue of senior indebtedness unless nine months have elapsed since we received the notice of default as provided above.

In addition, no payment may be made on the LYONs if any LYONs are declared due and payable prior to their stated maturity by reason of the occurrence of an event of default until the earlier of 120 days after the date of such acceleration or the payment in full of all senior indebtedness, but only if such payment is then otherwise permitted under the terms of the indenture. Notwithstanding the foregoing, upon the expiration of any payment blockage period described above, holders of the LYONs are required to pay over any amounts collected by such holders to the holders of senior indebtedness to the extent necessary to pay all holders of senior indebtedness in full.

The term "senior indebtedness" of TJX means the principal, premium (if any) and unpaid interest on all present and future on all of our:

- (1) indebtedness for borrowed money;
- (2) obligations evidenced by bonds, debentures, notes or similar instruments;
- (3) obligations under (a) interest rate swaps, caps, collars, options, and similar arrangements, (b) any foreign exchange contract, currency swap contract, futures contract, currency option contract, or other foreign currency hedge and (c) credit swaps, caps, floors, collars and similar arrangements;
- (4) indebtedness incurred, assumed or guaranteed by us in connection with the acquisition by us or one of our subsidiaries of any business, properties or assets (except purchase money indebtedness classified as accounts payable under generally accepted accounting principles);
- (5) all obligations and liabilities, contingent or otherwise, in respect of our leases required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on our balance sheet and all obligations and liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, in connection with the lease of real property which provides that we are contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the lessor and our obligations under such lease or related document to purchase or to cause a third party to purchase such leased property;
- (6) reimbursement obligations in respect of letters of credit relating to our indebtedness or other obligations that qualify as indebtedness or obligations of the kind referred to in clauses (1) through (5) above; and

(7) obligations under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (1) through (6) above,

in each case unless in the instrument creating or evidencing the indebtedness or obligation or pursuant to which the same is outstanding it is provided that such indebtedness or obligation is not senior in right of payment to the LYONS or that such indebtedness or obligation is subordinated to any of our other indebtedness or obligations, unless such indebtedness or obligations expressly provide that such indebtedness or obligations are to be senior in right of payment to the LYONS. At January 27, 2001, we had approximately \$425 million of senior indebtedness outstanding, not including any contingent liabilities not reflected on our balance sheet.

The LYONS are effectively subordinated to all existing and future liabilities of our subsidiaries. Any right we have to participate in any distribution of the assets of any of our subsidiaries upon the liquidation, reorganization or insolvency of such subsidiary (and the consequent right of the holders of the LYONS to participate in those assets) will be subject to the claims of the creditors (including trade creditors) of such subsidiary, except to the extent that our claims as a creditor of such subsidiary may be recognized, in which case our claims would still be subordinate to any security interest in the assets of such subsidiary and any indebtedness of such subsidiary senior to that held by us. The indenture does not restrict us or our subsidiaries from incurring additional indebtedness, including senior indebtedness. A significant amount of the total liabilities reflected on our balance sheet are incurred by our subsidiaries and will be effectively senior to the LYONS.

#### BOOK-ENTRY SYSTEM

The LYONS were issued in the form of global securities held in book-entry form. DTC or its nominee is the sole registered holder of the LYONS for all purposes under the indenture. Owners of beneficial interests in the LYONS represented by the global securities hold their interests pursuant to the procedures and practices of DTC. As a result, beneficial interests in any such securities are shown on, and may only be transferred through, records maintained by DTC and its direct and indirect participants, and any such interest may not be exchanged for certificated securities, except in limited circumstances. Owners of beneficial interests must exercise any rights in respect of their interests, including any right to convert or require purchase of their interests in the LYONS, in accordance with the procedures and practices of DTC. Beneficial owners are not holders and are not entitled to any rights under the global securities or the indenture. Both we and the trustee, and any of our respective agents, may treat DTC as the sole holder and registered owner of the global securities.

#### EXCHANGE OF GLOBAL SECURITIES

LYONS represented by a global security will be exchangeable for certificated securities with the same terms only if:

- DTC is unwilling or unable to continue as depository or if DTC ceases to be a clearing agency registered under the Exchange Act, and we do not appoint a successor depository within 90 days;
- we decide to discontinue use of the system of book-entry transfer through DTC (or any successor depository); or
- a default under the indenture occurs and is continuing.

DTC has advised us as follows: DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC facilitates the settlement of transactions among its participants through electronic computerized book-entry changes in participants' accounts, eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, banks, trust companies, clearing corporations and other organizations, some of whom and/or their representatives, own DTC. Access to

DTC's book-entry system is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

#### CONVERSION RIGHTS

Holder may surrender LYONs for conversion into shares of our common stock only if at least one of the conditions described below is satisfied. In addition, a LYON for which a holder has delivered a purchase notice or a change in control purchase notice requiring us to purchase the LYONs may be surrendered for conversion only if such notice is withdrawn in accordance with the indenture.

The initial conversion rate is 16.3335 shares of common stock per LYON, subject to adjustment upon the occurrence of the events described below. A holder of a LYON otherwise entitled to a fractional share will receive cash equal to the applicable portion of the then-current sale price of our common stock on the trading day immediately preceding the conversion date.

The ability to surrender LYONs for conversion will expire at the close of business on February 13, 2021.

To convert a LYON into shares of our common stock, a holder must:

- complete and manually sign the conversion notice appearing on the back of the LYON (or complete and manually sign a facsimile of such notice), and deliver such notice to the conversion agent;
- surrender the LYON to the conversion agent;
- if required by the conversion agent, furnish appropriate endorsements and transfer documents; and
- if required, pay all transfer or similar taxes.

The date on which all of the foregoing requirements have been satisfied is the conversion date.

The conversion agent will, on our behalf, determine if the LYONs are convertible and notify the trustee and us accordingly. If one or more of the conditions to the conversion of the LYONs has been satisfied, we will promptly notify the holders of the LYONs and use our reasonable best efforts to post this information on our website or otherwise publicly disclose this information.

**Conversion Based on Common Stock Price.** A holder may surrender such holder's LYONs for conversion into shares of our common stock in any fiscal quarter, if, as of the last day of the preceding fiscal quarter, the sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of such preceding fiscal quarter is more than a specified percentage of the accreted conversion price per share of common stock on the last day of such preceding fiscal quarter. The specified percentage begins at 135% in the quarter ended April 28, 2001 and declines 0.3125% per quarter thereafter until it reaches 110.3125% for the quarter beginning January 31, 2021.

The accreted conversion price per share as of any day will equal the issue price of a LYON plus the accrued original issue discount to that day, divided by the number of shares of common stock issuable upon conversion of a LYON on that day. The sale price of our common stock on any trading day means the closing per share sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date on the principal national securities exchange on which the common stock is listed or, if our common stock is not listed on a principal national securities exchange, as reported by Nasdaq or otherwise as provided in the indenture.

The table below shows the conversion trigger price per share of our common stock in respect of each of the first 20 fiscal quarters following issuance of the LYONs. These conversion trigger prices reflect the accreted conversion price per share of common stock multiplied by the applicable percentage for the respective fiscal quarter. Thereafter, the accreted conversion price per share of common stock increases each fiscal quarter by the accreted original issue discount for the quarter and the applicable percentage

declines by 0.3125% per quarter. The conversion trigger price for the fiscal quarter beginning January 31, 2021, is \$67.49.

FISCAL QUARTER*	(1) ACCRETED CONVERSION PRICE	(2) APPLICABLE PERCENTAGE	(3) CONVERSION TRIGGER PRICE (1) X (2)
2002			
Quarter ended April 28, 2001.....	\$41.29	135.0000%	\$55.74
Quarter ended July 28, 2001.....	41.50	134.6875%	55.89
Quarter ended October 27, 2001.....	41.70	134.3750%	56.04
Quarter ended January 26, 2002.....	41.91	134.0625%	56.18
2003			
Quarter ended April 27, 2002.....	\$42.12	133.7500%	\$56.34
Quarter ended July 27, 2002.....	42.33	133.4375%	56.48
Quarter ended October 26, 2002.....	42.54	133.1250%	56.63
Quarter ended January 25, 2003.....	42.75	132.8125%	56.78
2004			
Quarter ended April 26, 2003.....	\$42.96	132.5000%	\$56.93
Quarter ended July 26, 2003.....	43.18	132.1875%	57.08
Quarter ended October 25, 2003.....	43.39	131.8750%	57.22
Quarter ended January 31, 2004.....	43.62	131.5625%	57.39
2005			
Quarter ended May 1, 2004.....	\$43.84	131.2500%	\$57.54
Quarter ended July 31, 2004.....	44.06	130.9375%	57.69
Quarter ended October 30, 2004.....	44.28	130.6250%	57.84
Quarter ended January 29, 2005.....	44.49	130.3125%	57.98
2006			
Quarter ended April 30, 2005.....	\$44.72	130.0000%	\$58.13
Quarter ended July 30, 2005.....	44.94	129.6875%	58.28
Quarter ended October 29, 2005.....	45.16	129.3750%	58.43
Quarter ended January 28, 2006.....	45.39	129.0625%	58.58

\* This table assumes no events have occurred that would require an adjustment to the conversion rate. We have a fiscal year that ends on the last Saturday in January and is generally comprised of four fiscal quarters of 13 weeks ending on the last Saturday of April, July, October and January. Periodically, the fourth fiscal quarter will consist of 14 weeks (and therefore the fiscal year will be 53 weeks); such quarters include the quarters ending January 31, 2004, January 31, 2009, January 31, 2015 and January 30, 2021.

Conversion Based on Credit Rating. A holder may also surrender such holder's LYONs for conversion during any period that the credit rating assigned to the LYONs by either Moody's Investor Service, Inc. or Standard & Poor's Rating Services is below investment grade (Ba1 or lower for Moody's and BB+ or lower for S&P).

Conversion Based on Redemption. A holder may surrender for conversion such holder's LYONs called for redemption at any time prior to the close of business on the second business day immediately preceding the redemption date, even if the LYONs are not otherwise convertible at such time. A LYON for which a holder has delivered a purchase notice or a change in control purchase notice, as described below, requiring us to purchase such LYON may be surrendered for conversion only if such notice is withdrawn in accordance with the indenture.

A "business day" is any weekday that is not a day on which banking institutions in The City of New York are authorized or obligated to close. A "trading day" is any day on which the NYSE is open for trading or, if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made on such market or, if the applicable security is not so listed, admitted for trading or quoted, any business day.

Conversion Upon Occurrence of Certain Corporate Transactions. If we are party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of our assets, a holder may surrender such holder's LYONs for conversion at any time from and after the date which is 15 days prior to the anticipated effective date of the transaction until 15 days after the actual effective date of such transaction, and at the effective date, the right to convert a LYON into common stock will be changed into a right to convert it into the kind and amount of securities, cash or other assets of TJX or another person which the holder would have received if the holder had converted the holder's LYONs immediately prior to the transaction. If such transaction also constitutes a change in control of TJX, the holder will be able to require us to purchase all or a portion of such holder's LYONs as described under "-- Change in Control Permits Purchase of LYONs by TJX at the Option of the Holder."

If we elect to make a distribution to all holders of shares of our common stock pursuant to paragraphs (3) and (4) of the provisions regarding adjustments to the conversion rate below which, in the case of paragraph (4) has a per share value equal to more than 15% of the sale price of our shares of common stock on the day preceding the declaration date for such distribution, we will be required to give notice to the holders of LYONs at least 20 days prior to the date for such distribution. Upon giving such notice, holders may surrender the LYONs for conversion at any time until the close of business on the business day prior to the date of distribution or until we announce that such distribution will not take place.

Conversion Adjustments and Delivery of Common Stock. On conversion of a LYON, a holder will not receive any cash payment of interest representing accrued original issue discount. Delivery to the holder of the full number of shares of common stock into which the LYON is convertible, together with any cash payment of such holder's fractional shares, will be deemed:

- to satisfy our obligation to pay the principal amount at maturity of the LYON; and
- to satisfy our obligation to pay accrued original issue discount attributable to the period from the issue date through the conversion date.

As a result, accrued original issue discount is deemed paid in full rather than cancelled, extinguished or forfeited.

If semiannual interest is payable to holders of LYONs and LYONs are converted after a record date and prior to the next interest payment date, holders of such LYONs on the record date will receive the semi-annual interest payable on such LYONs on the corresponding interest payment date, notwithstanding the conversion. Upon surrender, such LYONs must be accompanied by funds equal to the amount of semiannual interest payable on the principal amount of LYONs so converted, unless such LYONs have been called for redemption, in which case no such payment shall be required.

The conversion rate will not be adjusted for accrued original issue discount. A certificate for the number of full shares of common stock into which any LYON is converted, together with any cash payment for fractional shares, will be delivered through the conversion agent as soon as practicable following the conversion date. For a discussion of the tax treatment of a holder receiving shares of our common stock upon surrendering LYONs for conversion, see "Material United States Federal Income Tax Consequences -- U.S. Holders -- Sale, Exchange, Conversion or Redemption."

We will adjust the conversion rate for:

- (1) dividends or distributions on our common stock payable in our common stock or our other capital stock;



(2) subdivisions, combinations or certain reclassifications of our common stock;

(3) distributions to all holders of our common stock of certain rights to purchase our common stock for a period expiring within 60 days at less than the then current sale price; and

(4) distributions to the holders of our common stock of our assets (including shares of capital stock of a subsidiary) or debt securities or certain rights to purchase our securities (excluding cash dividends or other cash distributions from current or retained earnings unless the annualized amount thereof per share exceeds 5% of the sale price of our common stock on the day preceding the date of declaration of such dividend or other distribution).

However, no adjustment to the conversion rate need be made if holders of the LYONs may participate in the transaction or in a few other specified cases.

In addition, the indenture provides that if we implement a stockholders' rights plan, such rights plan must provide that, upon conversion of the LYONs, the holders of such LYONs will receive, in addition to the shares of common stock issuable upon such conversion, the rights related to such common stock, whether or not such rights have separated from the common stock at the time of such conversion. However, there shall not be any adjustment to the conversion privilege or conversion rate as a result of:

- the issuance of the rights;
- the distribution of separate certificates representing the rights;
- the exercise or redemption of such rights in accordance with any rights agreement; or
- the termination or invalidation of the rights.

The indenture permits us to increase the conversion rate from time to time.

Holders of the LYONs may be deemed to have received a distribution subject to federal income tax as a dividend upon:

- a taxable distribution to holders of common stock which results in an adjustment of the conversion rate;
- an increase in the conversion rate at our discretion; or
- failure to adjust the conversion rate in some instances.

See "Material United States Federal Income Tax Consequences -- U.S. Holders -- Constructive Dividend."

#### REDEMPTION OF LYONs AT OUR OPTION

No sinking fund is provided for the LYONs. We may not redeem the LYONs at our option prior to February 13, 2007. Beginning on February 13, 2007, we may redeem the LYONs for cash, as a whole or in part at any time. We will give not less than 30 days' or more than 60 days' notice of redemption by mail to holders of LYONs.

If redeemed at our option, the LYONs will be redeemed at a price equal to the sum of the issue price and accrued original issue discount on such LYONs as of the applicable redemption date. The table below shows the redemption prices of a LYON on February 13, 2007, at each February 13 thereafter prior to maturity and at maturity on February 13, 2021. In addition, the redemption price of a LYON that is redeemed between the dates listed below would include an additional amount reflecting the additional accrued original issue discount that has accrued on such LYON since the immediately preceding date in the table below.

REDEMPTION DATE -----	(1) LYON ISSUE PRICE -----	(2) ACCRUED ORIGINAL ISSUE DISCOUNT -----	(3) REDEMPTION PRICE (1) + (2) -----
February 13, 2007.....	\$671.65	\$ 85.18	\$ 756.83
2008.....	671.65	100.40	772.05
2009.....	671.65	115.91	787.56
2010.....	671.65	131.74	803.39
2011.....	671.65	147.89	819.54
2012.....	671.65	164.37	836.02
2013.....	671.65	181.17	852.82
2014.....	671.65	198.31	869.96
2015.....	671.65	215.80	887.45
2016.....	671.65	233.64	905.29
2017.....	671.65	251.83	923.48
2018.....	671.65	270.39	942.04
2019.....	671.65	289.33	960.98
2020.....	671.65	308.65	980.30
At stated maturity.....	671.65	328.35	1,000.00

If we convert the LYONs to semiannual coupon notes following the occurrence of a tax event, the notes will be redeemable at the restated principal amount plus accrued and unpaid interest from the date of the conversion through the redemption date. However, in no event may the LYONs be redeemed prior to February 13, 2007. For more information on this optional conversion, see "-- Optional Conversion to Semiannual Coupon Notes upon Tax Event."

If less than all of the outstanding LYONs are to be redeemed, the trustee will select the LYONs to be redeemed in principal amounts at maturity of \$1,000 or integral multiples of \$1,000. In this case, the trustee may select the LYONs by lot, pro rata or by any other method the trustee considers fair and appropriate. If a portion of a holder's LYONs is selected for partial redemption and the holder converts a portion of the LYONs, the converted portion will be deemed to be the portion selected for redemption.

#### PURCHASE OF LYONs AT THE OPTION OF THE HOLDER

On the purchase dates of February 13, 2002, February 13, 2004, February 13, 2007 and February 13, 2013, each holder may, at the option of the holder, require us to purchase any of such holder's LYONs for which a written purchase notice has been properly delivered by the holder and not withdrawn, subject to some additional conditions. Holders may submit their LYONs for purchase to the paying agent at any time from the opening of business on the date that is 20 business days prior to such purchase date until the close of business on the business day immediately preceding such purchase date.

The purchase price of a LYON will be:

- \$681.76 per LYON on February 13, 2002;
- \$712.97 per LYON on February 13, 2004;
- \$756.83 per LYON on February 13, 2007; and
- \$852.82 per LYON on February 13, 2013.

The above purchase prices reflect a price equal to the sum of the issue price and accrued original issue discount on such LYONs as of the applicable purchase date, except for the price at February 13, 2002, which reflects the sum of the issue price and an accrual of one and one-half percent of the issue price on a semiannual bond equivalent basis.

We may, at our option, elect to pay the purchase price in cash or shares of common stock or any combination of cash and stock. For a discussion of the tax treatment of a holder receiving cash, common stock or a combination of cash and stock, see "Material United States Federal Income Tax Consequences -- U.S. Holders -- Sale, Exchange, Conversion or Redemption."

If, prior to a purchase date, the LYONs have been converted to semiannual coupon notes following the occurrence of a tax event, the purchase price will be equal to the restated principal amount plus accrued and unpaid interest from the date of the conversion to the purchase date. For more information on this optional conversion, see "-- Optional Conversion to Semiannual Coupon Notes upon Tax Event."

We will be required to give notice on a date not less than 20 business days prior to each purchase date to all holders at their addresses shown in the register of the registrar, and to beneficial owners as required by applicable law, stating among other things:

- the amount of the purchase price;
- whether we will pay the purchase price of LYONs in cash or common stock or any combination thereof, specifying the percentages of each;
- if we elect to pay in common stock, the method of calculating the market price of the common stock; and
- the procedures that holders must follow to require us to purchase their LYONs.

The purchase notice given by each holder electing to require us to purchase LYONs must state:

- the certificate numbers of the holder's LYONs, if applicable, to be delivered for purchase;
- the portion of the principal amount at maturity of LYONs to be purchased, which must be \$1,000 or an integral multiple of \$1,000;
- that the LYONs are to be purchased by us pursuant to the applicable provisions of the LYONs; and
- in the event we elect, pursuant to the notice that we are required to give, to pay the purchase price in common stock, in whole or in part, but the purchase price is ultimately to be paid to the holder entirely in cash because any of the conditions to payment of the purchase price or portion of the purchase price in common stock is not satisfied prior to the close of business on the purchase date, as described below, whether the holder elects:
  - (1) to withdraw the purchase notice as to some or all of the LYONs to which it relates, or
  - (2) to receive cash in respect of the entire purchase price for all LYONs or portions of LYONs subject to such purchase notice.

If the purchase price for the LYONs subject to the purchase notice is ultimately to be paid to a holder entirely in cash because we have not satisfied one or more of the conditions to payment of the purchase price in common stock prior to the close of business on the purchase date, a holder shall be deemed to have elected to receive cash in respect of the entire purchase price for all such LYONs unless such holder has properly notified us of its election to withdraw the purchase notice. For a discussion of the tax treatment of a holder receiving cash instead of common stock, see "Material United States Federal Income Tax Consequences -- U.S. Holders -- Sale, Exchange, Conversion or Redemption."

Any purchase notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the purchase date.

The notice of withdrawal shall state:

- the principal amount at maturity being withdrawn;
- the certificate numbers of the LYONs being withdrawn; and

- the principal amount at maturity, if any, of the LYONS that remains subject to the purchase notice.

If we elect to pay the purchase price, in whole or in part, in shares of our common stock, the number of such shares we deliver shall be equal to the portion of the purchase price to be paid in common stock divided by the market price of a share of common stock.

We will pay cash based on the market price for all fractional shares of common stock if we elect to deliver common stock in payment of all or part of the purchase price. See "Material United States Federal Income Tax Consequences -- U.S. Holders -- Sale, Exchange, Conversion or Redemption."

The market price of our common stock is an amount equal to the average of the sale prices of our common stock for the five-trading-day period ending on the third business day prior to the applicable purchase date, or, if such business day is not a trading day, then on the last trading day prior to such business day, appropriately adjusted to take into account any occurrence. See "-- Conversion Rights" for a description of the manner in which the sales price of our common stock is determined.

Because the market price of our common stock is determined prior to the applicable purchase date, holders of LYONS bear the market risk with respect to the value of the common stock to be received from the date such market price is determined to such purchase date. We may pay the purchase price or any portion of the purchase price in common stock only if the information necessary to calculate the market price is published in a daily newspaper of national circulation.

Upon determination of the actual number of shares of common stock in accordance with the foregoing provisions, we will promptly issue a press release and publish such information on our website.

Our right to purchase LYONS, in whole or in part, with common stock is subject to our satisfying various conditions, including:

- listing the common stock on the principal United States securities exchange on which our common stock is then listed or, if not so listed, on Nasdaq;
- the registration of the common stock under the Securities Act and the Exchange Act, if required; and
- any necessary qualification or registration under applicable state securities law or the availability of an exemption from such qualification and registration.

If these conditions are not satisfied with respect to a holder prior to the close of business on the purchase date, we will pay the purchase price of the LYONS of the holder entirely in cash. See "Material United States Federal Income Tax Consequences -- U.S. Holders -- Sale, Exchange, Conversion or Redemption." We may not change the form or components or percentages of components of consideration to be paid for the LYONS once we have given the notice that we are required to give to holders of LYONS, except as described in the first sentence of this paragraph.

In connection with any purchase offer, we will:

- comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable; and
- file Schedule TO or any other required schedule under the Exchange Act.

Payment of the purchase price for a LYON for which a purchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the LYON, together with necessary endorsements, to the paying agent at any time after delivery of the purchase notice. Payment of the purchase price for the LYON will be made as soon as practicable following the later of the purchase date or the time of delivery of the LYON.

If the paying agent holds money or securities sufficient to pay the purchase price of the LYON on the business day following the purchase date in accordance with the terms of the indenture, then, immediately

after the purchase date, the LYON will cease to be outstanding and accrued original issue discount on such LYON will cease to accrue, whether or not the LYON is delivered to the paying agent. Thereafter, all other rights of the holder shall terminate, other than the right to receive the purchase price upon delivery of the LYON.

No LYONS may be purchased for cash at the option of holders if there has occurred and is continuing an event of default with respect to the LYONS, other than a default in the payment of the purchase price with respect to such LYONS.

#### CHANGE IN CONTROL PERMITS PURCHASE OF LYONS BY TJX AT THE OPTION OF THE HOLDER

In the event of a change in control occurring on or prior to February 13, 2007, each holder will have the right, at the holder's option, subject to the terms and conditions of the indenture, to require us to purchase for cash all or any portion of the holder's LYONS. However, the principal amount at maturity of LYONS submitted for purchase by a holder must be \$1,000 or an integral multiple of \$1,000.

We will be required to purchase the LYONS as of a date no later than 35 business days after the occurrence of such change in control at a cash price equal to the sum of the issue price and accrued original issue discount on such LYON on such date of purchase.

If prior to such date of purchase upon a change in control the LYONS have been converted to semiannual coupon notes following the occurrence of a tax event, we will be required to purchase the notes at a cash price equal to the restated principal amount plus accrued and unpaid interest from the date of the conversion to such date of purchase.

Within 15 days after the occurrence of a change in control, we are obligated to mail to the trustee and to all holders of LYONS at their addresses shown in the register of the registrar and to beneficial owners as required by applicable law a notice regarding the change in control, which notice shall state, among other things:

- the events causing a change in control;
- the date of such change in control;
- the last date on which the purchase right may be exercised;
- the change in control purchase price;
- the change in control purchase date;
- the name and address of the paying agent and the conversion agent;
- the conversion rate and any adjustments to the conversion rate resulting from such change in control;
- that LYONS with respect to which a change in control purchase notice is given by the holder may be converted only if the change in control purchase notice has been withdrawn in accordance with the terms of the indenture; and
- the procedures that holders must follow to exercise these rights.

To exercise this right, the holder must deliver a written notice to the paying agent prior to the close of business on the business day prior to the change in control purchase date. The required purchase notice upon a change in control shall state:

- the certificate numbers of the LYONS to be delivered by the holder;
- the portion of the principal amount at maturity of LYONS to be purchased, which portion must be \$1,000 or an integral multiple of \$1,000; and
- that we are to purchase such LYONS pursuant to the applicable provisions of the LYONS.

Any such change in control purchase notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the change in control purchase date.

The notice of withdrawal shall state:

- the principal amount at maturity being withdrawn;
- the certificate numbers of the LYONs being withdrawn; and
- the principal amount at maturity, if any, of the LYONs that remain subject to a change in control purchase notice.

Payment of the change in control purchase price for a LYON for which a change in control purchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the LYON, together with necessary endorsements, to the paying agent at any time after the delivery of such change in control purchase notice. Payment of the change in control purchase price for such LYON will be made promptly following the later of the change in control purchase date or the time of delivery of such LYON.

If the paying agent holds money sufficient to pay the change in control purchase price of the LYON on the business day following the change in control purchase date in accordance with the terms of the indenture, then, immediately after the change in control purchase date, accrued original issue discount on the LYON will cease to accrue, whether or not the LYON is delivered to the paying agent. Thereafter, all other rights of the holder will terminate, other than the right to receive the change in control purchase price upon delivery of the LYON.

We will be deemed to have undergone a "change in control" at such time as:

- any person, including our affiliates and associates, other than our subsidiaries or our or their employee benefit plans, files a Schedule 13D or Schedule TO (or any successor schedule, form or report under the Exchange Act) disclosing that such person has become the beneficial owner of 50% or more of the aggregate voting power of our common stock and other capital stock with equivalent voting rights, or other capital stock into which the common stock is reclassified or changed, with certain exceptions; or
- we complete any consolidation or merger pursuant to which our common stock would be converted into cash, securities or other property, in each case other than a consolidation or merger in which the holders of our common stock and other capital stock with equivalent voting rights, immediately prior to the consolidation or merger have, directly or indirectly, at least a majority of the total voting power in the aggregate of all classes of capital stock of the continuing or surviving corporation immediately after the consolidation or merger.

The indenture does not permit our board of directors to waive our obligation to purchase LYONs at the option of holders in the event of a change in control.

In connection with any purchase offer in the event of a change in control, we will:

- comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable; and
- file Schedule TO or any other required schedule under the Exchange Act.

The change in control purchase feature of the LYONs may, in some circumstances, make more difficult or discourage a takeover of TJX. The change in control purchase feature, however, is not the result of our knowledge of any specific effort to accumulate shares of common stock, to obtain control of us by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of anti-takeover provisions.

Instead, the change in control purchase feature is a standard term contained in other LYONs offerings that have been marketed by Merrill Lynch, Pierce, Fenner & Smith Incorporated. The terms of

the change in control purchase feature resulted from negotiations between Merrill Lynch, Pierce, Fenner & Smith Incorporated and us.

There are a number of transactions that we could enter into in the future, including some recapitalizations, that would not constitute a change in control with respect to the change in control purchase feature of the LYONs but that would increase the amount of our or our subsidiaries' outstanding indebtedness.

No LYONs may be purchased at the option of holders upon a change in control if there has occurred and is continuing an event of default with respect to the LYONs, other than a default in the payment of the change in control purchase price with respect to the LYONs.

#### EVENTS OF DEFAULT AND ACCELERATION

The following are events of default under the indenture:

- default in the payment of any principal amount (including accrued original issue discount and, if the LYONs have been converted to semiannual coupon notes following a tax event, the restated principal amount) at maturity, redemption price, purchase price, or change in control purchase price due with respect to the LYONs, whether or not such payment is prohibited by the provisions of the indenture;
- default in payment of any interest which becomes payable after the LYONs have been converted to semiannual coupon notes following the occurrence of a tax event, which default continues for 30 days, whether or not such payment is prohibited by the provisions of the indenture;
- default in the performance or breach of any of our covenants or warranties in the indenture, which default continues uncured for a period of 60 days after written notice to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount at maturity of the outstanding LYONs;
- default under any bond, debenture, note or other evidence of indebtedness for money borrowed, whether such indebtedness now exists or is created later, which default results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, and the principal amount of all indebtedness so accelerated, together with all indebtedness due and payable but not paid prior to the end of any grace period, is \$30 million or more, and such acceleration has not been rescinded or annulled within a period of 30 days after written notice to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount at maturity of the LYONs;
- failure to comply with any of our other agreements in the LYONs or the indenture upon our receipt of notice of such default from the trustee or from holders of not less than 25% in aggregate principal amount at maturity of the LYONs, and our failure to cure (or obtain a waiver of) such default within 60 days after we receive such notice; or
- specified events of bankruptcy, insolvency or reorganization affecting us.

If an event of default shall have occurred and be continuing, either the trustee or the holders of not less than 25% in aggregate principal amount at maturity of the LYONs then outstanding may declare the issue price of the LYONs plus the original issue discount on the LYONs accrued through the date of such declaration, and any accrued and unpaid interest through the date of such declaration, to be immediately due and payable. In the case of certain events of bankruptcy or insolvency, the issue price of the LYONs plus the original issue discount accrued thereon through the occurrence of such event shall automatically become and be immediately due and payable.

If a bankruptcy proceeding is commenced by us or in respect of our company, the claim of the holder of a LYON is, under Title 11 of the United States Code, limited to the issue price of the LYON plus that portion of the original issue discount that has accrued from the date of issue to the commencement of the

proceeding. In addition, the holders of the LYONS will be subordinated in right of payment to senior indebtedness and effectively subordinated to the indebtedness and other obligations of our subsidiaries.

#### MERGERS AND SALES OF ASSETS

The indenture provides that we may not consolidate with or merge into any person or convey, transfer or lease our properties and assets substantially as an entity to another person, unless, among other things:

- the resulting, surviving or transferee person is a corporation organized and existing under the laws of the United States, any state thereof or the District of Columbia and such corporation (if other than us) assumes all our obligations under the LYONS and the indenture; and
- we or such successor corporation shall not immediately thereafter be in default under the indenture.

Upon the assumption of our obligations by such corporation in such circumstances, subject to some exceptions, we will be discharged from all obligations under the LYONS and the indenture. Although such transactions are permitted under the indenture, some of the transactions described above could constitute a change in control in TJX, permitting each holder to require us to purchase the LYONS of such holder as described above.

#### OPTIONAL CONVERSION TO SEMIANNUAL COUPON NOTES UPON TAX EVENT

From and after the date of the occurrence of a tax event, we shall have the option to elect to have interest instead of future accrued original issue discount accrue at 2% per year on a principal amount per LYON equal to the sum of the issue price and accrued original issue discount on such LYON on the date of the tax event or the date on which we exercise such option, whichever is later.

Such interest will accrue from the date that we exercise our option to pay interest in lieu of accrued original issue discount, and will be payable semiannually on the interest payment dates of February 13 and August 13 of each year to holders of record at the close of business on January 30 or July 30 immediately preceding the interest payment date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. Interest will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date we exercise our option to pay interest. In the event that we exercise our option to pay interest instead of accrued original issue discount, the redemption price, purchase price and change in control purchase price on the LYONS will be adjusted. However, there will be no change in the holder's conversion rights.

A "tax event" means that we shall have received an opinion from independent tax counsel experienced in such matters to the effect that, on or after February 7, 2001, as a result of:

- any amendment to, or change (including any announced prospective change) in, the laws (or any regulations under the laws) of the United States or any political subdivision or taxing authority of any of them; or
- any amendment to, or change in, an interpretation or application of such laws or regulations by any legislative body, court, governmental agency or regulatory authority,

in each case which amendment or change is enacted, promulgated, issued or announced or which interpretation is issued or announced or which action is taken, on or after February 7, 2001 there is more than an insubstantial risk that accrued original issue discount payable on the LYONS either:

- would not be deductible on a current accrual basis, or
- would not be deductible under any other method,

in either case in whole or in part, by us (by reason of deferral, disallowance, or otherwise) for United States federal income tax purposes.

If a similar proposal were enacted and made applicable to the LYONS in a manner that would limit our ability to deduct the interest, including the accrued original issue discount, payable on the LYONS on



a current accrual basis or any other method for United States federal income tax purposes, such enactment would result in a tax event and the terms of the LYONS would be subject to modification at our option as described above.

The modification of the terms of LYONS by us upon a tax event as described above could possibly alter the timing of income recognition by holders of the LYONS with respect to the semiannual payments of interest due on the LYONS after the date on which we exercise our option to pay interest instead of accrued original issue discount on the LYONS.

#### MODIFICATION

We and the trustee may modify or amend the indenture or the LYONS with the consent of the holders of not less than a majority in aggregate principal amount at maturity of the LYONS then outstanding. However, the consent of the holders of each outstanding LYON would be required to:

- alter the manner of calculation or rate of accrual of original issue discount or interest on any LYON or extend the time of payment;
- make any LYON payable in money or securities other than that stated in the LYON;
- change the stated maturity of any LYON;
- reduce the principal amount at maturity, accrued original issue discount, redemption price, purchase price or change in control purchase price with respect to any LYON;
- make any change that adversely affects the rights of a holder to convert any LYON;
- make any change that adversely affects the right to require us to purchase a LYON;
- impair the right to institute suit for the enforcement of any payment with respect to, or conversion of, the LYONS; and
- change the provisions in the indenture that relate to modifying or amending the indenture.

Without the consent of any holder of LYONS, we and the trustee may enter into supplemental indentures for any of the following purposes:

- to evidence a successor to us and the assumption by that successor of our obligations under the indenture and the LYONS;
- to add to our covenants for the benefit of the holders of the LYONS or to surrender any right or power conferred upon us;
- to secure our obligations in respect of the LYONS;
- to make any changes or modifications to the indenture necessary in connection with the registration of the LYONS under the Securities Act and the qualifications of the LYONS under the Trust Indenture Act as contemplated by the indenture;
- to cure any ambiguity or inconsistency in the indenture; provided, however, that such amendment does not materially adversely affect the rights of any holder of the LYONS; or
- to make any change that does not adversely affect the rights of any holder of the LYONS.

The holders of a majority in principal amount at maturity of the outstanding LYONS may, on behalf of all the holders of all LYONS:

- waive compliance by us with restrictive provisions of the indenture, as detailed in the indenture; and
- waive any past default under the indenture and its consequences, except a default in the payment of the principal amount at maturity, issue price, accrued and unpaid interest, accrued original issue discount, redemption price, purchase price or change in control purchase price or obligation to deliver common stock upon conversion with respect to any LYON or in respect of any provision

which under the indenture cannot be modified or amended without the consent of the holder of each outstanding LYON affected.

#### DISCHARGE OF THE INDENTURE

We may satisfy and discharge our obligations under the indenture by delivering to the trustee for cancellation all outstanding LYONS or by depositing with the trustee, the paying agent or the conversion agent, if applicable, after the LYONS have become due and payable, whether at stated maturity or any redemption date, or any purchase date, or a change in control purchase date, or upon conversion or otherwise, cash or shares of common stock (as applicable under the terms of the indenture) sufficient to pay all of the outstanding LYONS and paying all other sums payable under the indenture.

#### CALCULATIONS IN RESPECT OF LYONS

We are responsible for making all calculations called for with respect to the LYONS. These calculations include, but are not limited to, determination of the market prices of our common stock. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on holders of LYONS. We will provide a schedule of our calculations to the trustee, and the trustee is entitled to rely upon the accuracy of our calculations without independent verification.

#### GOVERNING LAW

The indenture and the LYONS are governed by, and construed in accordance with, the law of the State of New York, without regard to conflicts of laws principles thereof.

#### MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

##### GENERAL

This is a summary of some of the material United States federal income tax consequences relevant to holders of LYONS and common stock issuable upon conversion or repurchase by us of the LYONS. This summary is based upon laws, regulations, rulings and decisions in effect as of the effective date of the registration statement of which this prospectus is a part. All of these are subject to change (possibly with retroactive effect) or to possible differing interpretations. The discussion below deals only with LYONS and shares of our common stock held as capital assets and does not deal with persons in special tax situations, such as financial institutions, insurance companies, dealers in securities or currencies, tax-exempt entities, persons holding LYONS or common stock in a tax deferred or tax-advantaged account, persons who are former citizens or long-term residents of the United States subject to taxation as expatriates or persons holding LYONS or shares of our common stock as a hedge against currency risks, as a position in a "straddle" or as part of a "hedging," "constructive sale" or "conversion" transaction for tax purposes. Furthermore, in general, this discussion does not address the tax consequences applicable to holders that are taxed as partnerships or other pass-through entities for United States federal income tax purposes. We do not address all of the tax consequences that may be relevant to a holder of LYONS or shares of our common stock. In particular, we do not address:

- the United States federal income tax consequences to shareholders in, or partners or beneficiaries of, an entity that is a holder of LYONS or shares of our common stock;
- the United States federal estate (except where indicated), gift or alternative minimum tax consequences of the purchase, ownership or disposition of LYONS or shares of our common stock;
- the consequences to persons who hold the LYONS or shares of our common stock whose functional currency is not the United States dollar; or

- any state, local or foreign tax consequences of the purchase, ownership or disposition of the LYONs or ownership or disposition of the common stock issuable upon conversion or repurchase of the LYONs.

Accordingly, you should consult your own tax advisor regarding the tax consequences of purchasing, owning and disposing of the LYONs and shares of our common stock in light of your own circumstances.

A "U.S. Holder" is a beneficial owner of the LYONs or, where applicable, our common stock who or which is:

- a citizen or individual resident of the United States, as defined in Section 7701(b) of the Internal Revenue Code of 1986, as amended (which we refer to as the Code);
- a corporation, including any entity treated as a corporation for United States federal income tax purposes, created or organized in or under the laws of the United States, any state or the District of Columbia;
- an estate if its income is subject to United States federal income taxation regardless of its source; or
- a trust if (1) a United States court can exercise primary supervision over its administration and (2) one or more United States persons have the authority to control all of its substantial decisions.

Notwithstanding the preceding sentence, some trusts in existence on August 20, 1996 and treated as a U.S. Holder prior to such date may also be treated as U.S. Holders. A "Non-U.S. Holder" is a holder or beneficial owner of LYONs other than a U.S. Holder.

If a partnership (including for this purpose any entity treated as a partnership for United States federal income tax purposes) is a beneficial owner of LYONs or common stock into which LYONs have been converted (or with which LYONs were repurchased), the treatment of a partner in the partnership will generally depend upon the status of the partner and upon the activities of the partnership. If you are a partnership that holds or is acquiring LYONs or our common stock or a partner in such partnership, we urge you to consult your own tax advisors about the United States federal and other tax consequences to you of the purchase, ownership and disposition of the LYONs and the common stock.

No statutory, administrative or judicial authority directly addresses the treatment of the LYONs or instruments similar to the LYONs for United States federal income tax purposes. No rulings have been sought or are expected to be sought from the Internal Revenue Service (which we refer to as the IRS) with respect to any of the United States federal income tax consequences discussed below, and no assurance can be given that the IRS will agree with the tax characterizations and the tax consequences described below.

WE URGE PROSPECTIVE INVESTORS TO CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE LYONs AND THE COMMON STOCK ISSUABLE UPON CONVERSION OR REPURCHASE IN LIGHT OF THEIR OWN PARTICULAR CIRCUMSTANCES, INCLUDING THE TAX CONSEQUENCES UNDER UNITED STATES FEDERAL, STATE, LOCAL OR FOREIGN AND OTHER TAX LAWS AND THE POSSIBLE EFFECTS OF CHANGES IN UNITED STATES FEDERAL OR OTHER TAX LAWS.

#### CLASSIFICATION OF THE LYONs

It is the opinion of our counsel, Ropes & Gray, that the LYONs will be treated as indebtedness for United States federal income tax purposes.

#### TAX EVENT

The modification of the terms of the LYONs by us upon a tax event as described in "Description of LYONs -- Optional Conversion to Semiannual Coupon Notes upon Tax Event" could alter the timing of income recognition by the holders with respect to the semiannual payments of interest that will subsequently become due.

## U.S. HOLDERS

The following discussion applies to you if you are a U.S. Holder.

**Original Issue Discount.** We issued the LYONs at a substantial discount from their principal amount at maturity. For United States federal income tax purposes, the difference between the issue price and the stated principal amount at maturity of each LYON constitutes original issue discount, or OID. You will be required to include OID in income periodically over the term of the LYONs before receipt of the cash or other payment attributable to such income.

The OID you must include in gross income as it accrues is the sum of the daily portions of OID with respect to the LYON for each day during the taxable year or portion of a taxable year on which you hold the LYON. The daily portion is determined by allocating to each day of an accrual period a pro rata portion of an amount equal to the adjusted issue price of the LYON at the beginning of the accrual period multiplied by the yield to maturity of the LYON. The accrual period of a LYON may be of any length and may vary in length over the term of the LYON, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the final day of an accrual period or on the first day of an accrual period. The issue price is the initial offering price to investors (excluding sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers). The adjusted issue price of the LYON at the start of any accrual period is the issue price of the LYON increased by the accrued original issue discount for each prior accrual period. Under these rules, you will have to include in gross income increasingly greater amounts of OID in each successive accrual period.

**Acquisition Premium.** Your acquisition of a LYON subsequent to its original issue at an "acquisition premium" will reduce the amount of OID otherwise includible in gross income to reflect the acquisition premium. A LYON is purchased at an acquisition premium if, immediately after its purchase, its adjusted basis is greater than its adjusted issue price (as described above). If you purchase a LYON at an acquisition premium, you may reduce the amount of OID otherwise includible in income during an accrual period by a fraction. The numerator of this fraction is the excess of the adjusted basis of the LYON to you immediately after your acquisition over the adjusted issue price of the LYON. The denominator of the fraction is the excess of the principal amount at maturity of the LYON over the LYON's adjusted issue price. As an alternative to reducing the amount of OID otherwise includible in income by this fraction, you may elect to compute OID accruals by treating the purchase as if it were a purchase at original issuance and compute OID accruals by applying the constant-yield method described above. Any such election applies to all debt instruments acquired by you on or after the first day of the first taxable year to which such election applies and is irrevocable without the consent of the IRS.

**Sale, Exchange, Conversion or Redemption.** Your basis for determining gain or loss on the sale, exchange, conversion, redemption or other disposition of a LYON will be increased by any amount you included in income as OID. Your obligation to include in gross income the daily portions of OID with respect to a LYON will prospectively terminate on the date of a disposition. Except as set forth under "Market Discount" below, gain or loss recognized upon a disposition of a LYON or shares of our common stock acquired with respect to a LYON will generally be capital gain or loss and, except as described below with respect to shares of our common stock issued for accrued OID, will be long-term capital gain or loss if the LYON has been held for more than one year. In the case of individuals, long-term capital gains are generally taxed at a maximum rate of 20%. The deductibility of capital losses is subject to limitation.

A conversion of a LYON into our common stock and the use by us of our common stock on a purchase date to repurchase a LYON (in case you require us to repurchase) will generally not be a taxable event, except with respect to cash received in lieu of a fractional share. Your basis in the common stock received will be the same as your basis in the LYON at the time of conversion less any basis allocable to a fractional share. The holding period for the common stock received on conversion or repurchase will include the holding period of the converted or repurchased LYON, assuming each is held as a capital asset, except that the holding period for common stock attributable to accrued OID may likely

begin no earlier than the date the OID accrued and may begin as late as on the day following the date of conversion or repurchase.

If you elect to exercise your option to tender a LYON to us on a purchase date and we satisfy the purchase price in a combination of common stock and cash (other than cash received in lieu of a fractional share), you will recognize gain (but not loss) to the extent such gain does not exceed such cash.

If you choose to tender a LYON to us on a purchase date or a change in control purchase date and we deliver solely cash in satisfaction of the purchase price, you will recognize gain or loss, measured by the difference between the amount of cash transferred by us to you and your basis in the tendered LYON. You will be required to accrue ordinary income at the original OID rate, even if you later elect to exercise your option to tender a LYON to us at a discount to accreted value on the first purchase date and, if you so exercise, you will then recognize a capital loss.

Your basis in the common stock you receive from us in exchange for your LYON will be the same as your basis in the LYON less any basis allocable to a fractional share. However, this basis will be decreased by the amount of any cash received in exchange, other than cash received in lieu of a fractional share, and increased by the amount of any gain recognized by you on the exchange, other than gain with respect to a fractional share. The holding period for common stock received in the exchange will include the holding period for the LYON tendered to us in exchange assuming each is held as a capital asset. However, the holding period for common stock attributable to accrued OID may likely begin no earlier than the date the OID accrued and may begin as late as on the day following the purchase date.

Any cash paid by us on a purchase date or on a conversion in order to avoid issuance of a fractional share will generally result in capital gain or loss, if any, measured by the difference between the cash received for the fractional share and your basis that would have been allocable to the fractional share.

**Market Discount.** If you acquire a LYON other than in connection with its original issue and you have a tax basis in the LYON that is less than its adjusted issue price, as described above, the amount of such difference is treated as "market discount" for federal income tax purposes, unless such difference is less than 1/4 of one percent of the principal amount at maturity multiplied by the number of complete years to maturity from the date of your acquisition. Under the market discount rules you are required to treat any gain on the sale, exchange, retirement or other disposition of a LYON as ordinary income to the extent of the accrued market discount that has not previously been included in income. If such LYON is disposed of by you in some otherwise nontaxable transactions, such as a gift, accrued market discount will be includible as ordinary income by you as if you had sold the LYON at its then fair market value.

An important qualification to the preceding paragraph is that if you dispose of a LYON which has accrued market discount in a nonrecognition transaction in which you receive property the basis of which is determined in whole or in part by reference to the basis of the LYON, the accrued market discount is generally not includible in income at the time of such transaction. Instead, the accrued market discount attaches to the property received in the nonrecognition transaction and is recognized as ordinary income upon the disposition of such property. Such nonrecognition transactions would include the conversion a LYON for our shares of common stock and our purchase of a LYON you have tendered with our common stock.

In general, the amount of market discount that has accrued is determined on a ratable basis, by allocating an equal amount of market discount to each day of every accrual period. You may, however, elect to determine the amount of accrued market discount allocable to any accrual period through a constant-yield calculation.

You may not be allowed to deduct immediately a portion of the interest expense on any indebtedness incurred or continued to purchase or to carry LYONs with market discount. However, you may elect to include market discount in income currently as it accrues, in which case the interest-deferral rule set forth in the preceding sentence will not apply. Any such election applies to all debt instruments acquired by you on or after the first day of the first taxable year to which such election applies and is irrevocable without

the consent of the IRS. If you make such an election your tax basis in the LYONS will be increased by the amount of market discount included in income under such election.

**Dividends.** If you receive common stock, distributions on that common stock paid out of our current or accumulated earnings and profits generally will constitute dividends taxable as ordinary income. If a distribution exceeds our then current and accumulated earnings and profits, the excess will be treated as a tax-free return of your investment, up to your basis in the common stock. Any remaining excess will be treated as capital gain. If you are a U.S. corporation, you may be able to claim a deduction equal to a portion of any dividends received.

**Constructive Dividend.** If we make a distribution of cash or property to our stockholders that would be taxable to them as a dividend for United States federal income tax purposes and, in accordance with the anti-dilution provisions of the LYONS, the conversion rate of the LYONS is increased, that increase may be deemed to be the payment of a taxable dividend to you although you would not actually receive any cash or other property.

For example, an increase in the conversion rate in the event of distributions of our evidences of indebtedness or our assets or an increase in the conversion rate at our discretion will generally result in deemed dividend treatment to holders of the LYONS, but generally an increase in the event of stock dividends or the distribution of rights to subscribe for common shares will not. See "Description of LYONS -- Conversion Rights."

**Backup Withholding and Information Reporting.** Information reporting will apply to payments of interest (including accruals of OID) or dividends, if any, made by us on, or the proceeds of the sale or other disposition of, the LYONS or shares of common stock with respect to certain non-corporate U.S. Holders, and backup withholding at a rate of 31% may apply unless the recipient of such payment supplies a correct taxpayer identification number, and other required information or otherwise establishes an exemption from backup withholding. Backup withholding will also apply if we are notified by the IRS or a broker that it is required. Any amount withheld under the backup withholding rules will be allowable as a credit against your United States federal income tax, provided that the required information is provided to the IRS.

#### NON-U.S. HOLDERS

The following discussion applies to you if you are a Non-U.S. Holder.

**Original Issue Discount and Disposition.** In general and subject to the discussion below under "-- Backup Withholding and Information Reporting," you will not be subject to United States federal income or withholding tax with respect to OID accrued on LYONS or gain upon the disposition of LYONS or shares of common stock if:

- you do not actually or constructively own 10% or more of the total combined voting power of all classes of our stock;
- you are not a controlled foreign corporation that is related to us;
- you are not a bank receiving interest described in Section 881(c)(3)(A) of the Code;
- you certify your nonresident status by providing a Form W-8BEN or appropriate substitute form to us or our agent (provided that if you hold the LYON through a financial institution or other agent acting on your behalf, you will be required to provide appropriate documentation to the agent and your agent will then be required to provide certification to us or our paying agent, either directly or through other intermediaries);
- you are not an individual who is present in the United States for 183 days or more in the year of the sale, exchange or disposition of the LYONS or common stock; and

- any gain from a sale, exchange or disposition of the LYONS or common stock is not effectively connected (or deemed effectively connected by virtue of Section 897 of the Code) with the conduct by you of a U.S. trade or business.

Dividends paid to you on common stock received in exchange for the LYONS following a purchase or conversion will generally be subject to a withholding tax at a 30 percent rate (or a lower rate provided by an applicable income tax treaty if you establish that you qualify to receive the benefits of such treaty) unless they are effectively connected with the conduct by you of a U.S. trade or business and you provide us with a Form W-8ECI.

U.S. trade or business income will generally be subject to regular United States federal income tax in the same manner as if it were realized by a U.S. Holder. Moreover, if you are a non-U.S. corporation your U.S. trade or business income may be subject to an additional branch profits tax at a rate of 30% (or such lower rate provided by an applicable income tax treaty if you establish that you qualify to receive the benefits of such treaty).

United States Federal Estate Tax. A LYON held by a nonresident alien individual at the time of death will not be includible in the decedent's gross estate for United States federal estate tax purposes, provided that such holder did not at the time of death actually or constructively own 10% or more of the combined voting power of all classes of our stock entitled to vote, and provided that, at the time of death, payments with respect to such LYON (including OID) would not have been effectively connected with the conduct by such holder of a trade or business within the United States. Our common stock will be included in the taxable estate of a nonresident alien decedent. The United States federal estate tax liability of the estate of the nonresident alien may be affected by a tax treaty between the United States and the decedent's country of residence.

Backup Withholding and Information Reporting. If the LYONS, or shares of common stock into which LYONS have been converted, are held by you through a non-U.S. or non-U.S. related broker or financial institution, information reporting and backup withholding generally would not be required. Information reporting and possibly backup withholding may apply if the LYONS or shares of common stock are held by you through a U.S., or U.S. related, broker or financial institution and you fail to certify your nonresident status.

#### SELLING SECURITYHOLDERS

We originally issued the LYONS in a private placement in February 2001. The LYONS were resold by the initial purchaser to qualified institutional buyers under Rule 144A under the Securities Act. Selling securityholders may offer and sell the LYONS and the underlying common stock pursuant to this prospectus.

The following table sets forth information as of May 8, 2001 about the principal amount at maturity of LYONS and the underlying common stock, beneficially owned by each selling securityholder, that may be offered using this prospectus.

NAME AND ADDRESS -----	PRINCIPAL AMOUNT AT MATURITY OF LYONS BENEFICIALLY OWNED THAT MAY BE SOLD	PERCENTAGE OF LYONS OUTSTANDING	NUMBER OF SHARES OF COMMON STOCK THAT MAY BE SOLD(1)	PERCENTAGE OF COMMON STOCK OUTSTANDING(2)
Amaranth Securities, L.L.C. Two American Lane Greenwich, CT 06836-2571	\$ 7,500,000	1.45%	122,501	*
Bank America Pension Plan c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 4,900,000	*	80,034	*
Black Diamond Offshore Ltd. (no address provided)	\$ 1,398,000	*	22,834	*
BP Amoco Plc. Master Trust 357 N. Canon Drive c/o SSI Investment Mgmt. Inc. Beverly Hills, CA 90210	\$ 1,698,000	*	27,734	*
Calamos Convertible Growth & Income -- Calamos Investment Trust Calamos Asset Management 1111 Warrenville Road Naperville, IL 60563-1493	\$ 3,200,000	*	52,267	*
D.E. Shaw Investments, L.P. D.E. Shaw & Co., L.P. 120 West 45th Street, 39th Floor New York, NY 10036	\$ 2,600,000	*	42,467	*
D.E. Shaw Valence, L.P. D.E. Shaw & Co., L.P. 120 West 45th Street, 39th Floor New York, NY 10036	\$ 10,200,000	1.97%	166,601	*
Deeprook & Co. c/o Camden Asset Management, LP 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 4,000,000	*	65,334	*
Double Black Diamond Offshore LDC (no address provided)	\$ 6,296,000	1.22%	102,835	*
Duckbill & Co. c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 2,000,000	*	32,667	*
Gaia Offshore Master Fund Ltd. c/o Promethean Asset Management L.L.C. 750 Lexington Avenue, 22nd Floor New York, NY 10022	\$ 25,000,000	4.83%	408,337	*



NAME AND ADDRESS	PRINCIPAL AMOUNT AT MATURITY OF LYONS BENEFICIALLY OWNED THAT MAY BE SOLD	PERCENTAGE OF LYONS OUTSTANDING	NUMBER OF SHARES OF COMMON STOCK THAT MAY BE SOLD(1)	PERCENTAGE OF COMMON STOCK OUTSTANDING(2)
General Motors Welfare Benefit Trust (ST -- Veba) c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 3,000,000	*	49,000	*
Goldman Sachs & Co. 180 Maiden Lane, 8(th) Floor New York, NY 10038	\$ 5,000,000	*	81,667	*
Granville Capital Corporation c/o Soros Fund Management L.L.C. 888 Seventh Avenue, Suite 3300 New York, NY 10106	\$ 5,800,000	1.12%	94,734	*
Highbridge International L.L.C. c/o Highbridge Capital Management 767 5th Avenue New York, NY 10153 P.O. Box 30554 SMB Grand Cayman Islands BWI	\$ 38,500,000	7.44%	628,839	*
Hotel Union & Hotel Industry of Hawaii 357 N. Canon Drive c/o SSI Investment Mgmt. Inc. Beverly Hills, CA 90210	\$ 782,000	*	12,772	*
Jefferies & Company Inc. 357 N. Canon Drive c/o SSI Investment Mgmt. Inc. Beverly Hills, CA 90210	\$ 17,000	*	277	*
LDG Limited 48 Par-La-Ville Road, Suite 780 Hamilton HM11, Bermuda	\$ 500,000	*	8,166	*
Lexington Vantage Fund, Ltd. c/o BNP Paribas Equities Corporate and Investment Banking 20, boulevard des Italiens, 75009 Paris, France	\$ 250,000	*	4,083	*
McMahan Securities Co. L.P. 500 West Putnam Avenue, 3rd Floor Greenwich, CT 06830-6086	\$ 163,000	*	2,662	*
Nomura Securities International, Inc. 2 World Financial Center, Building B New York, NY 10281	\$ 15,000,000	2.90%	245,002	*
Northern Income Equity Fund c/o The Northern Trust Company 50 South LaSalle Street Chicago, IL 60675	\$ 4,000,000	*	65,334	*

NAME AND ADDRESS	PRINCIPAL AMOUNT AT MATURITY OF LYONS BENEFICIALLY OWNED THAT MAY BE SOLD	PERCENTAGE OF LYONS OUTSTANDING	NUMBER OF SHARES OF COMMON STOCK THAT MAY BE SOLD(1)	PERCENTAGE OF COMMON STOCK OUTSTANDING(2)
Paloma Securities L.L.C. Two American Lane Greenwich, CT 06836-2571	\$ 7,500,000	1.45%	122,501	*
Peoples Benefit Life Insurance Company c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 4,900,000	*	80,034	*
Peoples Benefit Life Insurance Company Teamsters c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 6,100,000	1.18%	99,634	*
PGEP IV, L.L.C. 357 N. Canon Drive c/o SSI Investment Mgmt. Inc. Beverly Hills, CA 90210	\$ 162,000	*	2,646	*
Retail Clerks Pension Trust c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 4,000,000	*	65,334	*
Retail Clerks Pension Trust #2 c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 3,000,000	*	49,000	*
Royal Bank of Canada c/o RBC Dominion Securities Corp. One Liberty Plaza, 4(th) Floor New York, NY 10006-1404	\$ 10,000,000	1.93%	163,335	*
St. Albans Partners Ltd. c/o Camden Asset Management, L.P. 2049 Century Park East, Ste. 330 Los Angeles, CA 80067	\$ 5,000,000	*	81,667	*
TD Securities (USA) Inc. 31 West 52nd Street, 21st Floor New York, NY 10019	\$ 3,000,000	*	49,000	*
The Estate of James Campbell 357 N. Canon Drive c/o SSI Investment Mgmt. Inc. Beverly Hills, CA 90210	\$ 580,000	*	9,473	*
TQA Master Fund, Ltd. 405 Lexington Avenue, 45th Floor New York, NY 10174	\$ 5,000,000	*	81,667	*
TQA Master Plus Fund, Ltd. 405 Lexington Avenue, 45th Floor New York, NY 10174	\$ 1,500,000	*	24,500	*

NAME AND ADDRESS	PRINCIPAL AMOUNT AT MATURITY OF LYONS	BENEFICIALLY OWNED THAT MAY BE SOLD	PERCENTAGE OF LYONS OUTSTANDING	NUMBER OF SHARES OF COMMON STOCK THAT MAY BE SOLD(1)	PERCENTAGE OF COMMON STOCK OUTSTANDING(2)
Tribeca Investments, L.L.C. 399 Park Avenue New York, NY 10043	\$ 9,800,000	*		160,068	*
Viacom Inc. Pension Plan Master Trust 357 N. Canon Drive c/o SSI Investment Mgmt. Inc. Beverly Hills, CA 90210	\$ 98,000	*		1,600	*
Worldwide Transactions Ltd. 48 Par-la-Ville Road, Suite 778 Hamilton, HM 11 Bermuda	\$ 306,000	*		4,998	*
Any other holder of LYONS or future transferee, pledgee, donee or successor of any holder(3)(4)	\$314,750,000		60.82%	5,140,969	1.84%

\* Less than 1%.

- (1) Assumes conversion of all of the holder's LYONS at a conversion rate of 16.3335 shares of common stock per \$1,000 principal amount at maturity of the LYONS. However, this conversion rate will be subject to adjustment as described under "Description of LYONS -- Conversion Rights." As a result, the amount of common stock issuable upon conversion of the LYONS may increase or decrease in the future.
- (2) Calculated based on 278,811,087 shares of common stock outstanding as of March 31, 2001. In calculating this amount, we treated as outstanding that number of shares of common stock issuable upon conversion of all of a particular holder's LYONS. However, we did not assume the conversion of any other holder's LYONS.
- (3) Information about other selling securityholders will be set forth in prospectus supplements, if required.
- (4) Assumes that any other holders of LYONS, or any future transferees, pledgees, donees or successors of or from any such other holders of LYONS, do not beneficially own any common stock other than the common stock issuable upon conversion of the LYONS at the initial conversion rate.

We prepared this table based on the information supplied to us by the selling securityholders named in the table. The selling securityholders listed in the above table may have sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their LYONS since the date on which the information is presented in the above table. Information about the selling securityholders may change over time. Any changed information supplied to us will be set forth in prospectus supplements.

Because the selling securityholders may offer all or some of their LYONS or the underlying common stock from time to time, we cannot estimate the amount of the LYONS or the underlying common stock that will be held by the selling securityholders upon the termination of any particular offering. See "Plan of Distribution."

## PLAN OF DISTRIBUTION

We will not receive any of the proceeds of the sale of the LYONS and the underlying common stock offered by this prospectus. The LYONS and the underlying common stock may be sold from time to time to purchasers:

- directly by the selling securityholders; or
- through underwriters, broker-dealers or agents who may receive compensation in the form of discounts, concessions or commissions from the selling securityholders or the purchasers of the LYONS and the underlying common stock.

The selling securityholders and any such broker-dealers or agents who participate in the distribution of the LYONS and the underlying common stock may be deemed to be "underwriters." As a result, any profits on the sale of the underlying common stock by selling securityholders and any discounts, commissions or concessions received by any such broker-dealers or agents may be deemed to be underwriting discounts and commissions under the Securities Act. If the selling securityholders were deemed to be underwriters, the selling securityholders may be subject to statutory liabilities including, but not limited to, those of Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act.

If the LYONS and the underlying common stock are sold through underwriters or broker-dealers, the selling securityholders will be responsible for underwriting discounts or commissions or agent's commissions.

The LYONS and the underlying common stock may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in transactions:

- on any national securities exchange or quotation service on which the LYONS and underlying common stock may be listed or quoted at the time of the sale, including the New York Stock Exchange in the case of the common stock;
- in the over-the-counter market;
- in transactions otherwise than on such exchanges or services or in the over-the-counter market; or
- through the writing of options.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the transaction.

In connection with the sales of the LYONS and the underlying common stock or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers. These broker-dealers may in turn engage in short sales of the LYONS and the underlying common stock in the course of hedging their positions. The selling securityholders may also sell the LYONS and the underlying common stock short and deliver LYONS and the underlying common stock to close out short positions, or loan or pledge LYONS and the underlying common stock to broker-dealers that, in turn, may sell the LYONS and the underlying common stock.

To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the LYONS and the underlying common stock by the selling securityholders. Selling securityholders may decide not to sell all or a portion of the LYONS and the underlying common stock offered by them pursuant to this prospectus

or may decide not to sell LYONS or the underlying common stock under this prospectus. In addition, any selling securityholder may transfer, devise or give the LYONS and the underlying common stock by other means not described in this prospectus. Any LYONS or underlying common stock covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus.

Our common stock trades on the New York Stock Exchange under the symbol "TJX." We do not intend to apply for listing of the LYONS on any securities exchange or for quotation through Nasdaq. Accordingly, no assurance can be given as to the development of liquidity or any trading market for the LYONS.

The selling securityholders and any other persons participating in the distribution of the LYONS or underlying common stock will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the LYONS and the underlying common stock by the selling securityholders and any such other person. In addition, Regulation M of the Exchange Act may restrict the ability of any person engaged in the distribution of the LYONS and the underlying common stock being distributed for a period of up to five business days prior to the commencement of such distribution. This may affect the marketability of the LYONS and the underlying common stock and the ability to engage in market-making activities with respect to the LYONS and the underlying common stock.

Under the registration rights agreement that has been filed as an exhibit to this registration statement, we and the selling securityholders will each indemnify the other against certain liabilities, including certain liabilities under the Securities Act, or will be entitled to contribution in connection with these liabilities.

We have agreed to pay substantially all of the expenses incidental to the registration, offering and sale of the LYONS and the underlying common stock to the public other than commissions, fees and discounts of underwriters, brokers, dealers and agents.

#### LEGAL MATTERS

The validity of the LYONS and of the shares of Common Stock issuable upon conversion of the LYONS has been passed upon for TJX by Ropes & Gray, Boston, Massachusetts.

#### EXPERTS

The financial statements incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended January 27, 2001 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

-----  
-----  
\$517,500,000

[TJX LOGO]

LIQUID YIELD OPTION(TM) NOTES DUE 2021  
(ZERO COUPON -- SUBORDINATED)  
AND  
COMMON STOCK ISSUABLE UPON CONVERSION OF THE LYONS

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## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

## ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the costs and expenses, payable by TJX in connection with the distribution of the securities being registered. All of the amounts shown are estimates, except the Securities and Exchange Commission registration fee.

Securities and Exchange Commission registration fee.....	\$ 93,796.88
Printing and engraving fees.....	\$ 10,000.00
Accountant's fees and expenses.....	\$ 5,000.00
Legal fees and expenses.....	\$ 50,000.00
Miscellaneous expenses.....	\$ 6,204.00
	-----
Total.....	\$165,000.88

## ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law, as amended, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 145 further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which the Court of Chancery or such other court shall deem proper.

We have entered into indemnification agreements with each of our directors and officers indemnifying them against expenses, settlements, judgments and fines incurred in connection with any threatened, pending or completed action, suit, arbitration or proceeding, where the individual's involvement is by reason of the fact that such person is or was a director or officer or served at our request as a director of another organization (except that indemnification is not provided against judgments and fines in a derivative suit unless permitted by Delaware law). An individual may not be indemnified if such person is found not to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to our best interests except to the extent Delaware law permits broader contractual indemnification. These indemnification agreements provide procedures, presumptions and remedies which substantially strengthen the indemnification rights beyond those provided by our Restated Certificate of Incorporation and by Delaware law.

The Restated Certificate provides that each person who was or is made a party to, or is involved in, any action, suit, proceeding or claim by reason of the fact that he or she is or was a director, officer or

employee of TJX (or is or was serving at the request of TJX as a director, officer, trustee, employee or agent of any other enterprise including service with respect to employee benefit plans) shall be indemnified and held harmless by TJX, to the full extent permitted by Delaware law, as in effect from time to time, against all expenses (including attorneys' fees and expenses), judgements, fines, penalties and amounts to be paid in settlement incurred by such person in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim.

The rights to indemnification and the payment of expenses provided by the Restated Certificate do not apply to any action, suit, proceeding or claim initiated by or on behalf of a person otherwise entitled to the benefit of such provisions. Any person seeking indemnification under the Restated Certificate shall be deemed to have met the standard of conduct required for such indemnification unless the contrary shall be established. The Restated Certificate provides that the rights to indemnification and the payment of expenses provided thereby shall not be exclusive of any other right which any person may have or acquire under any statute, provision of the Restated Certificate or the By-laws, or otherwise. Any repeal or modification of such indemnification provisions shall not adversely affect any right or protection of a director or officer with respect to any conduct of such director or officer occurring prior to such repeal or modification.

Section 102(b)(7) of the Delaware General Corporation Law, as amended, permits a corporation to include in its certificate of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under section 174 of the Delaware General Corporation Law (relating to unlawful payment of dividend and unlawful stock purchase and redemption) or (iv) for any transaction from which the director derived an improper personal benefit. We have provided in our Certificate that our directors shall be exculpated from liability as provided under Delaware law.

#### ITEM 16. EXHIBITS

- 4.1 Indenture between TJX and The Bank of New York dated as of February 13, 2001.
- 4.2 Registration Rights Agreement dated as of February 7, 2001 between TJX and Merrill Lynch & Co.
- 5.1 Opinion of Ropes & Gray.
- 12.1 Statement Regarding Computation of Ratios of Earnings to Fixed Charges.
- 23.1 Consent of PricewaterhouseCoopers L.L.P.
- 23.2 Consent of Ropes & Gray (included in Exhibit 5.1).
- 24.1 Powers of Attorney (included on the signature page).
- 25.1 Statement of Eligibility of Trustee on Form T-1.

#### ITEM 17. UNDERTAKINGS

a. The undersigned registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase and decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)



if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

b. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.

c. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the financial adjudication of such issue.

d. The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be a part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in the Town of Framingham, Commonwealth of Massachusetts.

THE TJX COMPANIES, INC.

By: /s/ DONALD G. CAMPBELL

-----  
 Donald G. Campbell  
 Executive Vice President,  
 Chief Financial Officer

Dated: May 9, 2001

## POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Edmond J. English, Donald G. Campbell and Jay H. Meltzer, and each of them singly, his or her true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-3 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date indicated.

SIGNATURE

TITLE

-----  
 /s/ EDMOND J. ENGLISH

-----  
 President, Chief Executive Officer and Director

-----  
 Edmond J. English

-----  
 /s/ DONALD G. CAMPBELL

-----  
 Executive Vice President, Chief Financial Officer

-----  
 Donald G. Campbell

-----  
 /s/ BERNARD CAMMARATA

-----  
 Chairman

-----  
 Bernard Cammarata

-----  
 /s/ GARY L. CRITTENDEN

-----  
 Director

-----  
 Gary L. Crittenden

-----  
 /s/ GAIL DEEGAN

-----  
 Director

-----  
 Gail Deegan

-----  
 /s/ DENNIS F. HIGHTOWER

-----  
 Director

-----  
 Dennis F. Hightower

SIGNATURE  
-----

TITLE  
-----

/s/ RICHARD G. LESSER Director

-----  
Richard G. Lesser

/s/ ARTHUR F. LOEWY Director

-----  
Arthur F. Loewy

/s/ JOHN M. NELSON Director

-----  
John M. Nelson

/s/ JOHN F. O'BRIEN Director

-----  
John F. O'Brien

/s/ ROBERT F. SHAPIRO Director

-----  
Robert F. Shapiro

Director

-----  
Willow B. Shire

/s/ FLETCHER H. WILEY Director

-----  
Fletcher H. Wiley

Dated: May 9, 2001

## EXHIBIT INDEX

EXHIBIT NO. -----	DESCRIPTION -----	PAGE -----
4.1	Indenture between TJX and The Bank of New York dated as of February 13, 2001.	
4.2	Registration Rights Agreement dated as of February 7, 2001 between TJX and Merrill Lynch & Co.	
5.1	Opinion of Ropes & Gray.	
12.1	Statement Regarding Computation of Ratios of Earnings to Fixed Charges.	
23.1	Consent of PricewaterhouseCoopers LLP	
23.2	Consent of Ropes & Gray (see Exhibit 5.1).	
24	Power of Attorney (see page II-5).	
25	Statement of Eligibility of Trustee on Form T-1.	

THE TJX COMPANIES, INC.  
Liquid Yield Option (TM) Notes  
due 2021  
(Zero Coupon-Subordinated)

-----  
INDENTURE  
Dated as of February 13, 2001

-----  
THE BANK OF NEW YORK  
TRUSTEE

-----  
(TM) Trademark of Merrill Lynch & Co., Inc.

## CROSS REFERENCE TABLE\*

TIA Section	Indenture Section
310(a)(1).....	7.10
(a)(2).....	7.10
(a)(3).....	N.A.
(a)(4).....	N.A.
(b).....	7.08; 7.10
(c).....	N.A.
311(a).....	7.11
(b).....	7.11
(c).....	N.A.
312(a).....	2.05
(b).....	13.03
(c).....	13.03
313(a).....	7.06
(b)(1).....	N.A.
(b)(2).....	7.06
(c).....	13.02
(d).....	7.06
314(a).....	4.02; 4.03; 13.02
(b).....	N.A.
(c)(1).....	13.04
(c)(2).....	13.04
(c)(3).....	N.A.
(d).....	N.A.
(e).....	13.05
(f).....	N.A.
315(a).....	7.01
(b).....	7.05; 13.02
(c).....	7.01
(d).....	7.01
(e).....	6.11
316(a) (last sentence).....	2.08
(a)(1)(A).....	6.05
(a)(1)(B).....	6.04
(a)(2).....	N.A.
(b).....	6.07
317(a)(1).....	6.08
(a)(2).....	6.09
(b).....	2.04
318(a).....	13.01

N.A. means Not Applicable.

\* Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

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\* Note: This Table of Contents shall not, for any purpose, be deemed to be part of the Indenture.

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INDENTURE dated as of February 13, 2001 between THE TJX COMPANIES, INC., a Delaware corporation (the "Company"), and THE BANK OF NEW YORK, a New York banking corporation (the "Trustee").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company's Liquid Yield Option(TM) Notes due 2021 (Zero Coupon - Subordinated) ("Securities"):

#### ARTICLE 1

##### DEFINITIONS AND INCORPORATION BY REFERENCE

###### SECTION 1.01 Definitions.

"144A Global Security" means a permanent Global Security in the form of the Security attached hereto as Exhibit A-1, and that is deposited with and registered in the name of the Depository, representing Securities sold in reliance on Rule 144A under the Securities Act.

"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" when used with respect to any specified person means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Procedures" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depository for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of such board.

"Business Day" means each day of the year other than a Saturday or a Sunday or other day on which banking institutions in The City of New York or Boston, Massachusetts are required or authorized to close.

"Capital Stock" for any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that corporation.

"Certificated Securities" means Securities that are in the form of the Securities attached hereto as Exhibit A-2.

"Common Stock" shall mean the shares of Common Stock, \$1 par value, of the Company as it exists on the date of this Indenture or any other shares of Capital Stock of the Company into which the Common Stock shall be reclassified or changed.

"Company" means the party named as the "Company" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by any two Officers.

"Corporate Trust Office" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 101 Barclay Street, Floor 21 West, New York, New York 10286, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

"Debt" means with respect to the Company at any date, without duplication, obligations (other than nonrecourse obligations) under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Global Securities" means Securities that are in the form of the Securities attached hereto as Exhibit A-1, and to the extent that such Securities are required to bear the Legend required by Section 2.06, such Securities will be in the form of a 144A Global Security.

"Holder" or "Securityholder" means a 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 in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

"Institutional Accredited Investor Security" means a Security in the form of the Security attached hereto as Exhibit A-2, representing Securities sold to Institutional Accredited Investors.

"Issue Date" of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

"Issue Price" of any Security means, in connection with the original issuance of such Security, the initial issue price at which the Security is sold as set forth on the face of the Security.

"Officer" means the Chairman of the Board, any Vice Chairman, the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary or the Controller of the Company.

"Officers' Certificate" means a written certificate containing the information specified in Sections 13.04 and 13.05, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers' Certificate given pursuant to Section 4.03 shall be signed by the principal executive, financial or accounting Officer of the Company but need not contain the information specified in Sections 13.04 and 13.05.

"Opinion of Counsel" means a written opinion containing the information specified in Sections 13.04 and 13.05, from legal counsel who is acceptable to the Trustee. The counsel may be an employee of, or counsel to, the Company or the Trustee.

"Original Issue Discount" of any Security means the difference between the Issue Price and the Principal Amount at Maturity of the Security as set forth on the face of the Security.

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

"Principal Amount at Maturity" of a Security means the principal amount at maturity as set forth on the face of the Security.

"Redemption Date" or "redemption date" means the date specified for redemption of the Securities in accordance with the terms of the Securities and this Indenture.

"Redemption Price" or "redemption price" shall have the meaning set forth in paragraph 5 of the Securities.

"Responsible Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"Restricted Security" means a Security required to bear the restrictive Legend set forth in the form of Security set forth in Exhibits A-1 and A-2 of this Indenture.

"Rule 144A" means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

"Sale Price" of Capital Stock on any date means the closing per share sale price (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date as reported

in the composite transactions for the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional securities exchange, as reported by the National Association of Securities Dealers Automated Quotation System or by the National Quotation Bureau Incorporated. In the absence of such quotation, the Company shall be entitled to determine the Sale Price on the basis of such quotations as it considers appropriate.

"SEC" means the Securities and Exchange Commission.

"Securities" means any of the Company's Liquid Yield Option Notes(TM) due 2021 (Zero Coupon-Subordinated), as amended or supplemented from time to time, issued under this Indenture.

"Securityholder" or "Holder" means a person in whose name a Security is registered on the Registrar's books.

"Senior Indebtedness" means the principal, premium (if any) and unpaid interest on all present and future (i) indebtedness of the Company for borrowed money; (ii) obligations of the Company evidenced by bonds, debentures, notes or similar instruments; (iii) obligations of the Company under (a) interest rate swaps, caps, collars, options and similar arrangements, (b) any foreign exchange contract, currency swap contract, futures contract, currency option contract, or other foreign currency hedge and (c) credit swaps, caps, floors, collars and similar arrangements; (iv) indebtedness incurred, assumed or guaranteed by the Company in connection with the acquisition by it or a subsidiary of the Company of any business, properties or assets (except purchase-money indebtedness classified as accounts payable under U.S. generally accepted accounting principles); (v) all obligations and liabilities (contingent or otherwise) in respect of leases of the Company required, in conformity with U.S. generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of the Company and all obligations and liabilities (contingent or otherwise) under any lease or related document (including a purchase agreement) in connection with the lease or real property which provides that the Company is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the lessor and the obligations of the Company under such lease or related document to purchase or to cause a third party to purchase such leased property; (vi) reimbursement obligations of the Company in respect of letters of credit relating to indebtedness or other obligations of the Company that qualify as indebtedness or obligations of the kind referred to in clauses (i) through (v) above; and (vii) obligations of the Company under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (i) through (vi) above;

in each case unless in the instrument creating or evidencing the indebtedness or obligation or pursuant to which the same is outstanding it is provided that (i) that such indebtedness or obligation is not senior in right of payment to the Securities or (ii) such indebtedness or obligation is subordinated to any other indebtedness or obligation of the Company, unless such indebtedness or obligation expressly provides that such indebtedness or obligations be senior in right of payment to the Securities.

"Special Record Date" means, for the payment of any Defaulted Interest, the date fixed by the Trustee pursuant to Section 10.02(b).

"Stated Maturity" means, when used with respect to any Security, the date specified in such Security as the fixed date on which an amount equal to the Principal Amount at Maturity of such Security is due and payable.

"Subsidiary" means (i) a corporation, a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is, at the date of determination, directly or indirectly owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company, (ii) a partnership in which the Company or a Subsidiary of the Company holds a majority interest in the equity capital or profits of such partnership, or (iii) any other person (other than a corporation or partnership) in which the Company, a Subsidiary of the Company or the Company and one or more Subsidiaries of the Company, directly or indirectly, at the date of determination, has (x) at least a majority ownership interest or (y) the power to elect or direct the election of a majority of the directors or other governing body of such person.

"Tax Event" means that the Company shall have received an opinion from independent tax counsel experienced in such matters to the effect that, on or after February 7, 2001, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein or (b) any amendment to, or change in, an interpretation or application of such laws or regulations by any legislative body, court, governmental agency or regulatory authority, in each case which amendment or change is enacted, promulgated, issued or announced or which interpretation is issued or announced or which action is taken, on or after February 7, 2001, there is more than an insubstantial risk that interest (including Original Issue Discount) payable on the Securities either (i) would not be deductible on a current accrual basis or (ii) would not be deductible under any other method, in either case in whole or in part, by the Company (by reason of deferral, disallowance, or otherwise) for United States federal income tax purposes.

"TIA" means the Trust Indenture Act of 1939 as in effect on the date of this Indenture; provided, however, that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

"trading day" means a day during which trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, 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 National Association of Securities Dealers Automated Quotation System or, if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotation System, on the principal other market on which the Common Stock is then traded.

"Trustee" means the party named as the "Trustee" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and,

thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

SECTION 1.02 Other Definitions.

Term	Defined in Section
----	-----
"Act".....	1.05(a)
"Agent Members".....	2.12(e)
"Associate".....	3.09(a)
"Average Sale Price".....	11.01
"Bankruptcy Law".....	6.01
"beneficial owner".....	3.09(a)
"Bid Solicitation Agent".....	2.03
"cash".....	3.08(b)
"Change in Control".....	3.09(a)
"Change in Control Purchase Date".....	3.09(a)
"Change in Control Purchase Notice".....	3.09(c)
"Change in Control Purchase Price".....	3.09(a)
"Company Notice".....	3.08(e)
"Company Notice Date".....	3.08(c)
"Conversion Agent".....	2.03
"Conversion Date".....	11.02
"Conversion Rate".....	11.01
"Custodian".....	6.01
"Defaulted Interest".....	10.02(b)
"Depository".....	2.01(a)
"DTC".....	2.01(a)
"Event of Default".....	6.01
"Exchange Act".....	3.08(d)
"Ex-Dividend Date".....	11.08(b)
"Ex-Dividend Time".....	11.01
"Extraordinary Cash Dividend".....	11.08(a)
"Institutional Accredited Investors".....	2.01(b)
"Interest Payment Date".....	10.01
"Legal Holiday".....	13.08
"Legend".....	2.06(f)
"Market Price".....	3.08(d)
"Measurement Period".....	11.08(a)
"Notice of Default".....	6.01
"Optional Exercise Date".....	10.01
"Paying Agent".....	2.03
"Purchase Date".....	3.08(a)
"Purchase Notice".....	3.08(a)
"Purchase Price".....	3.08(a)
"QIB".....	2.01(a)



"Registrar".....	2.03
"Regular Record Date".....	10.01
"Relevant Cash Dividends".....	11.08(a)
"Restated Principal Amount".....	10.01
"Rights".....	11.19
"Rights Agreement".....	11.19
"Rule 144A Information".....	4.06
"Securities Act".....	3.08(d)
"Special Record Date".....	12.02
"Tax Event Date".....	10.01
"Time of Determination".....	11.01

SECTION 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. 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.

"obligor" on the indenture securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

SECTION 1.04 Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with United States generally accepted accounting principles as in effect from time to time;

(c) "or" is not exclusive;

(d) "including" means including, without limitation; and

(e) words in the singular include the plural, and words in the plural include the singular.

SECTION 1.05 Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

(c) The ownership of Securities shall be proved by the register maintained by the Registrar.

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

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of the Board of Directors, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

## ARTICLE 2

## THE SECURITIES

SECTION 2.01 Form and Dating. The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibits A-1 and A-2, which are a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company). 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.

(a) 144A Global Securities. Securities offered and sold within the United States to qualified institutional buyers as defined in Rule 144A ("QIBs") in reliance on Rule 144A shall be issued, initially in the form of a 144A Global Security, which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for the Depository and registered in the name of The Depository Trust Company ("DTC") or the nominee thereof (such depository, or any successor thereto, and any such nominee being hereinafter referred to as the "Depository"), duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate Principal Amount at Maturity of the 144A Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository as hereinafter provided.

(b) Institutional Accredited Investor Securities. Except as provided in this Section 2.01 or in Section 2.06 or 2.12, owners of beneficial interests in Global Securities will not be entitled to receive physical delivery of Certificated Securities. Securities offered and sold within the United States to institutional accredited investors as defined in Rule 501(a)(1), (2) (3) and (7) under the Securities Act ("Institutional Accredited Investors") shall be issued, initially in the form of an Institutional Accredited Investor Security, duly executed by the Company and authenticated by the Trustee as hereinafter provided.

(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 Principal Amount at Maturity of outstanding Securities from time to time endorsed thereon and that the aggregate Principal Amount at Maturity of outstanding Securities represented thereby may from time to time be increased or decreased, as appropriate, to reflect exchanges, redemptions and conversions.

Any adjustment of the aggregate Principal Amount at Maturity of a Global Security to reflect the amount of any increase or decrease in the aggregate Principal Amount at Maturity 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 and shall be made on the records of the Trustee and the Depository.

(d) Book-Entry Provisions. This Section 2.01(d) shall apply only to Global Securities deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.01(d), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depository, (b) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instructions and (c) shall bear legends substantially to the following effect:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE ISSUER 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 THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS, IN WHOLE BUT NOT IN PART, TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."

(e) Certificated Securities. Securities not issued as interests in the Global Securities will be issued in certificated form substantially in the form of Exhibit A-2 attached hereto.

SECTION 2.02 Execution and Authentication. The Securities shall be executed on behalf of the Company by any Officer. The signature of the Officer on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of an individual who was at the time of the execution of the Securities the proper Officer of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Securities or did not hold such office at the date of authentication of such Securities.

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

The Trustee shall authenticate and deliver Securities for original issue in an aggregate Principal Amount at Maturity of up to \$517,500,000 upon a Company Order without any further action by the Company. The aggregate Principal Amount at Maturity of Securities outstanding at any time may not exceed the amount set forth in the foregoing sentence, except as provided in Section 2.07.

The Securities shall be issued only in registered form without coupons and only in denominations of \$1,000 of Principal Amount at Maturity and any integral multiple thereof.

SECTION 2.03 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 where Securities may be presented for purchase or payment ("Paying Agent") and an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Securities 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 Paying Agent includes any additional paying agent, including any named pursuant to Section 4.05. The term Conversion Agent includes any additional conversion agent, including any named pursuant to Section 4.05.

The Company shall enter into an appropriate agency agreement with any Registrar or co-registrar, Paying Agent, Conversion Agent or co-registrar (other than the Trustee). 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 such agent. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

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

SECTION 2.04 Paying Agent to Hold Money and Securities in Trust. Except as otherwise provided herein, not later than 10:00 a.m., New York City time, on each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money (in immediately available funds if deposited on the due date) or Common Stock sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money and Common Stock held by the Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money and Common Stock so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money and Common Stock held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money and Common Stock held by

it to the Trustee and to account for any funds and Common Stock disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money or Common Stock.

SECTION 2.05 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 Securityholders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on May 1 and November 1 a listing of Securityholders dated within 15 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.06 Transfer and Exchange. Subject to Section 2.12 hereof,

(a) upon surrender for registration of transfer of any Security, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at the office or agency of the Company designated as Registrar or co-registrar pursuant to Section 2.03, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination or denominations, of a like aggregate Principal Amount at Maturity. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the registration of transfer or exchange of the Securities from the Securityholder requesting such registration of transfer or exchange.

At the option of the Holder, Certificated Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate Principal Amount at Maturity, upon surrender of the Securities to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Securityholder or such Securityholder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee, upon receipt of a Company Order, shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be purchased in part, the portion thereof not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

(b) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depository, transfers of a Global Security, in whole or in part, shall be made only in accordance with Section 2.12 and this Section 2.06(b). Transfers of a Global Security shall be limited to transfers of such Global Security, in

whole or in part, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

(c) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the register for the Securities.

(d) Any Registrar appointed pursuant to Section 2.03 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon registration of transfer or exchange of Securities.

(e) No Registrar shall be required to make registrations of transfer or exchange of Securities during any periods designated in the text of the Securities or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

(f) If Securities are issued upon the registration of transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends set forth on the form of Security attached hereto as Exhibits A-1 and A-2 setting forth such restrictions (collectively, the "Legend"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel, as may be reasonably required by the Company and the Registrar, that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon (i) provision of such satisfactory evidence, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, upon receipt of a Company Order, shall authenticate and deliver a Security that does not bear the Legend. If the Legend is removed from the face of a Security and the Security is subsequently held by an Affiliate of the Company, the Legend shall be reinstated by the Company.

(g) 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 Depositary participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.07 Replacement Securities. If (a) any mutilated Security is surrendered to the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute, and the Trustee, upon

receipt of a Company Order, shall 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 at Maturity, 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 purchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

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

Every new Security issued pursuant to this Section in lieu of any 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 hereunder.

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

**SECTION 2.08 Outstanding Securities; Determinations of Holders' Action.** Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it or delivered to it for cancellation, those paid pursuant to Section 2.07 and those described in this Section 2.08 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; provided, however, that in determining whether the Holders of the requisite Principal Amount at Maturity of Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

If the Paying Agent holds, in accordance with this Indenture, on a Redemption Date, or on the Business Day following the Purchase Date or a Change in Control Purchase Date, or on Stated Maturity, money or securities, if permitted hereunder, sufficient to pay Securities



payable on that date, then immediately after such Redemption Date, Purchase Date, Change in Control Purchase Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and Original Issue Discount and interest, if any, on such Securities shall cease to accrue; provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

If a Security is converted in accordance with Article 11, then from and after the time of conversion on the Conversion Date, such Security shall cease to be outstanding and Original Issue Discount and interest, if any, shall cease to accrue on such Security.

SECTION 2.09 Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.03, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee, upon receipt of a Company Order, shall authenticate and deliver in exchange therefor a like Principal Amount at Maturity 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 2.10 Cancellation. All Securities surrendered for payment, purchase by the Company pursuant to Article 3, conversion, redemption or registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 11. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with the Trustee's customary procedure.

SECTION 2.11 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 the Security or the payment of any

Redemption Price, Purchase Price or Change in Control Purchase Price in respect thereof, and interest thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 2.12 Global Securities.

(a) Notwithstanding any other provisions of this Indenture or the Securities, (A) transfers of a Global Security, in whole or in part, shall be made only in accordance with Section 2.06 and Section 2.12(a)(i) below, (B) transfer of a beneficial interest in a Global Security for a Certificated Security shall comply with Section 2.06 and Section 2.12(a)(ii) below, and (C) transfers of a Certificated Security shall comply with Section 2.06 and Section 2.12(a)(iii) and (iv) below.

(i) Transfer of Global Security. A Global Security may not be transferred, in whole or in part, to any Person other than the Depository or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; provided that this clause (i) shall not prohibit any transfer of a Security that is issued in exchange for a Global Security but is not itself a Global Security. No transfer of a Security to any Person shall be effective under this Indenture or the Securities unless and until such Security has been registered in the name of such Person. Nothing in this Section 2.12(a)(i) shall prohibit or render ineffective any transfer of a beneficial interest in a Global Security effected in accordance with the other provisions of this Section 2.12(a).

(ii) Restrictions on Transfer of a Beneficial Interest in a Global Security for a Certificated Security. A beneficial interest in a Global Security may not be exchanged for a Certificated Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a transfer of a beneficial interest in a Global Security in accordance with Applicable Procedures for a Certificated Security in the form satisfactory to the Trustee, together with:

- (a) so long as the Securities are Restricted Securities, certification, in the form set forth in Exhibit B-1, and, if requested by the Company or the Registrar, certification in the form set forth in Exhibit B-2, that such beneficial interest in the Global Security is being transferred to an Institutional Accredited Investor in accordance with subparagraphs (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act;
- (b) written instructions to the Trustee to make, or direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect a decrease in the aggregate Principal Amount at Maturity of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such decrease; and

- (c) if the Company or Registrar so requests, an Opinion of Counsel or other evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Legend.

then the Trustee shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate Principal Amount at Maturity of Securities represented by the Global Security to be decreased by the aggregate Principal Amount at Maturity of the Certificated Security to be issued, shall authenticate and deliver such Certificated Security and shall debit or cause to be debited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the Principal Amount at Maturity of the Certificated Security so issued.

- (iii) Transfer and Exchange of Certificated Securities. When Certificated Securities are presented to the Registrar with a request:
- (x) to register the transfer of such Certificated Securities; or
  - (y) to exchange such Certificated Securities for an equal Principal Amount at Maturity of Certificated Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Securities surrendered for registration of transfer or exchange:

- (a) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing; and
- (b) so long as such Securities are Restricted Securities, such Securities are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:
  - (A) if such Certificated Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or
  - (B) if such Certificated Securities are being transferred to the Company, a certification to that effect; or
  - (C) if such Certificated Securities are being transferred pursuant to an exemption from registration, (i) a certification to that effect (in the form set forth in Exhibit B-1 and B-2, if applicable) and (ii) if the

Company or Registrar so requests, an Opinion of Counsel or other evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Legend.

(iv) Restrictions on Transfer of a Certificated Security for a Beneficial Interest in a Global Security. A Certificated Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below.

Upon receipt by the Trustee of a Certificated Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

- (a) so long as the Securities are Restricted Securities, certification, in the form set forth in Exhibit B-1, that such Certificated Security is being transferred to a QIB in accordance with Rule 144A; and
- (b) written instructions directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate Principal Amount at Maturity of the Securities represented by the Global Security, such instructions to contain information regarding the Depository account to be credited with such increase,

then the Trustee shall cancel such Certificated Security and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depository and the Registrar, the aggregate Principal Amount at Maturity of Securities represented by the Global Security to be increased by the aggregate Principal Amount at Maturity of the Certificated Security to be exchanged, and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the Principal Amount at Maturity of the Certificated Security so cancelled. If no Global Securities are then outstanding, the Company shall execute, and the Trustee, upon receipt of a Company Order, shall authenticate, a new Global Security in the appropriate Principal Amount at Maturity.

(b) Subject to the succeeding paragraph, every Security shall be subject to the restrictions on transfer provided in the Legend including the delivery of an Opinion of Counsel, if so provided. Whenever any Restricted Security is presented or surrendered for registration of transfer or for exchange for a Security registered in a name other than that of the Holder, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit B-1, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such registration of transfer or exchange any Security not so accompanied by a properly completed certificate.

(c) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by an Opinion of Counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable to the Company, addressed to the Company and the Registrar and in form acceptable to the Company, to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate Principal Amount at Maturity, which shall not bear the restrictive Legend. The Company shall inform the Trustee of the effective date of any registration statement registering the Securities under the Securities Act. The Trustee and the Registrar shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Opinion of Counsel or registration statement.

(d) As used in the preceding two paragraphs of this Section 2.12, the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Security.

(e) The provisions of clauses (1), (2), (3) and (4) below shall apply only to Global Securities:

(1) Notwithstanding any other provisions of this Indenture or the Securities, except as provided in Section 2.12(a)(ii), a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary or one or more nominees thereof; provided that a Global Security may be exchanged for Securities registered in the names of any person designated by the Depositary in the event that (i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days or (ii) an Event of Default has occurred and is continuing with respect to the Securities. Any Global Security exchanged pursuant to clause (i) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (ii) above may be exchanged in whole or from time to time in part as directed by the Depositary.

(2) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate Principal Amount at Maturity equal to

that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the Principal Amount at Maturity thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(3) Subject to the provisions of clause (5) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (as defined below) and persons that may hold interests through Agent Members, to take any action which a holder is entitled to take under this Indenture or the Securities.

(4) In the event of the occurrence of any of the events specified in clause (1) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.

(5) Neither any members of, or participants in, the Depositary (collectively, the "Agent Members") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, 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 prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

SECTION 2.13 CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed

on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

### ARTICLE 3

#### REDEMPTION AND PURCHASES

SECTION 3.01 Right to Redeem; Notices to Trustee. The Company, at its option, may redeem the Securities in accordance with the provisions of paragraphs 5 and 7 of the Securities. If the Company elects to redeem Securities pursuant to paragraph 5 of the Securities, it shall notify the Trustee in writing of the Redemption Date, the Principal Amount at Maturity of Securities to be redeemed and the Redemption Price.

The Company shall give the notice to the Trustee provided for in this Section 3.01 by a Company Order, at least 40 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee).

SECTION 3.02 Selection of Securities to Be Redeemed. If less than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed pro rata or by lot or by any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange on which the Securities are then listed). The Trustee shall make the selection at least 30 days but not more than 60 days before the Redemption Date from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the Principal Amount at Maturity of Securities that have denominations larger than \$1,000.

Securities and portions of them the Trustee selects shall be in Principal Amounts at Maturity of \$1,000 or an integral multiple of \$1,000. 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 Securities to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

SECTION 3.03 Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail a notice of redemption by first-class mail, postage prepaid, to each Holder of Securities to be redeemed.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the Redemption Date;

- (2) the Redemption Price;
- (3) the Conversion Rate;
- (4) the name and address of the Paying Agent and Conversion Agent;
- (5) that Securities called for redemption may be converted at any time before the close of business on the second Business Day immediately preceding the Redemption Date;
- (6) that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 8 of the Securities;
- (7) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;
- (8) if fewer than all the outstanding Securities are to be redeemed, the certificate number and Principal Amounts at Maturity of the particular Securities to be redeemed;
- (9) that, unless the Company defaults in making payment of such Redemption Price, Original Issue Discount and interest, if any, on Securities called for redemption will cease to accrue on and after the Redemption Date;
- (10) the CUSIP number of the Securities; and
- (11) any other information the Company wants to present.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense; provided that the Company makes such request at least three Business Days prior to the date such notice of redemption must be mailed.

SECTION 3.04 Effect of Notice of Redemption. Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice, except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice.

SECTION 3.05 Deposit of Redemption Price. Prior to 10:00 a.m. (New York City time), on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money, not required for that purpose because of conversion of Securities pursuant to Article 11. If such money is then held by the Company in trust and is not required for such purpose, it shall be discharged from such trust.



SECTION 3.06 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee, upon receipt of a Company Order, shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in Principal Amount at Maturity to the unredeemed portion of the Security surrendered.

SECTION 3.07 Conversion Arrangement on Call for Redemption. In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities called for redemption by an agreement with one or more investment banks or other purchasers to purchase such Securities by paying to the Trustee in trust for the Securityholders, on or prior to 10:00 a.m. New York City time on the Redemption Date, an amount that, together with any amounts deposited with the Trustee by the Company for the redemption of such Securities, is not less than the Redemption Price of such Securities. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the Redemption Price of such Securities shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, any Securities not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and (notwithstanding anything to the contrary contained in Article 11) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the Business Day prior to the Redemption Date, subject to payment of the above amount as aforesaid. The Trustee shall hold and pay to the Holders whose Securities are selected for redemption any such amount paid to it for purchase and conversion in the same manner as it would moneys deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

SECTION 3.08 Purchase of Securities at Option of the Holder.

(a) General. Securities shall be purchased by the Company pursuant to paragraph 6 of the Securities as of February 13, 2002, February 13, 2004, February 13, 2007 and February 13, 2013, (each, a "Purchase Date"), at the purchase price of \$681.76 per \$1,000 of Principal Amount at Maturity as of February 13, 2002, of \$712.97 per \$1,000 of Principal Amount at Maturity as of February 13, 2004, of \$756.83 per \$1,000 of Principal Amount at Maturity as of February 13, 2007 and of \$852.82 per \$1,000 of Principal Amount at Maturity as of February 13, 2013 (each, a "Purchase Price", as applicable), at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent, by the Holder of a written notice of purchase (a "Purchase Notice") at any time from the opening of business on the date that is

at least 20 Business Days prior to a Purchase Date until the close of business on the Business Day immediately prior to such Purchase Date stating:

(A) the certificate number of the Security which the Holder will deliver to be purchased,

(B) the portion of the Principal Amount at Maturity of the Security which the Holder will deliver to be purchased, which portion must be a Principal Amount at Maturity of \$1,000 or an integral multiple thereof,

(C) that such Security shall be purchased as of the Purchase Date pursuant to the terms and conditions specified in paragraph 6 of the Securities and in this Indenture, and

(D) in the event the Company elects, pursuant to Section 3.08(b), to pay the Purchase Price to be paid as of such Purchase Date, in whole or in part, in shares of Common Stock but such portion of the Purchase Price shall ultimately be payable to such Holder entirely in cash because any of the conditions to payment of the Purchase Price in Common Stock is not satisfied prior to the close of business on such Purchase Date, as set forth in Section 3.08(d), whether such Holder elects (i) to withdraw such Purchase Notice as to some or all of the Securities to which such Purchase Notice relates (stating the Principal Amount at Maturity and certificate numbers of the Securities as to which such withdrawal shall relate), or (ii) to receive cash in respect of the entire Purchase Price for all Securities (or portions thereof) to which such Purchase Notice relates; and

(2) delivery of such Security to the Paying Agent prior to, on or after the Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Purchase Price therefor; provided, however, that such Purchase Price shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company.

If a Holder, in such Holder's Purchase Notice and in any written notice of withdrawal delivered by such Holder pursuant to the terms of Section 3.10, fails to indicate such Holder's choice with respect to the election set forth in clause (D) of Section 3.08(a)(1), such Holder shall be deemed to have elected to receive cash in respect of the Purchase Price for all Securities subject to such Purchase Notice in the circumstances set forth in such clause (D).

The Company shall purchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security if the Principal Amount at Maturity of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery of the consideration to be received by the

Holder promptly following the later of the Purchase Date and the time of delivery of the Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Purchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Purchase Notice at any time prior to the close of business on the Business Day immediately prior to the Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

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

(b) Company's Right to Elect Manner of Payment of Purchase Price. The Securities to be purchased pursuant to Section 3.08(a) may be paid for, at the election of the Company, in U.S. legal tender ("cash") or Common Stock, or in any combination of cash and Common Stock, subject to the conditions set forth in Sections 3.08(c) and (d). The Company shall designate, in the Company Notice delivered pursuant to Section 3.08(e), whether the Company will purchase the Securities for cash or Common Stock, or, if a combination thereof, the percentages of the Purchase Price of Securities in respect of which it will pay in cash or Common Stock; provided that the Company will pay cash for fractional interests in Common Stock. For purposes of determining the existence of potential fractional interests, all Securities subject to purchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each Holder whose Securities are purchased pursuant to this Section 3.08 shall receive the same percentage of cash or Common Stock in payment of the Purchase Price for such Securities, except (i) as provided in Section 3.08(d) with regard to the payment of cash in lieu of fractional shares of Common Stock and (ii) in the event that the Company is unable to purchase the Securities of a Holder or Holders for Common Stock because any necessary qualifications or registrations of the Common Stock under applicable state securities laws cannot be obtained, the Company may purchase the Securities of such Holder or Holders for cash. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Company Notice to Securityholders, except pursuant to this Section 3.08(b) or pursuant to Section 3.08(d) in the event of a failure to satisfy, prior to the close of business on the Purchase Date, any condition to the payment of the Purchase Price, in whole or in part, in Common Stock.

At least three Business Days before the Company Notice Date, the Company shall deliver an Officers' Certificate to the Trustee specifying:

- (i) the manner of payment selected by the Company,
- (ii) the information required by Section 3.08(e),
- (iii) if the Company elects to pay the Purchase Price, or a specified percentage thereof, in Common Stock, that the conditions to such manner of payment set forth in Section 3.08(d) have been or will be complied with, and

(iv) whether the Company desires the Trustee to give the Company Notice required by Section 3.08(e).

(c) Purchase with Cash. On each Purchase Date, at the option of the Company, the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, may be paid by the Company with cash equal to the aggregate Purchase Price of such Securities. If the Company elects to purchase Securities with cash, the Company Notice, as provided in Section 3.08(e), shall be sent to Holders (and to beneficial owners as required by applicable law) not less than 20 Business Days prior to such Purchase Date (the "Company Notice Date").

(d) Payment by Issuance of Common Stock. On each Purchase Date, at the option of the Company, the Purchase Price of Securities in respect of which a Purchase Notice pursuant to Section 3.08(a) has been given, or a specified percentage thereof, may be paid by the Company by the issuance of a number of shares of Common Stock equal to the quotient obtained by dividing (i) the amount of cash to which the Securityholders would have been entitled had the Company elected to pay all or such specified percentage, as the case may be, of the Purchase Price of such Securities in cash by (ii) the Market Price of a share of Common Stock, subject to the next succeeding paragraph.

The Company will not issue a fractional share of Common Stock in payment of the Purchase Price. Instead the Company will pay cash for the current market value of the fractional share. The current market value of a fraction of a share shall be determined by multiplying the Market Price by such fraction and rounding the product to the nearest whole cent. It is understood that if a Holder elects to have more than one Security purchased, the number of shares of Common Stock shall be based on the aggregate amount of Securities to be purchased.

If the Company elects to purchase the Securities by the issuance of shares of Common Stock, the Company Notice, as provided in Section 3.08(e), shall be sent to the Holders (and to beneficial owners as required by applicable law) not later than the Company Notice Date.

The Company's right to exercise its election to purchase the Securities pursuant to Section 3.08 through the issuance of shares of Common Stock shall be conditioned upon:

(i) the Company's not having given its Company Notice of an election to pay entirely in cash and its giving of timely Company Notice of election to purchase all or a specified percentage of the Securities with Common Stock as provided herein;

(ii) the shares of Common Stock having been admitted for listing or admitted for listing subject to notice of issuance on the principal United States securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a national or regional securities exchange, as quoted on the National Association of Securities Dealers Automated Quotation System;

(iii) the registration of the shares of Common Stock to be issued in respect of the payment of the Purchase Price under the Securities Act of 1933, as amended

(the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in each case, if required;

(iv) any necessary qualification or registration under applicable state securities laws or the availability of an exemption from such qualification and registration; and

(v) the receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel each stating that (A) the terms of the issuance of the Common Stock are in conformity with this Indenture and (B) the shares of Common Stock to be issued by the Company in payment of the Purchase Price in respect of Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Purchase Price in respect of the Securities, will be validly issued, fully paid and non-assessable and, to the best of such counsel's knowledge, free from preemptive rights, and, in the case of such Officers' Certificate, stating that conditions (i), (ii), (iii) and (iv) above and the condition set forth in the second succeeding sentence have been satisfied and, in the case of such Opinion of Counsel, stating that conditions (ii), (iii) and (iv) above have been satisfied.

Such Officers' Certificate shall also set forth the number of shares of Common Stock to be issued for each \$1,000 Principal Amount at Maturity of Securities and the Sale Price of a share of Common Stock on each trading day during the period for which the Market Price is calculated. The Company may pay the Purchase Price (or any portion thereof) in Common Stock only if the information necessary to calculate the Market Price is published in The Wall Street Journal or another daily newspaper of national circulation. If the foregoing conditions are not satisfied with respect to a Holder or Holders prior to the close of business on the Purchase Date and the Company has elected to purchase the Securities pursuant to this Section 3.08 through the issuance of shares of Common Stock, the Company shall pay the entire Purchase Price of the Securities of such Holder or Holders in cash.

The "Market Price" of the Common Stock means the average of the Sale Prices of the Common Stock for the five trading day period ending on the third Business Day prior to the applicable Purchase Date (or if such Business Day is not a trading day, then on the last trading day prior to such Business Day), appropriately adjusted to take into account the occurrence, during the period commencing on the first of such trading days during such five trading day period and ending on such Purchase Date, of any event described in Section 11.06, 11.07 or 11.08; subject, however, to the conditions set forth in Sections 11.09 and 11.10.

(e) Notice of Election. The Company's notice of election to purchase with cash or Common Stock or any combination thereof shall be sent to the Holders (and to beneficial owners as required by applicable law) in the manner provided in Section 13.02 at the time specified in Section 3.08(c) or (d), as applicable (the "Company Notice"). Such Company Notice shall state the manner of payment elected and shall contain the following information:

In the event the Company has elected to pay the Purchase Price (or a specified percentage thereof) with Common Stock, the Company Notice shall:

(1) state that each Holder will receive Common Stock with a Market Price determined as of a specified date prior to the Purchase Date equal to such specified percentage of the Purchase Price of the Securities held by such Holder (except any cash amount to be paid in lieu of fractional shares);

(2) set forth the method of calculating the Market Price of the Common Stock; and

(3) state that because the Market Price of Common Stock will be determined prior to the Purchase Date, Holders will bear the market risk with respect to the value of the Common Stock to be received from the date such Market Price is determined to the Purchase Date.

In any case, each Company Notice shall include a form of Purchase Notice to be completed by a Securityholder and shall state:

(i) the Purchase Price and the Conversion Rate;

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

(iii) that Securities as to which a Purchase Notice has been given may be converted pursuant to Article 11 hereof only if the applicable Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(iv) that Securities must be surrendered to the Paying Agent to collect payment of the Purchase Price;

(v) that the Purchase Price for any Security as to which a Purchase Notice has been given and not withdrawn will be paid promptly following the later of the Purchase Date and the time of surrender of such Security as described in clause (iv) above;

(vi) the procedures the Holder must follow to exercise rights under Section 3.08 and a brief description of those rights;

(vii) briefly, the conversion rights of the Securities;

(viii) the procedures for withdrawing a Purchase Notice (including, without limitation, for a conditional withdrawal pursuant to the terms of Section 3.08(a)(1)(D) or Section 3.10);

(ix) that, unless the Company defaults in making payment of such Purchase Price, Original Issue Discount and interest, if any, on Securities surrendered for purchase will cease to accrue on and after the Purchase Date; and

(x) the CUSIP number of the Securities.

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

Upon determination of the actual number of shares of Common Stock to be issued for each \$1,000 Principal Amount at Maturity of Securities, the Company will issue a press release and publish such determination on the Company's website or comparable communications medium.

(f) Covenants of the Company. All shares of Common Stock delivered upon purchase of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

(g) Procedure upon Purchase. The Company shall deposit cash (in respect of a cash purchase under Section 3.08(c) or for fractional interests, as applicable) or shares of Common Stock, or a combination thereof, as applicable, at the time and in the manner as provided in Section 3.11, sufficient to pay the aggregate Purchase Price of all Securities to be purchased pursuant to this Section 3.08. As soon as practicable after the Purchase Date, the Company shall deliver to each Holder entitled to receive Common Stock through the Paying Agent, a certificate for the number of full shares of Common Stock issuable in payment of the Purchase Price and cash in lieu of any fractional interests. The person in whose name the certificate for Common Stock is registered shall be treated as a holder of record of shares of Common Stock on the Business Day following the Purchase Date. Subject to Section 3.08(d), no payment or adjustment will be made for dividends on the Common Stock the record date for which occurred on or prior to the Purchase Date.

(h) Taxes. If a Holder of a Security is paid in Common Stock, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of shares of Common Stock. However, the Holder shall pay any such tax which is due because the Holder requests the shares of Common Stock to be issued in a name other than the Holder's name. The Paying Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Paying Agent receives a sum sufficient to pay any tax which will be due because the shares of Common Stock are to be issued in a name other than the Holder's name. Nothing herein shall preclude any income tax withholding required by law or regulations.

SECTION 3.09 Purchase of Securities at Option of the Holder upon Change in Control. (a) If on or prior to February 13, 2007 there shall have occurred a Change in Control, all or a portion of the Securities of any Holder shall be purchased by the Company, at the option of such Holder, at a purchase price specified in paragraph 6 of the Securities (the "Change in Control Purchase Price"), as of a date that is no later than 35 Business Days after the occurrence of the Change in Control (the "Change in Control Purchase Date"), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.09(c).

A "Change in Control" shall be deemed to have occurred at such time as either of the following events shall occur:

(i) There shall be consummated any share exchange, consolidation or merger of the Company pursuant to which the Common Stock would be converted into cash, securities or other property, in each case other than a share exchange, consolidation or merger of the Company in which the holders of the Common Stock and other Capital Stock of the Company with equivalent voting rights immediately prior to the share exchange, consolidation or merger have, directly or indirectly, at least a majority of the total voting power in the aggregate of all classes of Capital Stock of the continuing or surviving corporation immediately after the share exchange, consolidation or merger; or

(ii) There is a report filed on Schedule 13D or TO (or any successor schedule, form or report) pursuant to the Exchange Act, disclosing that any person, including its Affiliates or Associates (for the purposes of this Section 3.09 only, as the term "person" is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), has become the beneficial owner (as the term "beneficial owner" is defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act) of 50% or more of the aggregate voting power of the Common Stock and other Capital Stock of the Company with equivalent voting rights then outstanding; provided, however, that a person shall not be deemed beneficial owner of, or to own beneficially, (A) any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange thereunder, or (B) any securities if such beneficial ownership (1) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (2) is not also then reportable on Schedule 13D (or any successor schedule) under the Exchange Act.

Notwithstanding the foregoing provisions of this Section 3.09, a Change in Control shall not be deemed to have occurred by virtue of the Company, any Subsidiary, any employee stock ownership plan or any other employee benefit plan of the Company or any Subsidiary, or any person holding Common Stock for or pursuant to the terms of any such employee benefit plan, filing or becoming obligated to file a report under or in response to Schedule 13D or Schedule TO (or any successor schedule, form or report) under the Exchange Act disclosing beneficial ownership by it of shares of Common Stock, whether in excess of 50% or otherwise.

"Associate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date hereof.

(b) Within 15 days after the occurrence of a Change in Control, the Company shall mail a written notice of Change in Control by first-class mail to the Trustee and to each Holder (and to beneficial owners as required by applicable law). In addition, the Company shall cause a copy of such notice of Change in Control to be published in The Wall Street Journal or another daily newspaper of national circulation. The notice shall include a form of Change in Control Purchase Notice to be completed by the Securityholder and shall state:



- (1) briefly, the events causing a Change in Control and the date of such Change in Control;
- (2) the date by which the Change in Control Purchase Notice pursuant to this Section 3.09 must be given;
- (3) the Change in Control Purchase Date;
- (4) the Change in Control Purchase Price;
- (5) the name and address of the Paying Agent and the Conversion Agent;
- (6) the Conversion Rate and any adjustments thereto;
- (7) that Securities as to which a Change in Control Purchase Notice has been given by a Holder may be converted pursuant to Article 11 hereof only if the Change in Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;
- (8) that Securities must be surrendered to the Paying Agent to collect payment of the Change in Control Purchase Price;
- (9) that the Change in Control Purchase Price for any Security as to which a Change in Control Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Change in Control Purchase Date and the time of surrender of such Security as described in clause (8) above;
- (10) briefly, the procedures the Holder must follow to exercise rights under this Section 3.09;
- (11) briefly, the conversion rights of the Securities;
- (12) the procedures for withdrawing a Change in Control Purchase Notice;
- (13) that, unless the Company defaults in making payment of such Change in Control Purchase Price, Original Issue Discount and interest, if any, on Securities surrendered for purchase will cease to accrue on and after the Change in Control Purchase Date; and
- (14) the CUSIP number of the Securities.

(c) A Holder may exercise its rights specified in Section 3.09(a) hereof upon delivery of a written notice of purchase (a "Change in Control Purchase Notice") to the Paying Agent at any time prior to the close of business on the Business Day immediately prior to the Change in Control Purchase Date, stating:

- (1) the certificate number of the Security which the Holder will deliver to be purchased;

(2) the portion of the Principal Amount at Maturity of the Security which the Holder will deliver to be purchased, which portion must be \$1,000 or an integral multiple thereof; and

(3) that such Security shall be purchased pursuant to the terms and conditions specified in paragraph 6 of the Securities.

The delivery of such Security to the Paying Agent prior to, on or after the Change in Control Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Change in Control Purchase Price therefor; provided, however, that such Change in Control Purchase Price shall be so paid pursuant to this Section 3.09 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Change in Control Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.09, a portion of a Security if the Principal Amount at Maturity of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.09 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Change in Control Purchase Date and the time of delivery of the Security to the Paying Agent in accordance with this Section 3.09.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Change in Control Purchase Notice contemplated by this Section 3.09(c) shall have the right to withdraw such Change in Control Purchase Notice at any time prior to the close of business on the Business Day immediately prior to the Change in Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.10.

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

The Company shall not be required to comply with this Section 3.09 if a third party mails a written notice of Change in Control in the manner, at the times and otherwise in compliance with this Section 3.09 and repurchases all Securities for which a Change in Control Purchase Notice shall be delivered and not withdrawn.

SECTION 3.10 Effect of Purchase Notice or Change in Control Purchase Notice. Upon receipt by the Paying Agent of the Purchase Notice or Change in Control Purchase Notice specified in Section 3.08(a) or Section 3.09(c), as applicable, the Holder of the Security in respect of which such Purchase Notice or Change in Control Purchase Notice, as the case may be, was given shall (unless such Purchase Notice or Change in Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Security. Such Purchase Price or Change in Control Purchase Price shall be paid to such Holder, subject to receipts of funds and/or securities by the Paying Agent, promptly following the later of

(x) the Purchase Date or the Change in Control Purchase Date, as the case may be, with respect to such Security (provided the conditions in Section 3.08(a) or Section 3.09(c), as applicable, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08(a) or Section 3.09(c), as applicable. Securities in respect of which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted pursuant to Article 11 hereof on or after the date of the delivery of such Purchase Notice or Change in Control Purchase Notice, as the case may be, unless such Purchase Notice or Change in Control Purchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Purchase Notice or Change in Control Purchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Purchase Notice or Change in Control Purchase Notice, as the case may be, at any time prior to the close of business on the Business Day immediately prior to the Purchase Date or the Change in Control Purchase Date, as the case may be, specifying:

- (1) the certificate number of the Security in respect of which such notice of withdrawal is being submitted,
- (2) the Principal Amount at Maturity of the Security with respect to which such notice of withdrawal is being submitted, and
- (3) the Principal Amount at Maturity, if any, of such Security which remains subject to the original Purchase Notice or Change in Control Purchase Notice, as the case may be, and which has been or will be delivered for purchase by the Company.

A written notice of withdrawal of a Purchase Notice may be in the form set forth in the preceding paragraph or may be in the form of (i) a conditional withdrawal contained in a Purchase Notice pursuant to the terms of Section 3.08(a)(1)(D) or (ii) a conditional withdrawal containing the information set forth in Section 3.08(a)(1)(D) and the preceding paragraph and contained in a written notice of withdrawal delivered to the Paying Agent as set forth in the preceding paragraph.

There shall be no purchase of any Securities pursuant to Section 3.08 (other than through the issuance of Common Stock in payment of the Purchase Price, including cash in lieu of fractional shares) or 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Purchase Notice or Change in Control Purchase Notice, as the case may be) and is continuing an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Purchase Notice or Change in Control Purchase Notice, as the case may be, has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Purchase Price or Change in Control Purchase Price, as the case may be, with respect to

such Securities) in which case, upon such return, the Purchase Notice or Change in Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.

SECTION 3.11 Deposit of Purchase Price or Change in Control Purchase Price. Prior to 10:00 a.m. (New York City time) on the Business Day following the Purchase Date or the Change in Control Purchase Date, as the case may be, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) or Common Stock, if permitted hereunder, sufficient to pay the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of all the Securities or portions thereof which are to be purchased as of the Purchase Date or Change in Control Purchase Date, as the case may be.

SECTION 3.12 Securities Purchased in Part. Any Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute, and the Trustee, upon receipt of a Company Order, shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount at Maturity equal to, and in exchange for, the portion of the Principal Amount at Maturity of the Security so surrendered which is not purchased.

SECTION 3.13 Covenant to Comply with Securities Laws upon Purchase of Securities. In connection with any offer to purchase or purchase of Securities under Section 3.08 or 3.09 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 or is otherwise subject to tender offer or other rules under the Federal or state securities laws), the Company shall (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable, (ii) file the related Schedule T0 (or any successor schedule, form or report) or any other schedule required under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Sections 3.08 and 3.09 to be exercised in the time and in the manner specified in Sections 3.08 and 3.09.

SECTION 3.14 Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash or shares of Common Stock that remain unclaimed as provided in paragraph 13 of the Securities, together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)), held by them for the payment of the Purchase Price or Change in Control Purchase Price, as the case may be; provided, however, that to the extent that the aggregate amount of cash or shares of Common Stock deposited by the Company pursuant to Section 3.11 exceeds the aggregate Purchase Price or Change in Control Purchase Price, as the case may be, of the Securities or portions thereof which the Company is obligated to purchase as of the Purchase Date or Change in Control Purchase Date, as the case may be, then promptly after the Business Day following the Purchase Date or Change in Control Purchase

Date, as the case may be, the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon (subject to the provisions of Section 7.01(f)).

#### ARTICLE 4

##### COVENANTS

SECTION 4.01 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 or pursuant to this Indenture. Any amounts to be given to the Trustee or Paying Agent shall be deposited with the Trustee or Paying Agent, by 10:00 a.m. New York City time by the Company. Principal Amount at Maturity, Restated Principal Amount, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price and interest, if any, shall be considered paid on the applicable date due if on such date (or, in the case of a Purchase Price or Change in Control Purchase Price, on the Business Day following the applicable Purchase Date or Change in Control Purchase Date, as the case may be) the Trustee or the Paying Agent holds, in accordance with this Indenture, money or securities, if permitted hereunder, sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay interest on overdue amounts at the rate per annum set forth in paragraph 1 of the Securities, compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in lieu of, and not in addition to, the continued accrual of Original Issue Discount.

SECTION 4.02 SEC and Other Reports. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the Trustee with reports containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In such event, such reports shall be provided at the times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. The Company also shall comply with the other provisions of TIA Section 314(a). Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 4.03 Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the

fiscal year ending on January 29, 2001) an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 4.04 Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

SECTION 4.05 Maintenance of Office or Agency. The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The office of The Bank of New York, located at 101 Barclay Street, Floor 21 West, New York, New York 10286 (Attention: Corporate Trust Administration), shall initially be 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 13.02.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes.

SECTION 4.06 Delivery of Certain Information. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any beneficial holder of Securities or shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any beneficial holder of Securities or 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, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act.

SECTION 4.07 Calculation of Original Issue Discount. The Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on outstanding Securities as of the end of such year and (ii) such other specific

information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

## ARTICLE 5

### SUCCESSOR CORPORATION

SECTION 5.01 When Company May Merge or Transfer Assets. The Company shall not consolidate with or merge with or into any other person or convey, transfer or lease all or substantially all of its properties and assets to any person, unless:

(a) the person formed by such consolidation or into which the Company is merged or the person which acquires by conveyance, transfer or lease the properties and assets of the Company substantially as an entirety (i) shall be organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and (ii) (if other than the Company) 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;

(b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article 5 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary), which, if such assets were owned by the Company, would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The successor person formed by such consolidation or into which the Company is merged or the successor person 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 had been named as the Company herein; and thereafter, except in the case of a lease and any obligations the Company may have under a supplemental indenture pursuant to Section 11.14, the Company shall be discharged from all obligations and covenants under this Indenture and the Securities. Subject to Section 9.06, the Company, the Trustee and the successor person shall enter into a supplemental indenture to evidence the succession and substitution of such successor person and such discharge and release of the Company.

## ARTICLE 6

## DEFAULTS AND REMEDIES

SECTION 6.01 Events of Default. An "Event of Default" occurs if:

(1) the Company defaults in payment of interest which becomes payable after the Securities have been converted to semiannual coupon notes following the occurrence of a Tax Event pursuant to Article 10 and such default continues for 30 days (whether or not such payments shall be prohibited by the terms of this Indenture);

(2) the Company defaults in the payment of the Principal Amount at Maturity (or, if the Securities have been converted to semiannual coupon notes following a Tax Event pursuant to Article 10, the Restated Principal Amount), Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price on any Security when the same becomes due and payable at its Stated Maturity, upon redemption, upon declaration, when due for purchase by the Company or otherwise (whether or not any such payment shall be prohibited by the terms of this Indenture);

(3) the Company fails to comply with any of its agreements in the Securities or this Indenture (other than those referred to in Clauses (1) and (2) above) and such failure continues for 60 days after receipt by the Company of a Notice of Default;

(4) default under any Debt, whether such Debt now exists or is created later, which default results in such Debt becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, and the principal amount of all Debt so accelerated, together with all Debt due and payable but not paid prior to the end of any grace period, is \$30,000,000 or more, and such acceleration has not been rescinded or annulled within a period of 30 days after receipt by the Company of a Notice of Default; provided, however, that if any such default shall be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred;

(5) the Company pursuant to or under 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;

(D) makes a general assignment for the benefit of its creditors;

(E) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or



(F) consents to the filing of such petition or the appointment of or taking possession by a Custodian; or

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company in an involuntary case or proceeding, or adjudicates the Company insolvent or bankrupt;

(B) appoints a Custodian of the Company or for any substantial part of its property; or

(C) orders the winding up or liquidation of the Company;

and the order or decree remains unstayed and in effect for 60 days.

"Bankruptcy Law" means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

"Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (3) or clause (4) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate Principal Amount at Maturity of the Securities at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in clause (3) or clause (4) above after actual receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default".

The Company will deliver to the Trustee, within five Business Days of becoming aware of the occurrence of an Event of Default, written notice thereof. In addition, the Company shall deliver to the Trustee, within 30 days after it becomes aware of the occurrence thereof, written notice of any event which with the giving of notice or the lapse of time, or both, would become an Event of Default under clause (3) or clause (4) above, its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 6.02 Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(5) or (6)) occurs and is continuing, the Trustee by Notice to the Company, or the Holders of at least 25% in aggregate Principal Amount at Maturity of the Securities at the time outstanding by notice to the Company and the Trustee, may declare the Issue Price plus accrued Original Issue Discount (or if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest) through the date of declaration on all the Securities to be immediately due and payable. Upon such a declaration, such Issue Price plus accrued Original Issue Discount shall be due and payable immediately. If an Event of Default specified in Section 6.01(5) or (6) occurs and is continuing, the Issue Price plus accrued Original Issue Discount (or if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount,

plus accrued interest) on all the Securities shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder) may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the Issue Price plus accrued Original Issue Discount (or if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest) that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 7.07 have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

SECTION 6.03 Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the Issue Price plus accrued Original Issue Discount (or if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued 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 the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any 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.

SECTION 6.04 Waiver of Past Defaults. Subject to Section 6.02, the Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding, by notice to the Trustee (and without notice to any other Securityholder), may waive an existing Default and its consequences except (1) an Event of Default described in Section 6.01(1) or (2), (2) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected or (3) a Default which constitutes a failure to convert any Security in accordance with the terms of Article 11. When a 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 6.04 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 6.05 Control by Majority. The Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 6.05 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 6.06 Limitation on Suits. A Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (2) the Holders of at least 25% in aggregate Principal Amount at Maturity of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity 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 such notice, request and offer of security or indemnity; and
- (5) the Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

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

SECTION 6.07 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount at Maturity, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price (or, if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest) in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date, and to convert the Securities in accordance with Article 11, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

SECTION 6.08 Collection Suit by Trustee. If an Event of Default described in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount owing with respect to the Securities and the amounts provided for in Section 7.07.

SECTION 6.09 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the Principal Amount at Maturity, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price (or, if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest), if any, in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the

payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the Principal Amount at Maturity, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price, (or, if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.07) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 Priorities. If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.07;

SECOND: to Securityholders for amounts due and unpaid on the Securities for the Principal Amount at Maturity, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price (or, if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest) 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 Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder and the Company a notice that states the record date, the payment date and the amount to be paid.

SECTION 6.11 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 (other than the Trustee) 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 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate Principal Amount at Maturity of the Securities at the time outstanding. This Section 6.11 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.

SECTION 6.12 Waiver of Stay, Extension or Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the Principal Amount at Maturity, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price in respect of Securities (or, if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount, plus accrued interest), as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE 7

### TRUSTEE

SECTION 7.01 Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others; and

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

confirm or investigate the accuracy of mathematical calculations or other facts stated therein.

This Section 7.01(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.01;

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

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

Subparagraphs (c)(1), (2) and (3) shall be in lieu of Sections 315(d)(1), 315(d)(2) and 315(d)(3) of the TIA and such Sections 315(d)(1), 315(d)(2) and 315(d)(3) are hereby expressly excluded from this Indenture, as permitted by the TIA.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (e) of this Section 7.01.

(e) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder unless otherwise agreed in writing with the Company.

SECTION 7.02 Rights of Trustee. Subject to its duties and responsibilities under the TIA,

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action

hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate;

(c) 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;

(d) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it believes to be authorized or within its rights or powers conferred under this Indenture;

(e) the Trustee may consult with counsel selected by it and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(f) 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 Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a resolution of the Board of Directors;

(h) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder; and

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

SECTION 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

SECTION 7.04 Trustee's Disclaimer. The Trustee 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 or application of the proceeds from the Securities, it shall not be responsible for any statement in the registration statement for the Securities under the Securities Act or in the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

SECTION 7.05 Notice of Defaults. If a Default occurs and if it is known to the Trustee, the Trustee shall give to each Securityholder notice of the Default within 90 days after it occurs unless such Default shall have been cured or waived before the giving of such notice. Except in the case of a Default described in Section 6.01(1) or (2), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Securityholders. The second sentence of this Section 7.05 shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA. The Trustee shall not be deemed to have knowledge of a Default unless a Responsible Officer of the Trustee has received written notice of such Default.

SECTION 7.06 Reports by Trustee to Holders. Within 60 days after each January 15 beginning with the January 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such January 15 that complies with TIA Section 313(a), if required by such Section 313(a). The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each securities exchange, if any, on which the Securities are listed. The Company agrees to promptly notify the Trustee whenever the Securities become listed on any securities exchange and of any delisting thereof.

SECTION 7.07 Compensation and Indemnity. The Company agrees:

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



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

(c) to indemnify the Trustee or any predecessor, Trustee and their agents for, and to hold them harmless against, any loss, damage, claim, liability, cost or expense (including attorney's fees and expenses and taxes (other than taxes based upon, measured by or determined by the income of the Trustee)) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay the Principal Amount at Maturity, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or interest, if any, as the case may be, on particular Securities.

The Company's payment obligations pursuant to this Section 7.07 shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(5) or (6), the expenses including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.08 Replacement of Trustee. The Trustee may resign by so notifying the Company; provided, however, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.08. The Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company satisfactory in form and substance to the retiring Trustee

and the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

SECTION 7.09 Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

SECTION 7.10 Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(b). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. Nothing herein contained shall prevent the Trustee from filing with the Commission the application referred to in the penultimate paragraph of TIA Section 310(b).

SECTION 7.11 Preferential Collection of Claims Against Company. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

## ARTICLE 8

### DISCHARGE OF INDENTURE

SECTION 8.01 Discharge of Liability on Securities. When (i) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (ii) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash or, if expressly permitted by the terms of the Securities or the Indenture, Common Stock sufficient to pay all amounts due and owing on all outstanding Securities (other than Securities replaced pursuant to Section 2.07), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 7.07, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge

of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company.

SECTION 8.02 Repayment to the Company. The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and the Trustee and the Paying Agent shall have no further liability to the Securityholders with respect to such money or securities for that period commencing after the return thereof.

#### ARTICLE 9

##### AMENDMENTS

SECTION 9.01 Without Consent of Holders. The Company and the Trustee may amend this Indenture or the Securities without the consent of any Securityholder:

- (1) to cure any ambiguity, omission, defect or inconsistency; provided, however, that such amendment does not materially adversely affect the rights of any Securityholder;
- (2) to comply with Article 5 or Section 11.14;
- (3) to secure the Company's obligations under the Securities and this Indenture;
- (4) to add to the Company's covenants for the benefit of the Securityholders or to surrender any right or power conferred upon the Company;
- (5) to make any change to comply with the TIA, or any amendment thereto, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, or as necessary in connection with the registration of the Securities under the Securities Act; or
- (6) to make any change that does not adversely affect the rights of any Holder.

SECTION 9.02 With Consent of Holders. With the written consent of the Holders of at least a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding, the Company and the Trustee may amend this Indenture or the Securities. However, without the consent of each Securityholder affected, an amendment to this Indenture or the Securities may not:

- (1) make any change to the provisions of this Indenture that relate to modifying or amending this Indenture;

(2) make any change in the manner of calculation or rate of accrual in connection with Original Issue Discount, reduce the rate of interest referred to in paragraph 1 of the Securities, reduce the rate of interest referred to in Section 10.01 upon the occurrence of a Tax Event, or extend the time for payment of Original Issue Discount or interest, if any, on any Security;

(3) reduce the Principal Amount at Maturity, Restated Principal Amount or the Issue Price of or change the Stated Maturity of any Security;

(4) reduce the Redemption Price, Purchase Price or Change in Control Purchase Price of any Security;

(5) make any Security payable in money or securities other than that stated in the Security;

(6) make any change in Section 6.04, Section 6.07 or this Section 9.02, except to increase any percentage set forth therein;

(7) make any change that adversely affects the right to convert any Security;

(8) make any change that adversely affects the right to require the Company to purchase the Securities in accordance with the terms thereof and this Indenture; or

(9) impair the right to institute suit for the enforcement of any payment with respect to, or conversion of, the Securities.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

SECTION 9.03 Compliance with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall comply with the TIA.

SECTION 9.04 Revocation and Effect of Consents, Waivers and Actions. Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Securityholder.

SECTION 9.05 Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

SECTION 9.06 Trustee to Sign Supplemental Indentures. The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

SECTION 9.07 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 10

##### SPECIAL TAX EVENT CONVERSION

SECTION 10.01 Optional Conversion to Semiannual Coupon Note upon Tax Event. From and after (i) the date (the "Tax Event Date") of the occurrence of a Tax Event and (ii) the date the Company exercises the option provided for in this Section 10.01, whichever is later (the "Option Exercise Date"), at the option of the Company, interest in lieu of future Original Issue Discount shall accrue at the rate of 2% per annum on a Restated Principal Amount, per \$1,000 original Principal Amount at Maturity (the "Restated Principal Amount") equal to the Issue Price plus Original Issue Discount accrued through the Option Exercise Date and shall be payable semiannually on February 13 and August 13 of each year (each an "Interest Payment Date") to Holders of record at the close of business on January 30 or July 30 (each a "Regular Record Date") immediately preceding such Interest Payment Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months and will accrue from the most recent date on which interest has been paid or, if no interest has been paid, from the Option Exercise Date. Within 15 days of the occurrence of a Tax Event, the Company shall deliver a written notice of such Tax Event by facsimile and first-class mail to the Trustee and within 15 days of its exercise of such option the Company shall deliver a written notice of the Option Exercise Date by facsimile and first-class mail to the Trustee and by first class mail to the Holders of the Securities. From and after the Option Exercise Date, (i) the Company shall be obligated to pay at Stated Maturity, in lieu of the Principal Amount at Maturity of a Security, the Restated Principal Amount thereof plus accrued and unpaid interest on such Security and (ii) "Issue Price and accrued Original Issue Discount," "Issue Price plus Original Issue Discount" or

similar words, as used herein, shall mean Restated Principal Amount plus accrued and unpaid interest with respect to any Security. Securities authenticated and delivered after the Option Exercise Date may, and shall if required by the Trustee, bear a notation in a form approved by the Trustee as to the conversion of the Securities to semiannual coupon notes. No other changes to this Indenture shall result as a result of the events described in this Section 10.01.

SECTION 10.02 Payment of Interest; Interest Rights Preserved. (a) Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Security is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose. Each installment of interest on any Security shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States. In the case of a permanent Global Security, interest payable on any Interest Payment Date will be paid to the Depositary, with respect to that portion of such permanent Global Security held for its account by Cede & Co. for the purpose of permitting such party to credit the interest received by it in respect of such permanent Global Security to the accounts of the beneficial owners thereof.

(b) Except as otherwise specified with respect to the Securities, any interest on any Security that is payable on any Interest Payment Date, but is not punctually paid or duly provided for within 30 days following such Interest Payment Date (herein called "Defaulted Interest", which term shall include any accrued and unpaid interest that has accrued on such defaulted amount in accordance with paragraph 1 of the Securities), shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, as its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the persons in whose names the Securities are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities at his address as it appears on the list of Securityholders maintained pursuant to Section 2.05 not less than 10 days prior to

such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Securities are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

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

Subject to the foregoing provisions of this Section and Section 2.06, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

## ARTICLE 11

### CONVERSION

SECTION 11.01 Conversion Privilege. A Holder of a Security may convert such Security into Common Stock at any time during the period stated in paragraph 8 of the Securities. The number of shares of Common Stock issuable upon conversion of a Security per \$1,000 of Principal Amount at Maturity thereof (the "Conversion Rate") shall be that set forth in paragraph 8 of the Securities, subject to adjustment as herein set forth.

A Holder may convert a portion of the Principal Amount at Maturity of a Security if the portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

"Average Sale Price" means the average of the Sale Prices of the Common Stock for the shorter of:

- (i) 30 consecutive trading days ending on the last full trading day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated, or
- (ii) the period (x) commencing on the date next succeeding the first public announcement of (a) the issuance of rights, warrants or options or (b) the distribution, in each case, in respect of which the Average Sale Price is being calculated and (y) proceeding through the last full trading day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated (excluding days within such period, if any, which are not trading days), or

(iii) the period, if any, (x) commencing on the date next succeeding the Ex-Dividend Time with respect to the next preceding (a) issuance of rights, warrants or options or (b) distribution, in each case, for which an adjustment is required by the provisions of Section 11.06(4), 11.07 or 11.08 and (y) proceeding through the last full trading day prior to the Time of Determination with respect to the rights, warrants or options or distribution in respect of which the Average Sale Price is being calculated (excluding days within such period, if any, which are not trading days).

In the event that the Ex-Dividend Time (or in the case of a subdivision, combination or reclassification, the effective date with respect thereto) with respect to a dividend, subdivision, combination or reclassification to which Section 11.06(1), (2), (3) or (5) applies occurs during the period applicable for calculating "Average Sale Price" pursuant to the definition in the preceding sentence, "Average Sale Price" shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such dividend, subdivision, combination or reclassification on the Sale Price of the Common Stock during such period.

"Time of Determination" means the time and date of the earlier of (i) the determination of stockholders entitled to receive rights, warrants or options or a distribution, in each case, to which Section 11.07 or 11.08 applies and (ii) the time ("Ex-Dividend Time") immediately prior to the commencement of "ex-dividend" trading for such rights, warrants or options or distribution on the New York Stock Exchange or such other principal national or regional exchange or market on which the Common Stock is then listed or quoted.

SECTION 11.02 Conversion Procedure. To convert a Security a Holder must satisfy the requirements in paragraph 8 of the Securities. The date on which the Holder satisfies all those requirements is the conversion date (the "Conversion Date"). As soon as practicable after the Conversion Date but in any event no later than the seventh Business Day following the Conversion Date, the Company shall deliver to the Holder, through the Conversion Agent, a certificate for the number of full shares of Common Stock issuable upon the conversion and cash in lieu of any fractional share determined pursuant to Section 11.03. The person in whose name the certificate is registered shall be treated as a stockholder of record on and after the Conversion Date; provided, however, that no surrender of 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; such conversion shall be at the Conversion Rate in effect on the date that such Security shall have been surrendered for conversion, 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 payment or adjustment will be made for dividends on, or other distributions with respect to, any Common Stock except as provided in this Article 11. On conversion of a Security, that portion of accrued Original Issue Discount (or interest, if the Company has exercised its option provided for in Section 10.01) attributable to the period from the Issue Date



(or, if the Company has exercised the option provided for in Section 10.01, the later of (x) the date of such exercise and (y) the date on which interest was last paid) of the Security through the Conversion Date with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the provisions hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for Original Issue Discount (or interest, if the Company has exercised its option provided for in Section 10.01) accrued through the Conversion Date, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

If the Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the total Principal Amount at Maturity of the Securities converted.

If the last day on which a Security may be converted is a Legal Holiday, the Security may be surrendered on the next succeeding day that is not a Legal Holiday.

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 in an authorized denomination equal in Principal Amount at Maturity to the unconverted portion of the Security surrendered.

SECTION 11.03 Fractional Shares. The Company will not issue a fractional share of Common Stock upon conversion of a Security. Instead, the Company will deliver cash for the current market value of the fractional share. The current market value of a fractional share shall be determined, to the nearest 1/1,000th of a share, by multiplying the Sale Price of the Common Stock, on the last trading day prior to the Conversion Date, of a full share by the fractional amount and rounding the product to the nearest whole cent.

SECTION 11.04 Taxes on Conversion. If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which 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 regulations.

SECTION 11.05 Company to Provide Stock. The Company shall, prior to issuance of any Securities under this Article 11, and from time to time as may be necessary, reserve out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion of the Securities.

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

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

SECTION 11.06 Adjustment for Change in Capital Stock. If, after the Issue Date of the Securities, the Company:

- (1) pays a dividend or makes a distribution on its Common Stock in shares of its Common Stock or other Capital Stock;
- (2) subdivides its outstanding shares of Common Stock into a greater number of shares;
- (3) combines its outstanding shares of Common Stock into a smaller number of shares;
- (4) pays a dividend or makes a distribution on its Common Stock in shares of its Capital Stock (other than Common Stock or rights, warrants or options for its Capital Stock); or
- (5) issues by reclassification of its Common Stock any shares of its Capital Stock (other than rights, warrants or options for its Capital Stock),

then the conversion privilege and the Conversion Rate in effect immediately prior to such action shall be adjusted so that the Holder of a Security thereafter converted may receive the number of shares of Capital Stock of the Company which such Holder would have owned immediately following such action if such Holder had converted the Security immediately prior to such action.

The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification.

If after an adjustment a Holder of a Security upon conversion of such Security may receive shares of two or more classes of Capital Stock of the Company, the Conversion Rate shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class of Capital Stock as is contemplated by this Article 11 with respect to the Common Stock, on terms comparable to those applicable to Common Stock in this Article 11.

SECTION 11.07 Adjustment for Rights Issue. If after the Issue Date of the Securities, the Company distributes any rights, warrants or options to all holders of its Common Stock entitling them, for a period expiring within 60 days after the record date for such

distribution, to purchase shares of Common Stock at a price per share less than the Sale Price of the Common Stock as of the Time of Determination, the Conversion Rate shall be adjusted in accordance with the formula:

$$R' = R \times \frac{(O + N)}{(O + (N \times P)/M)}$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

O = the number of shares of Common Stock outstanding on the record date for the distribution to which this Section 11.07 is being applied.

N = the number of additional shares of Common Stock offered pursuant to the distribution.

P = the offering price per share of the additional shares.

M = the Average Sale Price, minus, in the case of (i) a distribution to which Section 11.06(4) applies or (ii) a distribution to which Section 11.08 applies, for which, in each case, (x) the record date shall occur on or before the record date for the distribution to which this Section 11.07 applies and (y) the Ex-Dividend Time shall occur on or after the date of the Time of Determination for the distribution to which this Section 11.07 applies, the fair market value (on the record date for the distribution to which this Section 11.07 applies) of the

(1) Capital Stock of the Company distributed in respect of each share of Common Stock in such Section 11.06(4) distribution and

(2) assets of the Company or debt securities or any rights, warrants or options to purchase securities of the Company distributed in respect of each share of Common Stock in such Section 11.08 distribution.

The Board of Directors shall determine fair market values for the purposes of this Section 11.07.

The adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive the rights, warrants or options to which this Section 11.07 applies. If all of the shares of Common Stock subject to such rights, warrants or options have not been issued when such rights, warrants or options expire, then the Conversion Rate shall promptly be readjusted to the Conversion Rate which would then be in effect had the adjustment upon the issuance of such rights, warrants or options been made on the basis of the actual number of shares of Common Stock issued upon the exercise of such rights, warrants or options.

No adjustment shall be made under this Section 11.07 if the application of the formula stated above in this Section 11.07 would result in a value of R' that is equal to or less than the value of R.

SECTION 11.08 Adjustment for Other Distributions. (a) If, after the Issue Date of the Securities, the Company distributes to all holders of its Common Stock any of its assets, or evidences of indebtedness of the Company or any rights, warrants or options to purchase securities of the Company (including securities or cash, but excluding (x) distributions of Capital Stock referred to in Section 11.06 and distributions of rights, warrants or options referred to in Section 11.07 and (y) cash dividends or other cash distributions that are paid out of consolidated current net earnings or earnings retained in the business as shown on the books of the Company unless such cash dividends or other cash distributions are Extraordinary Cash Dividends) the Conversion Rate shall be adjusted, subject to the provisions of the last paragraph of this Section 11.08, in accordance with the formula:

$$R' = \frac{R \times M}{M-F}$$

where:

R' = the adjusted Conversion Rate.

R = the current Conversion Rate.

M = the Average Sale Price, minus, in the case of a distribution to which Section 11.06(4) applies, for which (i) the record date shall occur on or before the record date for the distribution to which this Section 11.08 applies and (ii) the Ex-Dividend Time shall occur on or after the date of the Time of Determination for the distribution to which this Section 11.08 applies, the fair market value (on the record date for the distribution to which this Section 11.08 applies) of any Capital Stock of the Company distributed in respect of each share of Common Stock in such Section 11.06(4) distribution.

F = the fair market value (on the record date for the distribution to which this Section 11.08 applies) of the assets, securities, rights, warrants or options to be distributed in respect of each share of Common Stock in the distribution to which this Section 11.08 is being applied (including, in the case of cash dividends or other cash distributions giving rise to an adjustment, all such cash distributed concurrently).

The Board of Directors shall determine fair market values for the purposes of this Section 11.08.

The adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive the distribution to which this Section 11.08 applies.

For purposes of this Section 11.08, the term "Extraordinary Cash Dividend" shall mean any cash dividend with respect to the Common Stock the amount of which, together with the aggregate amount of cash dividends on the Common Stock to be aggregated with such cash dividend in accordance with the provisions of this paragraph, equals or exceeds the threshold percentage set forth in item (i) below. For purposes of item (i) below, the "Measurement Period" with respect to a cash dividend on the Common Stock shall mean the 365 consecutive day period ending on the date prior to the Ex-Dividend Time with respect to such cash dividend, and the "Relevant Cash Dividends" with respect to a cash dividend on the Common Stock shall mean the cash dividends on the Common Stock with Ex-Dividend Times occurring in the Measurement Period.

(i) If, upon the date prior to the Ex-Dividend Time with respect to a cash dividend on the Common Stock, the aggregate amount of such cash dividend together with the amounts of all Relevant Cash Dividends equals or exceeds on a per share basis 5% of the Sale Price of the Common Stock on the last trading day preceding the date of declaration by the Board of Directors of the cash dividend with respect to which this provision is being applied, then such cash dividend together with all Relevant Cash Dividends, shall be deemed to be an Extraordinary Cash Dividend and for purposes of applying the formula set forth above in this Section 11.08, the value of "F" shall be equal to (y) the aggregate amount of such cash dividend together with the amount of all Relevant Cash Dividends, minus (z) the aggregate amount of all Relevant Cash Dividends for which a prior adjustment in the Conversion Rate was previously made under this Section 11.08.

In making the determinations required by item (i) above, the amount of cash dividends paid on a per share basis and the amount of any Relevant Cash Dividends specified in item (i) above, shall be appropriately adjusted to reflect the occurrence during such period of any event described in Section 11.06.

SECTION 11.09 When Adjustment May Be Deferred. No adjustment in the Conversion Rate need be made unless the adjustment would require an increase or decrease of at least 1% in the Conversion Rate. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustment.

All calculations under this Article 11 shall be made to the nearest cent or to the nearest 1/1,000th of a share, as the case may be.

SECTION 11.10 When No Adjustment Required. No adjustment need be made for a transaction referred to in Section 11.06, 11.07, 11.08 or 11.14 if Securityholders are to participate in the transaction on a basis and with notice that the Board of Directors determines to be fair and appropriate in light of the basis and notice on which holders of Common Stock participate in the transaction. Such participation by Securityholders may include participation upon conversion provided that an adjustment shall be made at such time as the Securityholders are no longer entitled to participate.

No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

No adjustment need be made for a change in the par value or no par value of the Common Stock.

To the extent the Securities become convertible pursuant to this Article 11 into cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

SECTION 11.11 Notice of Adjustment. Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Securityholders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice and a certificate from the Company's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

SECTION 11.12 Voluntary Increase. The Company from time to time may increase the Conversion Rate by any amount for any period of time. Whenever the Conversion Rate is increased, the Company shall mail to Securityholders and file with the Trustee and the Conversion Agent a notice of the increase. The Company shall mail the notice at least 15 days before the date the increased Conversion Rate takes effect. The notice shall state the increased Conversion Rate and the period it will be in effect.

A voluntary increase of the Conversion Rate does not change or adjust the Conversion Rate otherwise in effect for purposes of Section 11.06, 11.07 or 11.08.

SECTION 11.13 Notice of Certain Transactions. If:

- (1) the Company takes any action that would require an adjustment in the Conversion Rate pursuant to Section 11.06, 11.07 or 11.08 (unless no adjustment is to occur pursuant to Section 11.10); or
- (2) the Company takes any action that would require a supplemental indenture pursuant to Section 11.14; or
- (3) there is a liquidation or dissolution of the Company;

then the Company shall mail to Securityholders and file with the Trustee and the Conversion Agent a notice stating the proposed record date for a dividend or distribution or the proposed effective date of a subdivision, combination, reclassification, consolidation, merger, binding share exchange, transfer, liquidation or dissolution. The Company shall file and mail the notice at least 15 days before such date. Failure to file or mail the notice or any defect in it shall not affect the validity of the transaction.

SECTION 11.14 Reorganization of Company; Special Distributions. If the Company is a party to a transaction subject to Section 5.01 (other than a sale of all or

substantially all of the assets of the Company in a transaction in which the holders of Common Stock immediately prior to such transaction do not receive securities, cash or other assets of the Company or any other person) or a merger or binding share exchange which reclassifies or changes the outstanding Common Stock, the person obligated to deliver securities, cash or other assets upon conversion of Securities shall enter into a supplemental indenture. If the issuer of securities deliverable upon conversion of Securities is an Affiliate of the successor Company, that issuer shall join in the supplemental indenture.

The supplemental indenture shall provide that the Holder of a Security may convert it into the kind and amount of securities, cash or other assets which such Holder would have received immediately after the consolidation, merger, binding share exchange or transfer if such Holder had converted the Security immediately before the effective date of the transaction, assuming (to the extent applicable) that such Holder (i) was not a constituent person or an Affiliate of a constituent person to such transaction; (ii) made no election with respect thereto; and (iii) was treated alike with the plurality of non-electing Holders. The supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practical to the adjustments provided for in this Article 11. The successor Company shall mail to Securityholders a notice briefly describing the supplemental indenture.

If this Section applies, neither Section 11.06 nor 11.07 applies.

If the Company makes a distribution to all holders of its Common Stock of any of its assets, or debt securities or any rights, warrants or options to purchase securities of the Company that, but for the provisions of Section 11.08(c) hereof, would otherwise result in an adjustment in the Conversion Rate pursuant to the provisions of Section 11.08, then, from and after the record date for determining the holders of Common Stock entitled to receive the distribution, a Holder of a Security that converts such Security in accordance with the provisions of this Indenture shall upon such conversion be entitled to receive, in addition to the shares of Common Stock into which the Security is convertible, the kind and amount of securities, cash or other assets comprising the distribution that such Holder would have received if such Holder had converted the Security immediately prior to the record date for determining the holders of Common Stock entitled to receive the distribution.

SECTION 11.15 Company Determination Final. Any determination that the Company or the Board of Directors must make pursuant to Section 11.03, 11.06, 11.07, 11.08, 11.09, 11.10, 11.14 or 11.17 is conclusive.

SECTION 11.16 Trustee's Adjustment Disclaimer. The Trustee has no duty to determine when an adjustment under this Article 11 should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture under Section 11.14 need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities. The Trustee shall not be responsible for the Company's failure to comply with this Article 11. Each Conversion Agent shall have the same protection under this Section 11.16 as the Trustee.

SECTION 11.17 Simultaneous Adjustments. In the event that this Article 11 requires adjustments to the Conversion Rate under more than one of Sections 11.06(4), 11.07 or 11.08, and the record dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 11.06, second, the provisions of Section 11.08 and, third, the provisions of Section 11.07.

SECTION 11.18 Successive Adjustments. After an adjustment to the Conversion Rate under this Article 11, any subsequent event requiring an adjustment under this Article 11 shall cause an adjustment to the Conversion Rate as so adjusted.

SECTION 11.19 Rights Issued in Respect of Common Stock Issued upon Conversion. Each share of Common Stock issued upon conversion of Securities pursuant to this Article 11 shall be entitled to receive the appropriate number of Common Stock or preferred stock purchase rights, as the case may be (the "Rights"), if any, that all shares of Common Stock are entitled to receive and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any shareholder rights agreement adopted by the Company, as the same may be amended from time to time (in each case, a "Rights Agreement"). Provided that such Rights Agreement requires that each share of Common Stock issued upon conversion of Securities at any time prior to the distribution of separate certificates representing the Rights be entitled to receive such Rights, then, notwithstanding anything else to the contrary in this Article 11, there shall not be any adjustment to the conversion privilege or Conversion Rate as a result of the issuance of Rights, the distribution of separate certificates representing the Rights, the exercise or redemption of such Rights in accordance with any such Rights Agreement, or the termination or invalidation of such Rights.

## ARTICLE 12

### SUBORDINATION

SECTION 12.01 Securities Subordinate to Senior Indebtedness. The Company covenants and agrees, and each Holder of a Security, by his acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article 12, the indebtedness represented by the Securities and the payment of the Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price and interest, if any, in respect of each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness of the Company, as the case may be.

SECTION 12.02 Payment over of Proceeds upon Dissolution, Etc. Upon any distribution of assets of the Company in the event of:

(a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its respective creditors, as such, or to its respective assets, or



(b) any liquidation, dissolution or other winding-up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or

(c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company, or

(d) any other event that would constitute an Event of Default specified in Section 6.01(5) or 6.01(6),

then, and in any such event, the holders of Senior Indebtedness shall be entitled to receive:

- (1) payment in full in cash of all amounts due or to become due on or in respect of all Senior Indebtedness in cash or cash equivalents, or provision shall be made for such payment, before the Holders of the Securities are entitled to receive any payment on account of the Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Change of Control Purchase Price or interest, if any, in respect of the Securities, and
- (2) any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in respect of the Securities in any such case, proceeding, dissolution, liquidation or other winding up or event, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities.

In the event that, notwithstanding the foregoing provisions of this Section, the Trustee or the Holder of any Security shall have received any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Securities, before all Senior Indebtedness is paid in full in cash or payment thereof provided for, and if such fact shall, at or prior to the time of such payment or distribution, have been made known to the Trustee or, as the case may be, such Holder, then, in such event, such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, Custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full in cash or as payment thereof is otherwise provided for (as such phrase is defined below), after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness.

For purposes of this Article 12 only, the words "cash, property or securities" shall not be deemed to include shares of Capital Stock of the Company, as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan or reorganization or readjustment the payment of which is subordinated, at least to the extent provided in this Article 12 with respect to the Securities, to the payment of all Senior Indebtedness which may at the time be outstanding; provided, however, that (i) Senior Indebtedness is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of

the holders of the Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment.

The consolidation or share exchange of the Company with, or the merger of the Company into, another person or the liquidation or dissolution of the Company following the conveyance or transfer of its properties and assets substantially as an entirety to another person upon the terms and conditions set forth in Article 5 shall not be deemed a dissolution, winding up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this Section if the person formed by such consolidation or share exchange or into which the Company is merged or the person which acquires by conveyance or transfer such properties and assets of the Company, as the case may be, substantially as an entirety, as the case may be, shall as part of such consolidation, share exchange, merger, conveyance or transfer, comply with the conditions set forth in Article 5.

SECTION 12.03 Acceleration of Securities. In the event that any Securities are declared due and payable before their Stated Maturity pursuant to Section 6.02, then and in such event the Company shall promptly notify holders of Senior Indebtedness of such acceleration. The Company may not pay the Securities until the earlier of (i) 120 days after the date of such acceleration or (ii) the payment in full of all Senior Indebtedness or as payment thereof is otherwise provided for (as such phrase is defined below), and may thereafter pay the Securities if this Indenture permits the payment at that time.

In the event that, notwithstanding the foregoing, (a) the Company shall make any payment to the Trustee or the Holder of any Securities prohibited by the foregoing provisions of this Section 12.03, and (b) with respect to any payment made before 120 days after the date of such acceleration, if such facts shall, at or prior to the time of such payment, have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company by or on behalf of the person holding such payment for the benefit of the holders of Senior Indebtedness.

The provisions of this Section 12.03 shall not apply to any payment with respect to which Section 12.02 would be applicable.

SECTION 12.04 Default on Senior Indebtedness. The Company may not make any payment of the Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Change of Control Purchase Price or interest, if any, in respect of the Securities and may not pay cash with respect to the Purchase Price of any Security (other than for fractional shares) or otherwise acquire any Securities for cash or property (except as set forth in this Indenture) if:

(1) any payment default on any Senior Indebtedness has occurred and is continuing beyond any applicable grace period with respect thereto; or

(2) a default (other than a default referred to in the preceding clause (1)) on any Senior Indebtedness occurs and is continuing that permits holders of such Senior Indebtedness to accelerate the maturity thereof and the default is the subject of judicial proceedings or the Company receives a notice of default thereof from any person who

may give such notice pursuant to the instrument evidencing or document governing such Senior Indebtedness.

If the Company receives any such notice, then a similar notice received within nine months thereafter relating to the same default on the same issue of Senior Indebtedness shall not be effective for purposes of this Section 12.04.

Notwithstanding the foregoing, the Company may resume payment on the Securities and may acquire Securities if and when:

(a) the default referred to above is cured or waived as provided or permitted in accordance with the terms of the applicable Senior Indebtedness; or

(b) in the case of a default referred to in clause (2) of the preceding paragraph, 179 or more days pass after the receipt by the Company of the notice described in clause (2) above; and

this Indenture otherwise permits the payment or acquisition at that time; provided, however, that with respect to payments made after the 179-day period referred to in clause (b) of this Section 12.04, the Trustee or the Holder of any Securities shall pay over and deliver forthwith to the Company for the benefit of the holders of Senior Indebtedness any amounts received by the Trustee or any such Holder to the extent necessary to pay all holders of Senior Indebtedness in full in cash or otherwise provide for such payment thereof (as such phrase is defined above).

In the event that, notwithstanding the foregoing, (a) the Company shall make any payment to the Trustee or the Holder of any Security prohibited by the foregoing provisions of this Section, and (b) with respect to any payment made after the expiration of the 179-day period if such fact shall then have been made known to the Trustee or, as the case may be, such Holder, then and in such event such payment shall (to the extent permitted by law) be paid over and delivered forthwith to the Company by or on behalf of the person holding such payment for the benefit of the holders of the Senior Indebtedness.

The provisions of this Section shall not apply to any payment with respect to which Section 12.02 would be applicable.

SECTION 12.05 Payment Permitted if No Default. Nothing contained in this Article 12 or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding up, assignment for the benefit of creditors or other marshaling of assets and liabilities of the Company referred to in Section 12.02 or under the conditions described in Section 12.03 or 12.04, from making payments at any time of Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Change of Control Purchase Price or interest, if any, as the case may be, in respect of the Securities if the Trustee did not, at the time of such application, have actual knowledge that such payment would have been prohibited by the provisions of this Article 12 or (b) the application by the Trustee of any money deposited with it hereunder to payment of or on account of the Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price or

interest, if any, as the case may be, in respect of the Securities or the retention of such payment by the Holders of the Securities, if, at the time of such application by the Trustee, the Trustee did not have actual knowledge that such payment would have been prohibited by the provisions of this Article 12.

SECTION 12.06 Subrogation to Rights of Holders of Senior Indebtedness. Subject to payment in full of all Senior Indebtedness to the extent and in the manner set forth in this Article 12, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article 12 (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property and securities applicable to the Senior Indebtedness until the Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Change of Control Purchase Price or interest, if any, as the case may be, in respect of the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article 12, and no payments over pursuant to the provisions of this Article 12 to the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as among the Company, the creditors of the Company, other than holders of Senior Indebtedness and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Indebtedness.

SECTION 12.07 Provisions Solely to Define Relative Rights. The provisions of this Article 12 are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of Senior Indebtedness, on the other hand. Nothing contained in this Article 12 or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as among the Company, the creditors of the Company other than holders of Senior Indebtedness and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the Principal Amount at Maturity, Restated Principal Amount, Issue Price, accrued Original Issue Discount, Redemption Price, Purchase Price, Change of Control Purchase Price or interest, if any, as the case may be, in respect of the Securities as and when the same shall become due and payable in accordance with the terms of the Securities and this Indenture; or (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than the holders of Senior Indebtedness; or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 12 of the holders of Senior Indebtedness to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.08 Trustee to Effectuate Subordination. Each Holder of a Security by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 12 and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 12.09 No Waiver of Subordination Provisions. No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act by any such holder, or by any non-compliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article 12 or the obligations hereunder of the Holders of the Securities to the holders of Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew, increase or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (iii) release any person liable in any manner for the collection of Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.10 Notice to Trustee. The Company shall give prompt written notice to a Responsible Officer of the Trustee of any facts known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article 12 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until the Trustee shall have received written notice thereof from the Company, or a holder of Senior Indebtedness or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such facts exist.

The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a person representing himself to be a holder of Senior Indebtedness (or a trustee therefor) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 12, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such person, the extent to which such person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such person under this Article 12, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.11 Reliance on Judicial Order or Certificate of Liquidating Agent. Upon any payment or distribution of assets of the Company referred to in this Article 12, the Trustee and the Holders of the Securities shall be entitled to rely upon any final, nonappealable order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or

similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, Custodian, receiver, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 12.

SECTION 12.12 Trustee Not Fiduciary for Holders of Senior Indebtedness. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 12 or otherwise. The Trustee shall not be charged with knowledge of the existence of Senior Indebtedness or of any facts that would prohibit any payment hereunder or that would permit the resumption of any such payment unless a Responsible Officer of the Trustee shall have received notice to that effect at the address of the Trustee set forth in Section 13.02. With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article 12 and no implied covenants or obligations with respect to holders of Senior Indebtedness shall be read into this Indenture against the Trustee.

SECTION 12.13 Rights of Trustee as Holder of Senior Indebtedness; Preservation of Trustee's Rights. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 12 with respect to any Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.07.

SECTION 12.14 Article 12 Applicable to Paying Agents. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 12 shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article 12 in addition to or in place of the Trustee; provided, however, that Sections 12.10 and 12.12 shall not apply to the Company or an Affiliate of the Company if the Company or any such Affiliate acts as Paying Agent.

## ARTICLE 13

## MISCELLANEOUS

SECTION 13.01 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 shall control.

SECTION 13.02 Notices. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, MA 01701  
Telephone No. (508) 390-1000  
Facsimile No. (508) 390-2540  
Attention: Treasurer

if to the Trustee:

The Bank of New York  
101 Barclay Street,  
Floor 21 West  
New York, New York 10286

Facsimile No. 212-815-5915  
Attention: Corporate Trust Administration

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

Any notice or communication given to a Securityholder shall be mailed to the Securityholder, by first-class mail, postage prepaid, at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed 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. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Securityholders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

**SECTION 13.03 Communication 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 anyone else shall have the protection of TIA Section 312(c).

**SECTION 13.04 Certificate and Opinion as to Conditions Precedent.** 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:

(1) an Officers' Certificate stating that, in the opinion of the signers, all conditions 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 have been complied with.

**SECTION 13.05 Statements Required in Certificate or Opinion.** Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that each person making such Officers' Certificate or Opinion of Counsel 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 Officers' Certificate or Opinion of Counsel are based;

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

(4) a statement that, in the opinion of such person, such covenant or condition has been complied with.

**SECTION 13.06 Separability Clause.** In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.**SECTION 13.07 Rules by Trustee, Paying Agent, Conversion Agent and Registrar.** The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.**SECTION 13.08 Calculations.** The calculation of the Purchase Price, Change in Control Purchase Price, Conversion Rate, Market Price, Sale Price of the Common Stock and each other calculation to be made hereunder shall be the obligation of the Company. All calculations made by the Company as contemplated pursuant to this Section 13.08 shall be



final and binding on the Company and the Holders absent manifest error. The Trustee, Paying Agent and Conversion Agent shall not be obligated to recalculate, recompute or confirm any such calculations.

SECTION 13.09 Legal Holidays. A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Securities, no Original Issue Discount or interest, if any, shall accrue for the intervening period.

SECTION 13.10 GOVERNING LAW. THIS INDENTURE AND THE SECURITIES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

SECTION 13.11 No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 13.12 Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 13.13 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

THE TJX COMPANIES, INC.

By: /s/ Jay H. Meltzer  
-----  
Name: Jay H. Meltzer  
Title: Senior Vice President

THE BANK OF NEW YORK, as Trustee

By /s/ Kisha A. Holder  
-----  
Name: Kisha A. Holder  
Title: Assistant Treasurer

## [FORM OF FACE OF GLOBAL SECURITY]

FOR PURPOSES OF SECTIONS 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT WITH RESPECT TO EACH \$1,000 OF PRINCIPAL AMOUNT AT MATURITY OF THIS SECURITY IS \$328.35, THE ISSUE DATE IS February 13, 2001, THE YIELD TO MATURITY IS 2%.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE ISSUER 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 THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

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"), WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE TJX COMPANIES, INC. (THE "COMPANY" OR THE "ISSUER") 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 THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY 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 THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (A)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (E) IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (E) OR (F) 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, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

[THE FOREGOING LEGEND MAY BE REMOVED FROM THIS SECURITY ON SATISFACTION OF THE CONDITIONS SPECIFIED IN THE INDENTURE.]

## THE TJX COMPANIES, INC.

Liquid Yield Option(TM) Note due 2021

(Zero Coupon-Subordinated)

No. R-	CUSIP: 872540AJ8
Issue Date: February 13, 2001	Original Issue Discount: \$328.35
Issue Price: \$671.65	(for each \$1,000 Principal
(for each \$1,000 Principal	Amount at Maturity)
Amount at Maturity)	

THE TJX COMPANIES, INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the Principal Amount at Maturity of [ ] DOLLARS (\$[ ]) on February 13, 2021.

This Security shall not bear interest except as specified on the other side of this Security. Original Issue Discount will accrue as specified on the other side of this Security. This Security is convertible as specified on the other side of this Security.

Additional provisions of this Security are set forth on the other side of this Security.

THE TJX COMPANIES, INC.

By: \_\_\_\_\_

Title:

## TRUSTEE'S CERTIFICATE OF

## AUTHENTICATION

THE BANK OF NEW YORK, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture (as defined on the other side of this Security).

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

[FORM OF REVERSE SIDE OF LYON]  
Liquid Yield Option(TM) Note due 2021

(Zero Coupon-Subordinated)

1. Interest.

This Security shall not bear interest, except as specified in this paragraph or in paragraph 10 hereof. If the Principal Amount at Maturity hereof or any portion of such Principal Amount at Maturity is not paid when due (whether upon acceleration pursuant to Section 6.02 of the Indenture, upon the date set for payment of the Redemption Price pursuant to paragraph 5 hereof, upon the date set for payment of the Purchase Price or Change in Control Purchase Price pursuant to paragraph 6 hereof or upon the Stated Maturity of this Security) or if interest due hereon or any portion of such interest is not paid when due in accordance with paragraph 10 hereof, then in each such case the overdue amount shall, to the extent permitted by law, bear interest at the rate of 2% per annum, compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in lieu of, and not in addition to, the continued accrual of Original Issue Discount.

Original Issue Discount (the difference between the Issue Price and the Principal Amount at Maturity of the Security), in the period during which a Security remains outstanding, shall accrue at 2% per annum, on a semiannual bond equivalent basis using a 360-day year composed of twelve 30-day months, from the Issue Date of this Security.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of Principal Amount at Maturity, Restated Principal Amount, Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price, Change in Control Purchase Price and interest, if any, to Holders who surrender Securities to a Paying Agent to collect such payments in respect of the Securities. The Company will pay any cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money. Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day.

3. Paying Agent, Conversion Agent and Registrar.

Initially, The Bank of New York, a New York banking corporation (the "Trustee"), will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar without notice, other than notice to the Trustee except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar.

## 4. Indenture.

The Company issued the Securities under an Indenture dated as of February 13, 2001 (the "Indenture"), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as in effect from time to time (the "TIA"). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are general unsecured obligations of the Company limited to \$517,500,000 aggregate Principal Amount at Maturity (subject to Section 2.07 of the Indenture). The Indenture does not limit other indebtedness of the Company, secured or unsecured.

## 5. Redemption at the Option of the Company.

No sinking fund is provided for the Securities. The Securities are redeemable as a whole at any time, or in part from time to time, at the option of the Company at the Redemption Prices set forth below, provided that the Securities are not redeemable prior to February 13, 2007.

The table below shows Redemption Prices of a Security per \$1,000 Principal Amount at Maturity on the dates shown below and at Stated Maturity, which prices reflect accrued Original Issue Discount calculated to each such date. The Redemption Price of a Security redeemed between such dates shall include an additional amount reflecting the additional Original Issue Discount accrued since the preceding date in the table through the date of redemption.

Redemption Date	(1) LYON Issue Price	(2) Accrued Original Issue Discount	(3) Redemption Price (1) + (2)
-----	-----	-----	-----
February 13, 2007.....	\$671.65	\$ 85.18	\$756.83
February 13, 2008.....	671.65	100.40	772.05
February 13, 2009.....	671.65	115.91	787.56
February 13, 2010.....	671.65	131.74	803.39
February 13, 2011.....	671.65	147.89	819.54
February 13, 2012.....	671.65	164.37	836.02
February 13, 2013.....	671.65	181.17	852.82
February 13, 2014.....	671.65	198.31	869.96
February 13, 2015.....	671.65	215.80	887.45
February 13, 2016.....	671.65	233.64	905.29
February 13, 2017.....	671.65	251.83	923.48
February 13, 2018.....	671.65	270.39	942.04
February 13, 2019.....	671.65	289.33	960.98
February 13, 2020.....	671.65	308.65	980.30
At Stated Maturity.....	671.65	328.35	\$1,000

If converted to a semiannual coupon note following the occurrence of a Tax Event, the Redemption Price will be equal to the Restated Principal Amount, plus accrued and unpaid interest from the date of such conversion to the Redemption Date; but in no event will this Security be redeemable before February 13, 2007.

6. Purchase by the Company at the Option of the Holder.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the Holder, the Securities held by such Holder on the following Purchase Dates and at the following Purchase Prices per \$1,000 Principal Amount at Maturity, upon delivery of a Purchase Notice containing the information set forth in the Indenture, at any time from the opening of business on the date that is 20 Business Days prior to such Purchase Date until the close of business on the Business Day immediately preceding such Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

Purchase Date	Purchase Price
February 13, 2002	\$681.76
February 13, 2004	\$712.97
February 13, 2007	\$756.83
February 13, 2013	\$852.82

The Purchase Price (equal to the Issue Price plus accrued Original Issue Discount to the Purchase Date, except in the case of February 13, 2002) may be paid, at the option of the Company, in cash or shares of Common Stock, or any combination thereof in accordance with the Indenture.

If prior to a Purchase Date this Security has been converted to a semiannual coupon note following the occurrence of a Tax Event, the Purchase Price will be equal to the Restated Principal Amount, plus accrued and unpaid interest from the date of conversion to the Purchase Date.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or a portion of the Securities held by such Holder as of a date no later than 35 Business Days after the occurrence of a Change in Control of the Company occurring on or prior to February 13, 2007 for a Change in Control Purchase Price equal to the Issue Price plus accrued Original Issue Discount to the Change in Control Purchase Date, which Change in Control Purchase Price shall be paid in cash. If prior to a Change in Control Purchase Date this Security has been converted to a semiannual coupon note following the occurrence of a Tax Event, the Change in Control Purchase Price shall be equal to the Restated Principal Amount, plus accrued and unpaid interest from the date of conversion to the Change in Control Purchase Date.



A third party may make the offer and purchase of the Securities in lieu of the Company in accordance with the Indenture.

Holder's have the right to withdraw any Purchase Notice or Change in Control Purchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash (and/or securities if permitted under the Indenture) sufficient to pay the Purchase Price or Change in Control Purchase Price, as the case may be, of all Securities or portions thereof to be purchased as of the Purchase Date or the Change in Control Purchase Date, as the case may be, is deposited with the Paying Agent on the Business Day following the Purchase Date or the Change in Control Purchase Date, as the case may be, such Securities (or portions thereof) shall cease to be outstanding and Original Issue Discount and interest, if any, on such Securities shall cease to accrue (or portions thereof) on such Purchase Date or Change in Control Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the Purchase Price or Change in Control Purchase Price, as the case may be, upon surrender of such Security).

7. Notice of Redemption.

Notice of redemption will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, immediately after such Redemption Date, Original Issue Discount and interest, if any, shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of Principal Amount at Maturity may be redeemed in part but only in integral multiples of \$1,000 of Principal Amount at Maturity.

8. Conversion.

(a) Conversion Based on Common Stock Price. Subject to the provisions of this paragraph 8 and notwithstanding the fact that any other condition to conversion has not been satisfied, Holders may convert the Securities into Common Stock on a Conversion Date in any fiscal quarter commencing after April 28, 2001, if, as of the last day of the preceding fiscal quarter, the Sale Price of the Common Stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of such preceding fiscal quarter is greater than the conversion trigger price. The "conversion trigger price" for any fiscal quarter shall be a reference percentage, beginning at 135%, and declining 0.3125% per quarter thereafter until it reaches 110.3125% for the quarter beginning January 31, 2021, of the accreted conversion price per share of Common Stock on the last day of such preceding fiscal quarter.

The "accreted conversion price" per share of Common Stock as of any day equals the quotient of:

- the Issue Price and accrued Original Issue Discount to that day, divided by

- the number of shares of Common Stock issuable upon conversion of \$1,000 Principal Amount at Maturity of Securities on that day.

For illustrative purposes only, the table below shows the conversion trigger price per share of Common Stock in respect of each of the first 20 fiscal quarters following issuance of the Securities. The conversion trigger price for any fiscal quarter starting on or after April 29, 2001 shall be the conversion trigger price as of the last day of the immediately preceding fiscal quarter as set forth in the table below. These conversion trigger prices reflect the accreted conversion price per share of Common Stock (assuming that no events occurred requiring an adjustment to the initial Conversion Rate of 16.3335 shares of Common Stock per \$1,000 Principal Amount of Maturity) multiplied by the applicable percentage for the respective fiscal quarter. Thereafter, the accreted conversion price per share of Common Stock increases each fiscal quarter by the accrued Original Issue Discount for the quarter and the applicable percentage declines by 0.3125% per quarter.

Fiscal Quarter -----	(1) Accreted Conversion Price -----	(2) Applicable Percentage -----	(3) Conversion Trigger Price (1)x(2) -----
2002			
Quarter ended April 28, 2001.....	\$41.29	135.0000%	\$55.74
Quarter ended July 28, 2001.....	41.50	134.6875%	55.89
Quarter ended October 27, 2001.....	41.70	134.3750%	56.04
Quarter ended January 26, 2002.....	41.91	134.0625%	56.18
2003			
Quarter ended April 27, 2002.....	\$42.12	133.7500%	\$56.34
Quarter ended July 27, 2002.....	42.33	133.4375%	56.48
Quarter ended October 26, 2002.....	42.54	133.1250%	56.63
Quarter ended January 25, 2003.....	42.75	132.8125%	56.78
2004			
Quarter ended April 26, 2003.....	\$42.96	132.5000%	\$56.93
Quarter ended July 26, 2003.....	43.18	132.1875%	57.08
Quarter ended October 25, 2003.....	43.39	131.8750%	57.22
Quarter ended January 31, 2004.....	43.62	131.5625%	57.39
2005			
Quarter ended April 24, 2004.....	\$43.84	131.2500%	\$57.54
Quarter ended July 31, 2004.....	44.06	130.9375%	57.69
Quarter ended October 30, 2004.....	44.28	130.6250%	57.84
Quarter ended January 29, 2005.....	44.49	130.3125%	57.98
2006			
Quarter ended April 30, 2005.....	\$44.72	130.0000%	\$58.13
Quarter ended July 30, 2005.....	44.94	129.6875%	58.28
Quarter ended October 29, 2005.....	45.16	129.3750%	58.43
Quarter ended January 28, 2006.....	45.39	129.0625%	58.58

(b) Conversion Based on Credit Rating. Subject to the provisions of this paragraph 8 and notwithstanding the fact any other condition to conversion has not been satisfied, Holders may convert the Securities into Common Stock on a Conversion Date during any period in which the credit rating assigned to the Securities by a Rating Agency is at or below the Applicable

Rating. "Rating Agency" means (1) Moody's Investors Service, Inc. and its successors ("Moody's"), (2) Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., and its successors ("Standard & Poor's") or (3) if Moody's or Standard & Poor's or both of them are not making ratings of the Securities publicly available, a nationally recognized U.S. rating agency or agencies, as the case may be, selected by the Company, which will be substituted for Moody's or Standard & Poor's or both, as the case may be. "Applicable Rating" means (1) Ba1, in the case of Moody's (or its equivalent under any successor ratings categories of Moody's), (2) BB+, in the case of Standard & Poor's (or its equivalent, under any successor ratings categories of Standard & Poor's) or (3) the equivalent in respect of ratings categories of any Rating Agencies substituted for Moody's or Standard & Poor's.

(c) Conversion Based on Redemption. Subject to the provisions of this paragraph 8 and notwithstanding the fact that any other condition to conversion has not been satisfied, a Holder may convert into Common Stock a Security or portion of a Security which has been called for redemption pursuant to paragraph 6 hereof, even if the foregoing provisions have not been satisfied, but such Securities may be surrendered for conversion until the close of business on the second Business Day immediately preceding the Redemption Date.

(d) Conversion Upon Occurrence of Certain Corporate Transactions. Subject to the provisions of this paragraph 8 and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event that the Company declares a dividend or distribution described in Section 11.07 of the Indenture, or a dividend or a distribution described in Section 11.08 of the Indenture where the fair market value of such dividend or distribution per share of Common Stock, as determined in the Indenture, exceeds 15% of the Sale Price of the Common Stock on the Business Day immediately preceding the date of declaration for such dividend or distribution, the Securities may be surrendered for conversion beginning on the date the Company gives notice to the Holders of such right, which shall not be less than 20 days prior to the Ex-Dividend Time for such dividend or distribution, and Securities may be surrendered for conversion at any time thereafter until the close of business on the Business Day prior to the Ex-Dividend Time or until the Company announces that such dividend or distribution will not take place.

Subject to the provisions of this paragraph 8 and notwithstanding the fact that any other condition to conversion has not been satisfied, in the event the Company is a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all assets of the Company pursuant to which the Common Stock would be converted into cash, securities or other property as set forth in Section 11.14 of the Indenture, the Securities may be surrendered for conversion at any time from and after the date which is 15 days prior to the date the Company announces the anticipated effective time until 15 days after the actual effective date of such transaction, and at the effective time of such transaction the right to convert a Security into Common Stock will be deemed to have changed into a right to convert it into the kind and amount of cash, securities or other property which the holder would have received if the holder had converted its Security immediately prior to the transaction.

A Security in respect of which a Holder has delivered a Purchase Notice or Change in Control Purchase Notice exercising the option of such Holder to require the Company to

purchase such Security may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate is 16.3335 shares of Common Stock per \$1,000 Principal Amount at Maturity, subject to adjustment in certain events described in the Indenture. The Company will deliver cash or a check in lieu of any fractional share of Common Stock.

In the event the Company exercises its option pursuant to Section 10.01 of the Indenture to have interest in lieu of Original Issue Discount accrue on the Security following a Tax Event, the Holder will be entitled on conversion to receive the same number of shares of Common Stock such Holder would have received if the Company had not exercised such option.

Accrued and unpaid interest in lieu of Original Issue Discount will not be paid on Securities that are converted; provided, however, that Securities surrendered for conversion during the period, in the case of interest in lieu of Original Issue Discount, from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date shall be entitled to receive such interest, in lieu of Original Issue Discount, payable on such Securities on the corresponding Interest Payment Date and (except Securities with respect to which the Company has mailed a notice of redemption) Securities surrendered for conversion during such periods must be accompanied by payment of an amount equal to the interest in lieu of Original Issue Discount with respect thereto that the registered Holder is to receive.

To convert a Security, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Security to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

A Holder may convert a portion of a Security if the Principal Amount at Maturity of such portion is \$1,000 or an integral multiple of \$1,000. No payment or adjustment will be made for dividends on the Common Stock except as provided in the Indenture. On conversion of a Security, that portion of accrued Original Issue Discount (or interest if the Company has exercised its option provided for in paragraph 11 hereof) attributable to the period from the Issue Date (or, if the Company has exercised the option referred to in paragraph 11 hereof, the later of (x) the date of such exercise and (y) the date on which interest was last paid) through the Conversion Date with respect to the converted Security shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the Holder thereof through the delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Security being converted pursuant to the terms hereof; and the fair market value of such shares of Common Stock (together with any such cash payment in lieu of fractional shares) shall be treated as issued, to the extent thereof, first in exchange for Original Issue Discount (or interest, if the Company has exercised its option provided for in paragraph 11 hereof) accrued through the Conversion Date, and the balance, if any, of such fair market value of such Common Stock (and any such cash payment) shall be treated as issued in exchange for the Issue Price of the Security being converted pursuant to the provisions hereof.

The Conversion Rate will be adjusted for dividends or distributions on Common Stock payable in Common Stock or other Capital Stock; subdivisions, combinations or certain reclassifications of Common Stock; distributions to all holders of Common Stock of certain rights to purchase Common Stock for a period expiring within 60 days at less than the Sale Price of the Common Stock at the Time of Determination; and distributions to such holders of assets or debt securities of the Company or certain rights to purchase securities of the Company (excluding certain cash dividends or distributions). However, no adjustment need be made if Securityholders may participate in the transaction or in certain other cases. The Company from time to time may voluntarily increase the Conversion Rate.

If the Company is a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of its assets, or upon certain distributions described in the Indenture, the right to convert a Security into Common Stock may be changed into a right to convert it into securities, cash or other assets of the Company or another person.

9. Conversion Arrangement on Call for Redemption.

Any Securities called for redemption, unless surrendered for conversion before the close of business on the Redemption Date, may be deemed to be purchased from the Holders of such Securities at an amount not less than the Redemption Price, by one or more investment banks or other purchasers who may agree with the Company to purchase such Securities from the Holders, to convert them into Common Stock and to make payment for such Securities to the Trustee in trust for such Holders.

10. Tax Event

(a) From and after (i) the date (the "Tax Event Date") of the occurrence of a Tax Event and (ii) the date the Company exercises the option provided for in this paragraph 10, whichever is later (the "Option Exercise Date"), at the option of the Company, interest in lieu of future Original Issue Discount shall accrue at the rate of 2% per annum on a principal amount per Security (the "Restated Principal Amount") equal to the Issue Price plus Original Issue Discount accrued through the Option Exercise Date and shall be payable semiannually on February 13 and August 13 of each year (each an "Interest Payment Date") to Holders of record at the close of business on January 30 or July 30 (each a "Regular Record Date") immediately preceding such Interest Payment Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months and will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the Option Exercise Date.

(b) Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Security is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose. Each installment of interest on any Security shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States.

(c) Except as otherwise specified with respect to the Securities, any Defaulted Interest on any Security shall forthwith cease to be payable to the registered Holder thereof on

the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company as provided for in Section 10.02(b) of the Indenture.

11. Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of Principal Amount at Maturity and integral multiples of \$1,000. A Holder may transfer 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 any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities in respect of which a Purchase Notice or Change in Control Purchase Notice has been given and not withdrawn (except, in the case of a Security to be purchased in part, the portion of the Security not to be purchased) or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

12. Persons Deemed Owners.

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

13. Unclaimed Money or Securities.

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

14. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 or Section 11.14 of the Indenture, to secure the Company's obligations under this Security or to add to the Company's covenants for the benefit of the Securityholders or to surrender any right or power conferred, to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, or as necessary in connection with the registration of the Securities under the Securities Act or to make any change that does not adversely affect the rights of any Holders.

15. Defaults and Remedies.

Under the Indenture, Events of Default include (i) the Company defaults in payment of interest which becomes payable after the Securities have been converted to semiannual coupon notes following the occurrence of a Tax Event pursuant to Article 10 of the Indenture and such default continues for 30 days (whether or not such payment shall be prohibited by the terms of the Indenture); (ii) default in payment of the Principal Amount at Maturity (or, if the Securities have been converted to semiannual coupon notes following a Tax Event, the Restated Principal Amount), Issue Price plus accrued Original Issue Discount, Redemption Price, Purchase Price or Change in Control Purchase Price, as the case may be, in respect of the Securities when the same becomes due and payable (whether or not such payment shall be prohibited by the terms of the Indenture); (iii) failure by the Company to comply with other agreements in the Indenture or the Securities, subject to notice and lapse of time; (iv) default under any Debt, whether such Debt now exists or is created later, which default results in such Debt becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, and the principal amount of all Debt so accelerated, together with all Debt due and payable but not paid prior to the end of any grace period, is \$30,000,000 or more, and such acceleration has not been rescinded or annulled within a period of 30 days after receipt by the Company of a Notice of Default, subject to notice and lapse of time; provided, however, that if any such default shall be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred; and (v) certain events of bankruptcy or insolvency. If an Event of Default occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate Principal Amount at Maturity of the Securities at the time outstanding, may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities becoming due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security reasonably satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate Principal Amount at Maturity of the Securities at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of amounts specified in clause (i) or (ii) above) if it determines that withholding notice is in their interests.

16. Subordination.

The Securities are subordinated to the Senior Indebtedness of the Company. To the extent provided in the Indenture, Senior Indebtedness of the Company must be paid before the Securities may be paid. The Company and each Holder of Securities, by accepting a Security, agrees to the subordination provisions contained in the Indenture and authorizes the Trustee to give it effect and appoints the Trustee as attorney-in-fact for such purpose.

17. 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 Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

19. Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

20. Abbreviations.

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

21. GOVERNING LAW.

THE INDENTURE AND THIS SECURITY WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

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The Company will furnish to any Securityholder upon written request and without charge a copy of the Indenture. Requests may be made to:

The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, MA 01701  
Attention: Treasurer

ASSIGNMENT FORM

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

CONVERSION NOTICE

To convert this Security into Common Stock of the Company, check the box:

[ ]

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

\$ \_\_\_\_\_

If you want the stock certificate made out in another person's name, fill in the form below:

-----  
(Insert other person's soc. sec. or tax ID no.)  
-----  
-----  
-----

-----  
(Print or type other person's name, address and zip code)

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

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

## [Form of Certificated Security]

FOR PURPOSES OF SECTIONS 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT WITH RESPECT TO EACH \$1,000 OF PRINCIPAL AMOUNT AT MATURITY OF THIS SECURITY IS \$328.35, THE ISSUE DATE IS FEBRUARY 13, 2001, AND THE YIELD TO MATURITY FOR PURPOSES OF ACCRUING ORIGINAL ISSUE DISCOUNT IS 2% PER ANNUM.

[INCLUDE IF SECURITY IS A CERTIFICATED SECURITY TO BE HELD BY AN INSTITUTIONAL ACCREDITED INVESTOR--IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOLLOWING RESTRICTIONS.]

THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

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"), WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE TJX COMPANIES, INC. (THE "COMPANY" OR THE "ISSUER") 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 THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY 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 THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (A)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT,

(D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (E) IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (E) OR (F) 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, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

[THE FOREGOING LEGEND MAY BE REMOVED FROM THIS SECURITY ON SATISFACTION OF THE CONDITIONS SPECIFIED IN THE INDENTURE.]

THE TJX COMPANIES, INC.

Liquid Yield Option(TM) Note due 2021

(Zero Coupon-Subordinated)

No. R-	CUSIP: 872540AJ8
Issue Date: February 13, 2001	Original Issue Discount: \$328.35
Issue Price: \$671.65	(for each \$1,000 Principal
(for each \$1,000 Principal	Amount at Maturity)
Amount at Maturity)	

THE TJX COMPANIES, INC., a Delaware corporation, promises to pay to Cede & Co. or registered assigns, the Principal Amount at Maturity of [ ] MILLION DOLLARS (\$[ ]) on February 13, 2021.

This Security shall not bear interest except as specified on the other side of this Security. Original Issue Discount will accrue as specified on the other side of this Security. This Security is convertible as specified on the other side of this Security.

Additional provisions of this Security are set forth on the other side of this Security.

THE TJX COMPANIES, INC.

By: \_\_\_\_\_  
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture (as defined on the other side of this Security).

By \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

## EXHIBIT B-1

## TRANSFER CERTIFICATE

In connection with any transfer of any of the Securities within the period prior to the expiration of the holding period applicable to the sales thereof under Rule 144(k) under the Securities Act of 1933, as amended (the "Securities Act") (or any successor provision), the undersigned registered owner of this Security hereby certifies with respect to \$\_\_\_\_\_ Principal Amount at Maturity of the above-captioned securities presented or surrendered on the date hereof (the "Surrendered Securities") for registration of transfer, or for exchange or conversion where the securities issuable upon such exchange or conversion are to be registered in a name other than that of the undersigned registered owner (each such transaction being a "transfer"), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Securities for the reason checked below:

- A transfer of the Surrendered Securities is made to the Company or any subsidiaries; or
- The transfer of the Surrendered Securities complies with Rule 144A under the U.S. Securities Act of 1933, as amended (the "Securities Act"); or
- The transfer of the Surrendered Securities is to an institutional accredited investor, as described in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act; or
- The transfer of the Surrendered Securities is pursuant to an effective registration statement under the Securities Act, or
- The transfer of the Surrendered Securities is pursuant to an offshore transaction in accordance with Rule 904 of Regulation S under the Securities Act; or
- The transfer of the Surrendered Securities is pursuant to another available exemption from the registration requirement of the Securities Act.

and unless the box below is checked, the undersigned confirms that, to the undersigned's knowledge, such Securities are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

- The transferee is an Affiliate of the Company.

DATE:

\_\_\_\_\_  
Signature(s)

(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.)

## FORM OF LETTER TO BE DELIVERED BY ACCREDITED INVESTORS

The TJX Companies, Inc.  
770 Cochituate road  
Framingham, MA 01701

Attention: Treasurer

The Bank of New York  
101 Barclay Street,  
Floor 21 West  
New York, New York 10286

Attention: Corporate Trust Administration

Dear Sirs:

We are delivering this letter in connection with the proposed transfer of \$\_\_\_\_\_ Principal Amount at Maturity of the Liquid Yield Option(TM) Notes due 2021 ("LYONs") of The TJX Companies, Inc. (the "Company"), which are convertible into shares of the Company's Common Stock, \$1 par value per share (the "Common Stock").

We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act of 1933, as amended (the "Securities Act"), or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act (an "Institutional Accredited Investor");

(ii) the purchase of LYONs by us is for our own account or for the account of one or more other Institutional Accredited Investors or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring LYONs as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) we will acquire LYONs having a minimum principal amount at maturity of not less than \$100,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing LYONs; and

(v) we are not acquiring LYONs with a view to distribution thereof or with any present intention of offering or selling LYONs or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control.

We understand that the LYONs were originally offered and sold in a transaction not involving any public offering within the United States within the meaning of the Securities Act and that the LYONs and the shares of Common Stock (the "Securities") issuable upon conversion thereof have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any LYONs, that if in the future we decide to resell or otherwise transfer such Securities prior to the date (the "Resale Restriction Termination Date") which is two years after the later of the original issuance of the LYONs and the last date on which the Company or an affiliate of the Company was the owner of the Security, such Securities may be resold or otherwise transferred only (i) to The Company or any subsidiary thereof, or (ii) for as long as the LYONs 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) that purchases for its own account or for the account of a qualified institutional buyer to which notice is given that the transfer is being made in reliance on Rule 144A, or (iii) to an Institutional Accredited Investor that is acquiring the Security for its own account, or for the account of such Institutional Accredited Investor for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, or (iv) pursuant to another available exemption from registration under the Securities Act (if applicable), or (v) pursuant to a registration statement which has been declared effective under the Securities Act and, in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Securities. We further agree to provide any person purchasing any of the Securities other than pursuant to clause (v) above from us a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the trustee or the transfer agent, as the case may be, for the Securities will not be required to accept for registration of transfer any Securities pursuant to (iii) or (iv) above except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. We further understand that any Securities will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph other than certificates representing Securities transferred pursuant to clause (v) above.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

-----  
(Name of Purchaser)

By: -----

Name:  
Title:  
Address:

B-2-3



## REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT is made and entered into as of February 13, 2001 by and between The TJX Companies, Inc., a Delaware corporation ("the Company"), and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, (the "Initial Purchaser") pursuant to the Purchase Agreement, dated February 7, 2001 (the "Purchase Agreement"), between the Company and the Initial Purchaser. In order to induce the Initial Purchaser to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchaser, (i) for its benefit as Initial Purchaser and (ii) for the benefit of the beneficial owners (including the Initial Purchaser) from time to time of the LYONS (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the LYONS (each of the foregoing a "Holder" and together the "Holders"), as follows:

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

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

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

"Applicable Conversion Price" means, as of any date of determination, the Applicable Principal Amount per \$1,000 principal amount at maturity of LYONS as of such date of determination divided by the Conversion Rate in effect as of such date of determination or, if no LYONS are then outstanding, the Conversion Rate that would be in effect were LYONS then outstanding.

"Applicable Principal Amount" means, as of any date of determination, with respect to each \$1,000 principal amount at maturity of LYONS the sum of the initial issue price of such LYONS (\$671.65) plus accrued original issue discount with respect to such LYON through such date of determination or, if no LYONS are then outstanding, such sum calculated as if such LYONS were then outstanding.

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

"Common Stock" means the shares of Common Stock, \$1 par value, of the Company and any other shares of common stock as may constitute "Common Stock" for purposes of the Indenture, including the Underlying Common Stock.

"Conversion Rate" has the meaning assigned to that term in the Indenture.

"Damages Accrual Period" has the meaning specified in Section 2(e) hereof.

"Damages Payment Date" means each February 7 and August 7 in the case of LYONs and the Underlying Common Stock.

"Deferral Notice" has the meaning specified in Section 3(i) hereof.

"Deferral Period" has the meaning specified in Section 3(i) hereof.

"Effectiveness Deadline Date" has the meaning specified in Section 2(a) hereof.

"Effectiveness Period" means the period of two years from the later of the (a) Issue Date or (b) the last date of original issuance of the LYONs or such shorter period ending on the date that all Registrable Securities have ceased to be Registrable Securities.

"Event" has the meaning specified in Section 2(e) hereof.

"Event Termination Date" has the meaning specified in Section 2(e) hereof.

"Event Date" has the meaning specified in Section 2(e) hereof.

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

"Filing Deadline Date" has the meaning specified in Section 2(a) hereof.

"Holder" has the meaning specified in the second paragraph of this Agreement.

"Indenture" means the Indenture dated as of the date hereof between the Company and The Bank of New York, as trustee, pursuant to which the LYONs are being issued.

"Initial Purchaser" means Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"Initial Shelf Registration Statement" has the meaning specified in Section 2(a) hereof.

"Issue Date" means February 13, 2001.

"Liquidated Damages Amount" has the meaning specified in Section 2(e) hereof.

"Losses" has the meaning specified in Section 6 hereof.

"LYONs" means the Liquid Yield Option Notes due 2021 of the Company to be purchased pursuant to the Purchase Agreement.

"Material Event" has the meaning specified in Section 3(i) hereof.

"Notice and Questionnaire" means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Appendix A to the Offering Memorandum of the Company dated February 7, 2001 relating to the LYONs.

"Notice Holder" means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

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

"Purchase Agreement" has the meaning specified in the first paragraph of this Agreement.

"Record Holder" means, with respect to any Damages Payment Date relating to any LYON or Underlying Common Stock as to which any Liquidated Damages Amount has accrued, the registered holder of such LYON or Underlying Common Stock, as the case may be, 15 days prior to the next succeeding Damages Payment Date.

"Registrable Securities" means the LYONs and the Underlying Common Stock, until such securities have been converted or exchanged, and, at all times subsequent to any such conversion or exchange, any securities into or for which such securities have been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event until, in the case of any such security, the earliest of (i) its effective registration under the Securities Act and resale in accordance with the Registration Statement covering it, (ii) expiration of the holding period that would be applicable thereto under Rule 144(k) were it not held by an Affiliate of the Company or (iii) its sale to the public pursuant to Rule 144.

"Registration Expenses" has the meaning specified in Section 5 hereof.

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

"Restricted Securities" has the meaning assigned to that term in Rule 144.

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

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

"SEC" means the U.S. Securities and Exchange Commission and any successor agency.

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

"Shelf Registration Statement" has the meaning specified in Section 2(a) hereof.

"Subsequent Shelf Registration Statement" has the meaning specified in Section 2(b) hereof.

"TIA" means the Trust Indenture Act of 1939, as amended.

"Trustee" means The Bank of New York (or any successor entity), the Trustee under the Indenture.

"Underlying Common Stock" The Common Stock into which the LYONs are convertible or issued upon any such conversion.

Section 2. Shelf Registration. (a) The Company shall prepare and file or cause to be prepared and filed with the SEC, as soon as practicable but in any event by the date (the "Filing Deadline Date") which is the first business day on or after the ninetieth (90th) day after the Issue Date, a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act (a "Shelf Registration Statement") registering the resale from time to time by Holders thereof of all of the Registrable Securities (the "Initial Shelf Registration Statement"). The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Initial Shelf Registration Statement. The Company shall use reasonable efforts to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable but in any event by the date (the "Effectiveness Deadline Date") which is the first business day on or after one hundred and eightieth (180th) day after the Issue Date, and to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement) continuously effective under the Securities Act until the expiration of the Effectiveness Period; provided, however, that no Holder shall be entitled to have the Registrable Securities held by it covered by such Shelf Registration Statement unless such Holder shall have provided a Notice and Questionnaire in accordance with Section 2(d) and is in compliance with Section 4. None of the Company's security holders (other than the Holders of Registrable Securities) shall have the right to include any of the Company's securities in the Shelf Registration Statement.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use all reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within thirty (30) days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf

Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a "Subsequent Shelf Registration Statement"). If a Subsequent Shelf Registration Statement is filed, the Company shall use all reasonable efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Registration Statement (or subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement, if required by the Securities Act or, to the extent to which the Company does not reasonably object, as reasonably requested by the Initial Purchaser or by the Trustee on behalf of the registered Holders.

(d) Each Holder of Registrable Securities agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 3(i). Each Holder of Registrable Securities wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least three (3) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as is practicable after the date a Notice and Questionnaire is delivered, and in any event within five (5) Business Days after such date, (i) if required by applicable law, file with the SEC 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 required document so that the Holder delivering such Notice and Questionnaire is named as a selling security holder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use reasonable efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date (the "Amendment Effectiveness Deadline Date") that is thirty (30) days after the date such post-effective amendment is required by this clause to be filed; (ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); provided that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i), provided, further, that if under applicable law the Company has more than one option as to the type or manner of making any such filing, it will make the required filing or filings in the manner or of a type that is reasonably expected to result in the earliest availability of the Prospectus for effecting resales of Registrable Securities. Notwithstanding anything contained herein to the contrary, the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling security holder in any Registration Statement or related Prospectus; provided, however, that any Holder that becomes a Notice Holder pursuant to the provisions of Section 2(d) of this Agreement (whether or not such Holder was a Notice Holder at the time the

Registration Statement was declared effective) shall be named as a selling security holder in the Registration Statement or related Prospectus in accordance with the requirements of this Section 2(d).

(e) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if (i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date, (ii) the Initial Shelf Registration Statement has not been declared effective under the Securities Act on or prior to the Effectiveness Deadline Date, (iii) the Company has failed to perform its obligations set forth in Section 2(d) hereof within the time period required therein, (iv) the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i) hereof or (v) the number of Deferral Periods in any period exceeds the number permitted in respect of such period pursuant to Section 3(i) (each of the events of a type described in any of the foregoing clauses (i) through (v) are individually referred to herein as an "Event," and the Filing Deadline Date in the case of clause (i), the Effectiveness Deadline Date in the case of clause (ii), the date by which the Company is required to perform its obligations set forth in Section 2(d) in the case of clause (iii) (including the filing of any post-effective amendment prior to the Amendment Effectiveness Deadline Date), the date on which the aggregate duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(i) hereof in the case of clause (iv), and the date of the commencement of a Deferral Period that causes the limit on the number of Deferral Periods in any period under Section 3(i) hereof to be exceeded in the case of clause (v), being referred to herein as an "Event Date"). Events shall be deemed to continue until the "Event Termination Date," which shall be the following dates with respect to the respective types of Events: the date the Initial Shelf Registration Statement is filed in the case of an Event of the type described in clause (i), the date the Initial Shelf Registration Statement is declared effective under the Securities Act in the case of an Event of the type described in clause (ii), the date the Company performs its obligations set forth in Section 2(d) in the case of an Event of the type described in clause (iii) (including, without limitation, the date the relevant post-effective amendment to the Shelf Registration Statement is declared effective under the Securities Act), termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(i) to be exceeded in the case of the commencement of an Event of the type described in clause (iv), and termination of the Deferral Period the commencement of which caused the number of Deferral Periods in a period permitted by Section 3(i) to be exceeded in the case of an Event of the type described in clause (v).

Accordingly, commencing on (and including) any Event Date and ending on (but excluding) the next date on which there are no Events that have occurred and are continuing (a "Damages Accrual Period"), the Company agrees to pay, as liquidated damages and not as a penalty, an amount (the "Liquidated Damages Amount"), payable on the Damages Payment Dates to Record Holders of then outstanding LYONS that are Registrable Securities and of then outstanding shares of Underlying Common Stock issued upon conversion of LYONS that are Registrable Securities, as the case may be, accruing, for each portion of such Damages Accrual Period beginning on and including a Damages Payment Date (or, in respect of the first time that the Liquidation Damages Amount is to be paid to Holders on a Damages Payment Date as a result of the occurrence of any particular Event, from the Event Date) and ending on but excluding the first to occur of (A) the date of the end of the Damages Accrual Period or (B) the

Next Damages Payment Date, at a rate per annum equal to one-quarter of one percent (0.25%) for the first 90-day period from the Event Date, and thereafter at a rate per annum equal to one-half of one percent (0.5%) of the aggregate Applicable Principal Amount of such LYONs and the aggregate Applicable Conversion Price of such shares of Underlying Common Stock, as the case may be, in each case determined as of the Business Day immediately preceding the next Damages Payment Date; provided, that any Liquidated Damages Amount accrued with respect to any LYON or portion thereof called for redemption on a redemption date or converted into Underlying Common Stock on a conversion date prior to the Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such LYON or portion thereof for redemption or conversion on the applicable redemption date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). Notwithstanding the foregoing, no Liquidated Damages Amounts shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the Liquidated Damages Amount with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Events. Following the cure of all Events requiring the payment by the Company of Liquidated Damages Amounts to the Holders of Registrable Securities pursuant to this Section, the accrual of Liquidated Damages Amounts will cease (without in any way limiting the effect of any subsequent Event requiring the payment of Liquidated Damages Amount by the Company).

The Trustee shall be entitled, on behalf of Holders of LYONs or Underlying Common Stock, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Liquidated Damages Amount. Nothing shall preclude a Notice Holder or Holder of Registrable Securities from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

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

The parties hereto agree that the liquidated damages provided for in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

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

(a) Before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, furnish to the Initial Purchaser copies of all such documents proposed to be filed and use reasonable efforts to reflect in each such document when so filed with the SEC such comments as the Initial Purchaser reasonably shall propose within three (3) Business Days of the delivery of such copies to the Initial Purchaser.

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

(c) As promptly as practicable give notice to the Notice Holders and the Initial Purchaser (i) when any Prospectus, Prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC and, with respect to a Registration Statement or any post-effective amendment, when the same has been declared effective, (ii) of any request, following the effectiveness of the Initial Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to any Registration Statement or related Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Registration Statement or the initiation or threatening of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (v) of the occurrence of (but not the nature of or details concerning) a Material Event (provided, however, that no notice by the Company shall be required pursuant to this clause (v) in the event that the Company either promptly files a Prospectus supplement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement, which, in either case, contains the requisite information with respect to such Material Event that results in such Registration Statement no longer containing any untrue statement of material fact or omitting to state a material fact necessary to make the statements contained therein not misleading) and (vi) of the determination by the Company that a post-effective amendment to a Registration Statement will be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(i)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(i) shall apply.

(d) Use all reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in either case at the earliest possible moment.

(e) If reasonably requested by the Initial Purchaser or any Notice Holder, promptly as reasonably practicable incorporate in a Prospectus supplement or post-



effective amendment to a Registration Statement such information as the Initial Purchaser or such Notice Holder shall, on the basis of an opinion of nationally-recognized counsel experienced in such matters, determine to be required to be included therein by applicable law and make any required filings of such Prospectus supplement or such post-effective amendment; provided, that the Company shall not be required to take any actions under this Section 3(e) that are not, in the reasonable opinion of counsel for the Company, in compliance with applicable law.

(f) Promptly as reasonably practicable furnish to each Notice Holder and the Initial Purchaser, upon their request and without charge, at least one (1) conformed copy of the Registration Statement and any amendment thereto, including financial statements but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits (unless requested in writing to the Company by such Notice Holder or the Initial Purchaser, as the case may be).

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

(h) Prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use all reasonable efforts to register or qualify or cooperate with the Notice Holders in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use all reasonable efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the relevant Registration Statement and the related Prospectus; provided, that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement or (ii) take any action that would subject it to general service of process in suits or to taxation in any such jurisdiction where it is not then so subject.

(i) Upon (A) the issuance by the SEC of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with

respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a "Material Event") as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any pending corporate development that, in the discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus, (i) in the case of clause (B) above, subject to the next sentence, as promptly as practicable prepare and file a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use all reasonable efforts to cause it to be declared effective as promptly as is reasonably practicable, and (ii) give notice to the Notice Holders that the availability of the Shelf Registration Statement is suspended (a "Deferral Notice") and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder's receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The Company will use all reasonable efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as reasonably practicable thereafter and (z) in the case of clause (C) above, as soon as, in the discretion of the Company, such suspension is no longer appropriate. The period during which the availability of the Registration Statement and any Prospectus is suspended (the "Deferral Period") shall, without the Company incurring any obligation to pay liquidated damages pursuant to Section 2(e), not exceed forty-five (45) days in any three (3) month period or ninety (90) days in any twelve (12) month period.

(j) If reasonably requested in writing in connection with a disposition of Registrable Securities pursuant to a Registration Statement, make reasonably available for inspection during normal business hours by a representative for the Notice Holders of such Registrable Securities and any broker-dealers, attorneys and accountants retained by

such Notice Holders, all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate executive officers, directors and designated employees of the Company and its subsidiaries to make reasonably available for inspection during normal business hours all relevant information reasonably requested by such representative for the Notice Holders or any such broker-dealers, attorneys or accountants in connection with such disposition, in each case as is customary for similar "due diligence" examinations; provided, however, that such persons shall first agree in writing with the Company that any information that is reasonably and in good faith designated by the Company in writing as confidential at the time of delivery of such information shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) disclosure of such information is required by law (including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Registration Statement or the use of any Prospectus referred to in this Agreement), (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement; and provided further, that the foregoing inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of all the Notice Holders and the other parties entitled thereto by the counsel referred to in Section 5.

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

(l) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold pursuant to a Registration Statement, and cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least two Business Days prior to any sale of such Registrable Securities.

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

(n) Make a reasonable effort to provide such information as is required for any filings required to be made with the National Association of Securities Dealers, Inc.

(o) Upon (i) the filing of the Initial Shelf Registration Statement and (ii) the effectiveness of the Initial Shelf Registration Statement, announce the same, in each case by release to Reuters Economic Services and Bloomberg Business News.

(p) Enter into such customary agreements and take all such other reasonable necessary actions in connection therewith (including those reasonably requested by the holders of a majority of the Registrable Securities being sold) in order to expedite or facilitate disposition of such Registrable Securities.

(q) Cause the Indenture to be qualified under the TIA not later than the effective date of any Registration Statement; and in connection therewith, cooperate with the Trustee to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA and execute, and use all reasonable efforts to cause the Trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner.

Section 4. Holder's Obligations. Each Holder agrees, by acquisition of the Registrable Securities, that no Holder of Registrable Securities shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Registrable Securities as may be required to be disclosed in the Registration Statement under applicable law.

Section 5. Registration Expenses. The Company shall bear all fees and expenses incurred in connection with the performance by the Company of its obligations under Sections 2 and 3 of this Agreement whether or not any of the Registration Statements are declared effective. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (x) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (y) of compliance with federal and state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of the counsel specified in the next sentence in connection with Blue Sky qualifications of the Registrable Securities under the laws of such jurisdictions as the Notice Holders of a majority of the Registrable Securities being sold pursuant to a Registration Statement may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company), (iii) duplication expenses relating to copies of any Registration Statement or Prospectus delivered to any Holders hereunder, (iv) fees and disbursements of counsel for the Company in connection with the Shelf Registration Statement, and (v) reasonable fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock. In addition, the Company shall bear or reimburse the Notice Holders for the reasonable fees and disbursements of one firm of legal counsel for the Holders, which shall

initially be Shearman & Sterling, but which may, upon the written consent of the Initial Purchaser (which shall not be unreasonably withheld), be another nationally recognized law firm experienced in securities law matters designated by the Company. In addition, the Company shall pay the internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company.

Section 6. Indemnification; Contribution. (a) The Company agrees to indemnify and hold harmless the Initial Purchaser and each holder of Registrable Securities and each person, if any, who controls the Initial Purchaser or any holder of Registrable Securities within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, provided that (subject to Section 6(d) below) any such settlement is effected with the prior written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by the Initial Purchaser or such holder of Registrable Securities (which also acknowledges the indemnity provisions herein) and each person, if any, who controls the Initial Purchaser or any such holder of Registrable Securities expressly for use in the Registration

Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(b) In connection with any Shelf Registration in which a holder, including, without limitation, the Initial Purchaser, of Registrable Securities is participating, in furnishing information relating to such holder of Registrable Securities to the Company in writing expressly for use in such Registration Statement, any preliminary prospectus, the Prospectus or any amendments or supplements thereto, the holders of such Registrable Securities agree, severally and not jointly, to indemnify and hold harmless the Initial Purchaser and each person, if any, who controls the Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and the Company, and each person, if any, who controls the Company within the meaning of either such Section, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by such holder of Registrable Securities (which also acknowledges the indemnity provisions herein) and each person, if any, who controls any such holder of Registrable Securities expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

The Initial Purchaser agrees to indemnify and hold harmless the Company, the holders of Registrable Securities, and each person, if any, who controls the Company or any holder of Registrable Securities within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), or any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by the Initial Purchaser expressly for use in the Registration Statement (or any amendment thereto) or such preliminary prospectus or the Prospectus (or any amendment or supplement thereto).

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified

parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of aforesaid request, (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.

(e) If the indemnification provided for in this Section 6 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative fault of the Company on the one hand and the holders of the Registrable Securities or the Initial Purchaser on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the holder of the Registrable Securities or the Initial Purchaser and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 6(e). The aggregate amount of losses, liabilities, claims, damages, and expenses incurred by an indemnified party and referred to above in this Section 6(e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 6, neither the holder of any Registrable Securities nor the Initial Purchaser, shall be required to indemnify or contribute any

amount in excess of the amount by which the total price at which the Registrable Securities sold by such holder of Registrable Securities or unwritten by the Initial Purchaser, as the case may be, and distributed to the public were offered to the public exceeds the amount of any damages that such holder of Registrable Securities or the Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 6(e), each person, if any, who controls the Initial Purchaser or any holder of Registrable Securities within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Initial Purchaser or such holder, 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 shall have the same rights to contribution as the Company.

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

Section 8. Miscellaneous. (a) No Conflicting Agreements. The Company is not, as of the date hereof, a party to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders of Registrable Securities in this Agreement. The Company represents and warrants that the rights granted to the Holders of Registrable Securities hereunder do not in any way conflict with the rights granted to the holders of the Company's securities under any other agreements.

(b) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of a majority of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of LYONS deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such LYONS are or would be convertible or exchangeable as of the



date on which such consent is requested). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders of Registrable Securities may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Registration Statement; provided, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

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

(w) if to a Holder of Registrable Securities that is not a Notice Holder, at the address for such Holder then appearing in the Registrar (as defined in the Indenture);

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

(y) if to the Company, to:

The TJX Companies, Inc.  
770 Cochituate Road,  
Framingham, Massachusetts 01701  
Attention: General Counsel  
Telecopy No.: (508) 390-2457

With a copy to

Ropes & Gray  
One International Place  
Boston, Massachusetts 02110  
Attention: Mary Weber  
Telecopy No.: (617) 951-7050

and

(z) if to the Initial Purchaser, to:

Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith  
Incorporated

4 World Financial Center  
North Tower  
250 Vesey Street  
New York, New York 10080  
Attention: Syndicate Department  
Telecopy No.: (212) 449-1000

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

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

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

(f) 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 original and all of which taken together shall constitute one and the same agreement.

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

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

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

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained

herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such registration rights.

(k) Termination. This Agreement and the obligations of the parties hereunder shall terminate upon the expiration of the Effectiveness Period, except for any liabilities or obligations under Sections 4, 5 or 6 hereof and the obligations to make payments of and provide for liquidated damages under Section 2(e) hereof to the extent such damages accrue prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

[Remainder of this page intentionally left blank]

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

THE TJX COMPANIES, INC.

By: /s/ Donald G. Campbell

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Name: Donald G. Campbell  
Title: Executive Vice President and  
Chief Financial Officer

Confirmed and accepted as  
of the date first above written:

MERRILL LYNCH & CO.  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ Alex Done

-----  
Name: Alex Done  
Title: Vice President

May 8, 2001

The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, Massachusetts 01701

Ladies and Gentlemen:

This opinion is furnished to you in connection with a registration statement on Form S-3 (the "Registration Statement"), filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended, for the registration of \$517,500,000 aggregate principal amount of Liquid Yield Option Notes due 2021 (the "LYONs") of The TJX Companies, Inc. (the "Company") and 8,452,586 shares of common stock, \$1.00 par value per share, (the "Shares") issuable upon conversion of the LYONs. The LYONs and the Shares are being registered on behalf of the holders of the LYONs.

We have acted as counsel for the Company in connection with the preparation and filing of the Registration Statement. For purposes of our opinion, we have examined and relied upon the information set forth in the Registration Statement and such other documents, records, certificates and instruments as we have deemed necessary. We have assumed the genuineness and authenticity of all documents submitted to us as originals and of all documents submitted to us as copies.

We express no opinion as to the applicability of, compliance with or effect of the law of any jurisdiction other than The Commonwealth of Massachusetts, the laws of the State of New York, the corporate laws of the State of Delaware and the federal laws of the United States of America.

Based upon the foregoing, we are of the opinion that:

1. The LYONs have been duly and validly authorized and issued and will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws of general application affecting the rights and remedies of creditors or by general principles of equity regardless of whether applied in proceedings in equity or at law; and

2. The Shares, when issued upon conversion of the LYONS, will be duly authorized, validly issued and fully paid and nonassessable.

We understand that this opinion is to be used in connection with the Registration Statement. We hereby consent to the filing of this opinion as part of the Registration Statement and to the use of our name therein and in the related prospectus under the caption "Legal Matters."

Very truly yours,

/s/ Ropes & Gray

Ropes & Gray

THE TJX COMPANIES, INC.  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES AND  
 RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS  
 (Dollars in Millions)

	Fiscal Year Ended				
	Jan. 25, 1997 ----	Jan. 31, 1998 ----- (53 weeks)	Jan. 30, 1999 ----	Jan. 29, 2000 ----	Jan. 27, 2001 ----
Income from continuing operations	\$213.8	\$306.6	\$433.2	\$526.8	\$538.1
Add back:					
Taxes	152.3	215.7	270.8	327.1	326.9
Interest expense	50.8	26.2	22.1	20.4	34.7
Interest portion of leases	129.1	132.8	140.0	141.1	148.4
A) Income before taxes and fixed charges	\$546.0 =====	\$681.3 =====	\$866.1 =====	\$1,015.4 =====	\$1,048.1 =====
Fixed charges					
Capitalized interest	\$ --	\$ --	\$ 0.5	\$ --	\$ 0.3
Interest expense	50.8	26.2	22.1	20.4	34.7
Interest portion of leases	129.1	132.8	140.0	141.1	148.4
B) Fixed charges	\$179.9 =====	\$159.0 =====	\$162.6 =====	\$161.5 =====	\$183.4 =====
Ratio of earnings to fixed charges (A / B)	3.03x =====	4.28x =====	5.33x =====	6.29x =====	5.71x =====

## CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated February 27, 2001 relating to the financial statements, which appears in the 2000 Annual Report to Shareholders, which is incorporated by reference in The TJX Companies, Inc.'s Annual Report on Form 10-K for the year ended January 27, 2001. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP  
PricewaterhouseCoopers LLP

Boston, Massachusetts  
May 8, 2001



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FORM T-1  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE  
ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)

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THE BANK OF NEW YORK  
(Exact name of trustee as specified in its charter)

New York  
(State of incorporation  
if not a U.S. national bank) 13-5160382  
(I.R.S. employer  
identification no.)

One Wall Street, New York, N.Y. 10286  
(Address of principal executive offices) (Zip code)

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THE TJX COMPANIES, INC.  
(Exact name of obligor as specified in its charter)

Delaware 04-2207613  
(State or other jurisdiction of  
incorporation or organization) (I.R.S. employer  
identification no.)

770 Cochituate Road  
Framingham, Massachusetts 01701  
(Address of principal executive offices) (Zip code)

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Liquid Yield Option Notes (Zero Coupon - Subordinated) due 2021  
(Title of the indenture securities)

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1. GENERAL INFORMATION. FURNISH THE FOLLOWING INFORMATION AS TO THE TRUSTEE:

(a) NAME AND ADDRESS OF EACH EXAMINING OR SUPERVISING AUTHORITY TO WHICH IT IS SUBJECT.

-----  
Name

Address  
-----

Superintendent of Banks of the State of New York                      2 Rector Street, New York, N.Y. 10006, and Albany, N.Y. 12203

Federal Reserve Bank of New York                      33 Liberty Plaza, New York, N.Y. 10045

Federal Deposit Insurance Corporation                      Washington, D.C. 20429

New York Clearing House Association                      New York, New York 10005

(b) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

Yes.

2. AFFILIATIONS WITH OBLIGOR.

IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

None.

16. LIST OF EXHIBITS.

EXHIBITS IDENTIFIED IN PARENTHESES BELOW, ON FILE WITH THE COMMISSION, ARE INCORPORATED HEREIN BY REFERENCE AS AN EXHIBIT HERETO, PURSUANT TO RULE 7a-29 UNDER THE TRUST INDENTURE ACT OF 1939 (THE "ACT") AND 17 C.F.R. 229.10(d).

1. A copy of the Organization Certificate of The Bank of New York (formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672 and Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637.)

4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)

6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

## SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 1st day of May, 2001.

THE BANK OF NEW YORK

By: /s/ MARY LAGUMINA

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Name: MARY LAGUMINA

Title: VICE PRESIDENT

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Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business December 31, 2000, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

ASSETS	Dollar Amounts In Thousands
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin ...	\$ 3,083,720
Interest-bearing balances .....	4,949,333
Securities:	
Held-to-maturity securities .....	740,315
Available-for-sale securities .....	5,328,981
Federal funds sold and Securities purchased under agreements to resell .....	5,695,708
Loans and lease financing receivables:	
Loans and leases, net of unearned income.....	36,590,456
LESS: Allowance for loan and lease losses .....	598,536
LESS: Allocated transfer risk reserve .....	12,575
Loans and leases, net of unearned income, allowance, and reserve .....	35,979,345
Trading Assets .....	11,912,448
Premises and fixed assets (including capitalized leases) .....	763,241
Other real estate owned .....	2,925
Investments in unconsolidated subsidiaries and associated companies .....	183,836
Customers' liability to this bank on acceptances outstanding .....	424,303
Intangible assets .....	1,378,477
Other assets .....	3,823,797
Total assets .....	\$ 74,266,429 =====

## LIABILITIES

## Deposits:

In domestic offices .....	\$ 28,328,548
Noninterest-bearing .....	12,637,384
Interest-bearing .....	15,691,164
In foreign offices, Edge and Agreement subsidiaries, and IBFs .....	27,920,690
Noninterest-bearing .....	470,130
Interest-bearing .....	7,450,560
Federal funds purchased and Securities sold under agreements to repurchase .....	1,437,916
Demand notes issued to the U.S.Treasury .....	100,000
Trading liabilities .....	2,049,818
Other borrowed money:	
With remaining maturity of one year or less .....	1,279,125
With remaining maturity of more than one year through three years .....	0
With remaining maturity of more than three years .....	31,080
Bank's liability on acceptances executed and outstanding .....	427,110
Subordinated notes and debentures .....	1,646,000
Other liabilities .....	4,604,478
	-----
Total liabilities .....	\$ 67,824,765
	=====

## EQUITY CAPITAL

Common stock .....	1,135,285
Surplus .....	1,008,775
Undivided profits and capital reserves .....	4,308,492
Net unrealized holding gains (losses) on available-for-sale securities .....	27,768
Accumulated net gains (losses) on cash flow hedges .....	0
Cumulative foreign currency translation adjustments .....	(38,656)
Total equity capital .....	6,441,664
	-----
Total liabilities and equity capital .....	\$ 74,266,429
	=====

I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true to the best of my knowledge and belief.

Thomas J. Mastro

We, the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true and correct.

Thomas A. Renyi  
Alan R. Griffith  
Gerald L. Hassell

Directors

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