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As filed with the Securities and Exchange Commission on September 11, 2003

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

PROTEIN DESIGN LABS, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**94-3023969**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

34801 Campus Drive
Fremont, California 94555
(510) 574-1400
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Mark McDade
Chief Executive Officer
34801 Campus Drive
Fremont, California 94555
(510) 574-1400
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
J. Howard Clowes, Esq.
Gray Cary Ware & Freidenrich LLP
153 Townsend Street, Suite 800
San Francisco, California 94107
(415) 836-2500

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

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

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 reinvestment plans, check the following box: ☒

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434 under the Securities Act, please check the following box. o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Aggregate Price Per Security	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
2.75% Convertible Subordinated Notes due 2023	$250,000,000(1)	100%(2)(3)	$250,000,000(2)	$20,225.00
Common Stock, $.01 par value	12,415,450 shares(4)	—	—	—(5)

(1) Represents the aggregate principal amount of the notes issued by the Registrant.
(2) Estimated solely for the purpose of calculating the Registration Fee pursuant to Rule 457(i) under the Securities Act of 1933, as amended.
(3) Excludes accrued interest and distributions, if any.
(4) Represents the number of shares of common stock initially issuable upon conversion of the 2.75% Convertible Subordinated Notes due 2023 registered hereby and, pursuant to Rule 416 under the Securities Act of 1933, as amended, such indeterminate number of shares of common stock as may be issued from time to time upon conversion of the Notes as a result of the antidilution provisions thereof. For each $1,000 principal amount of the Notes surrendered for conversion, 49.6618 shares of common stock of Protein Design Labs, Inc. will be issued, subject to adjustment.
(5) No additional consideration will be received for the common stock and therefore, pursuant to Rule 457(i), no registration fee is required.

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

These securities may not be sold until the registration statement relating to these securities filed with the Securities and Exchange Commission is effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy these securities and it is not soliciting an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

SUBJECT TO COMPLETION, DATED SEPTEMBER 11, 2003

PRELIMINARY PROSPECTUS

$250,000,000

Protein Design Labs, Inc.

2.75% Convertible Subordinated Notes due 2023 and the 12,415,450 Shares of Common Stock Issuable on Conversion of the Notes

This prospectus relates to the 2.75% Convertible Subordinated Notes due 2023 of Protein Design Labs, Inc., or PDL, a Delaware corporation, held by certain security holders who may offer for sale the notes and up to 12,415,450 shares of our common stock into which the notes are convertible at any time, at market prices prevailing at the time of sale or at privately negotiated prices. The selling security holders may sell the notes or the common stock directly to purchasers or through underwriters, broker-dealers or agents, that may receive compensation in the form of discounts, concessions or commissions. We will not receive any proceeds from this offering.

You may convert the notes into shares of our common stock at any time before their maturity unless we have previously redeemed or repurchased them. The notes are due on August 16, 2023. The conversion rate is 49.6618 shares per each $1,000 principal amount of notes, subject to adjustment in certain circumstances. This is equivalent to a conversion price of approximately $20.14 per share. The notes are not listed on any securities exchange or included in any automated quotation system. The notes are eligible for trading in the Private Offerings, Resale and Trading through Automated Linkages (PORTAL) Market of the National Association of Securities Dealers, Inc. Our common stock is quoted on The Nasdaq National Market under the symbol "PDLI." On September 10, 2003, the last reported bid price for our common stock as quoted on The Nasdaq National Market was $13.31 per share.

We will pay interest on the notes on February 16 and August 16 of each year. The first interest payment will be made on February 16, 2004. The notes are unsecured and subordinated in right of payment to all existing and future indebtedness of PDL. The notes may be issued only in denominations of $1,000 and integral multiples of $1,000.

We have the right to redeem all or a portion of the notes that have not been previously converted at the redemption prices set forth in this prospectus on or after August 16, 2008. We will make at least 10 semi-annual interest payments on the notes before we may redeem.

You may require us to repurchase for cash all or a portion of the notes in the event of a change of control or a termination of trading (as each such term is defined in this prospectus). In addition, on each of August 16, 2010, August 16, 2013 and August 16, 2018, you may require us to repurchase all or a portion of the notes.

Investing in the notes and the common stock involves a high degree of risk. See "Risk factors" beginning on page 8 of the prospectus.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is , 2003.

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You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. The selling securityholders 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 is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

You should not consider any information in this prospectus or in the documents incorporated by reference herein to be investment, legal or tax advice. You should consult your own counsel, accountant and other advisors for legal, tax, business, financial and related advice regarding the purchase of the notes. We are not making any representation to any offeree or purchaser of the notes regarding the legality of an investment in the notes by such offeree or purchaser under appropriate investment or similar laws.

Unless otherwise indicated in this prospectus, "Protein Design Labs," "we," "us" and "our" refer to Protein Design Labs, Inc. and our subsidiaries.

This registration statement includes trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included in this prospectus are the property of their respective owners.

RISK FACTORS AND INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

In addition to the other information contained in this prospectus, investors should carefully consider the risk factors disclosed in this prospectus, including those beginning on page 8, in evaluating an investment in the notes or the common stock issuable upon conversion of the notes.

This prospectus includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts are "forward-looking statements" for purposes of these provisions, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of management for future operations, any statements concerning proposed new products or licensing or collaborative arrangements, any statements regarding future economic conditions or performance, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as "may," "will," "expects," "plans," "anticipates," "estimates," "potential," or "continue" or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties, including but not limited to the risk factors set forth below in this prospectus, and for the reasons described elsewhere in this prospectus. All forward-looking statements and reasons why results may differ included in this prospectus are made as of the date hereof, and we assume no obligation to update these forward-looking statements or reasons why actual results might differ.

PROSPECTUS SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus and may not contain all of the information that is important to you. This prospectus includes or incorporates by reference information about the convertible notes and common stock that we are offering, as well as information regarding our business and detailed financial data. We encourage you to read this prospectus in its entirety, including the documents incorporated by reference.

OUR COMPANY

Overview

We are a recognized leader in the discovery and development of humanized monoclonal antibodies for the treatment of disease. Our patented platform technology enables us to develop antibodies with high specificity based on murine antibodies, which are relatively easy to generate, but which we modify to be structurally similar to naturally occurring human antibodies. As a result, our antibodies do not have the immunogenicity and half-life limitations associated with

murine antibodies. We are utilizing our technology to develop humanized antibodies for the treatment of certain autoimmune and inflammatory diseases, and cancer. We currently have four antibodies in clinical development for ulcerative colitis, Crohn's disease, psoriasis, asthma and solid tumors.

We derive revenues from out-licensing our antibody humanization patents to developers of antibody-based therapeutics as well as from humanizing antibodies for other companies. We have entered into numerous patent licenses, patent rights agreements and humanization contracts that provide us with fees and royalty revenues. We receive royalties on four antibody products launched during the past six years, including Zenapax, Herceptin, Synagis and Mylotarg, with combined sales in excess of $1 billion in 2002. We believe that there are more than 40 humanized antibodies in clinical development by a variety of companies, and that a majority of those antibodies are the subject of either patent license or patent rights agreements with us.

We were incorporated in Delaware in 1986. Our principal executive offices are located at 34801 Campus Drive, Fremont, California 94555, and our telephone number is (510) 574-1400. We maintain a home page at www.pdl.com.

Business Strategy

Our objective is to leverage our proprietary antibody technology and patent portfolio to become a profitable biopharmaceutical company that markets its own drugs in North America. The principal elements of our strategy include:

- **Development of proprietary drugs.** We are focused on the development of novel antibodies to treat diseases with significant market potential and unmet medical needs. Our lead programs are targeted to the treatment of inflammatory bowel disease, or IBD, which affects over one million individuals in the United States. IBD is a chronic, recurrent inflammation of the bowel that has considerable impact on the quality of life of the patient. We have three humanized antibodies in clinical development for the treatment of IBD, specifically in ulcerative colitis and Crohn's disease, as well as other diseases. We plan to market or co-promote our products, if approved, with a specialized sales force in North America. We are seeking to out-license marketing rights for some of our antibodies primarily outside of North America and may receive upfront fees and milestone payments, research funding and/or royalties on product sales.

- **Acquisitions and in-licensing arrangements.** We are actively exploring opportunities that would provide access to additional products, technologies or capabilities, or that would expand our existing product rights through acquisitions, collaborations or in-licensing arrangements. These

efforts, if successful, could enable us to expand our franchises in our targeted therapeutic areas and accelerate the timeframe within which we generate revenues from product sales.

- **Patent licensing arrangements.** We license our patents relating to humanized antibodies in return for license fees, annual license maintenance payments and royalties on product sales. We have patent license or patent rights agreements with a number of biotechnology and pharmaceutical companies, including Biogen, Inc., Celltech Group plc, Chugai Pharmaceutical Co. LTD., Elan Pharmaceuticals, Genentech, Inc., GlaxoSmithKline Corporation (GSK), IDEC Pharmaceuticals, Inc., Medarex, Inc., MedImmune, Inc., Merck KGaA, Millennium Pharmaceuticals, Inc., Sankyo Company LTD., Tanox, Inc. and Wyeth Pharmaceuticals (Wyeth). We expect to enter into additional agreements in the future as humanized antibodies from other companies achieve clinical success. Genentech recently announced that it initiated the market launch of Xolair, a humanized antibody. Based on our evaluation to date of publicly available information, we believe that Xolair is covered under the claims of our humanization patents and therefore subject to our existing patent rights arrangement with Genentech. Genentech has stated that it does not believe Xolair is covered by our patents and we are having discussions with Genentech in an effort to resolve this issue. If Genentech does not take such a license, or if it challenges our antibody humanization patents, such action could have a material adverse effect on our revenue and financial condition. See "Risk factors—Our humanization patents are being opposed and a successful challenge or refusal to take a license could limit our future revenues."

- **Humanization contracts.** We humanize antibodies for other companies in return for upfront fees, milestone payments and royalties on any product sales. In some cases we also receive the right to co-promote these products in designated territories. We have performed humanization services for a number of companies, including Ajinomoto, Fujisawa Pharmaceuticals, Intermune Pharmaceuticals, Inc., Progenics Pharmaceuticals, Inc., Wyeth and Yamanouchi Pharmaceuticals. We have recently initiated efforts to expand our offerings to third parties, including seeking additional humanization contracts and performing additional services in conjunction with humanization, such as cell-line development necessary for scale-up and future manufacturing of antibodies on a larger scale.

OUR PRODUCTS IN CLINICAL STAGE DEVELOPMENT

The following table summarizes the potential therapeutic applications and development status for our clinical product candidates.

Antibody Product	Indication(s)	Status
Nuvion	Ulcerative Colitis	Phase I
Zenapax (daclizumab)	Kidney transplant rejection	Marketed/Roche
	Asthma	Phase II
	Ulcerative Colitis	Phase II
HuZAF	Crohn's Disease	Phase II
	Psoriasis	Phase I/II
M200 (anti-a5b1 integrin)	Solid Tumors	Phase I

Nuvion (visiluzumab). Nuvion (visilizumab) is a humanized antibody that binds to the CD3 antigen on immune system cells known as T cells that are believed to be active in certain inflammatory disease. Nuvion has been shown to bind to CD3, thereby inducing apoptosis or death of activated T cells.

We are performing an ongoing Phase I study of Nuvion in patients with severe ulcerative colitis who have failed intravenous, or IV, steroid treatment, a patient population for whom there is no

approved medical option. In May 2003, we announced promising preliminary results of this study. This study is ongoing and we intend to commence an additional Phase I/II study in 2003.

We have retained worldwide rights to Nuvion.

Daclizumab. Daclizumab is a humanized antibody that binds to the interleukin-2 (IL-2) receptor on immune system cells known as T-cells. IL-2 is a lymphokine, one of the substances released by cells as a part of the immune response that occurs in certain autoimmune diseases and often following organ transplants. Daclizumab has been shown to block the binding of IL-2 to its receptor on T-cells, suppressing an immune response by inhibiting the proliferation of activated T cells.

The US Food and Drug Administration, or FDA, approved daclizumab in December 1997 for the prevention of kidney transplant rejection. The antibody has since been approved throughout Europe and in a number of other countries. We have licensed daclizumab to Roche, which sells daclizumab under the brand name Zenapax in the United States, Europe and other territories for the prevention of kidney transplant rejection and we receive royalties on Zenapax sales. We have obtained the right to develop and, in the United States and Canada, to market daclizumab in autoimmune indications and will pay for these activities. Roche may choose to market daclizumab for these indications in Europe and certain other countries.

We recently initiated a randomized, placebo-controlled Phase II study of daclizumab in patients with moderate to severe ulcerative colitis. This study is evaluating two dosing schedules of daclizumab.

In addition, we are investigating daclizumab in a Phase II trial for the treatment of asthma. We have completed enrollment in a randomized Phase II study of asthma patients whose symptoms are not well controlled by inhaled steroids. We expect that the results of this trial will become available in the first half of 2004. We have identified multiple sclerosis, or MS, as a future indication.

HuZAF. HuZAF is a humanized antibody that targets interferon gamma, a protein that stimulates several types of white blood cells and has been shown by academic researchers to play a role in certain autoimmune diseases.

We are currently conducting a 175-patient Phase II trial of anti-interferon gamma in Crohn's disease patients. We are examining the same doses as were used in a previous Phase I/II trial. We recently initiated a second Phase II trial of 120 patients in Crohn's disease that examines a higher dose as well as a slightly modified treatment protocol. Our intention is to submit abstracts describing these two trials for presentation at the 2004 Digestive Disease Week meeting.

We have worldwide rights to HuZAF, although we are now actively seeking a partner for development and commercialization for rights primarily outside the United States and Canada.

M200. M200 is a chimeric antibody that may inhibit the growth or metastasis of tumors that are dependent on new blood vessel formation, a process known as angiogenesis. M200 blocks the binding of a5b1 integrin receptors to fibronectin on activated subset of endothelial cells that line blood vessels, potentially inhibiting a key step leading to angiogenesis. Recently we initiated a Phase I clinical trial of an anti-a5b1 integrin antibody, M200, in patients with advanced solid tumors for whom there is no standard treatment. The dose-escalation trial is designed to explore the safety associated with the infusion of M200.

OUR TECHNOLOGY

We are a leader in the development of therapeutic antibody products. Our "humanized" antibodies are designed using structural information from promising murine antibodies. Our proprietary technology enables us to combine the binding sites of a murine antibody with a human antibody

framework, thereby creating a humanized antibody with lower immunogenicity and longer half-life than the original murine antibody.

Antibodies are protective proteins released by the immune system's B cells, a type of white blood cell, in response to the presence of a foreign substance in the body, such as a virus, or due to an aberrant autoimmune response. B cells produce millions of different kinds of antibodies, which have slightly different shapes that enable them to bind and, as a result, inactivate different targets. Antibodies that have identical molecular structure that bind to a specific target are called monoclonal antibodies.

Typically, mice have been used to produce monoclonal antibodies to a wide range of targets, including targets to which the human body does not normally produce antibodies. Although murine monoclonal antibodies are relatively easy to generate, they have significant drawbacks as therapeutics, including short half-life and immunogenicity. Our patented humanization technology has allowed us to modify murine antibodies to minimize these problems.

THE OFFERING

Issuer	Protein Design Labs, Inc.
Notes	$250,000,000 aggregate principal amount of 2.75% convertible subordinated notes due August 16, 2023.
Maturity	The notes will mature on August 16, 2023, unless earlier redeemed, repurchased or converted.
Interest payment dates	We will pay 2.75% interest per annum on the principal amount payable on the notes semi-annually in

	arrears on February 16 and August 16 of each year, starting on February 16, 2004.
Conversion rights	The notes will be convertible into 49.6618 shares of our common stock, par value $.01 per share, per $1,000 principal amount of notes (which represents a conversion price of approximately $20.14 per share), subject to adjustments at any time until final maturity or earlier redemption or repurchase. See "Description of notes—Conversion rights."
Subordination	Except as described under "Description of notes—Security," the notes will be: • unsecured; • junior to our existing and future senior indebtedness and pari passu to our 5.50% convertible notes in the aggregate principal amount of $150.0 million; and • effectively subordinated to all existing and future liabilities of our subsidiaries, including trade payables. As of June 30, 2003, we had approximately $150.0 million of consolidated indebtedness that would rank pari passu to the notes on a pro forma basis giving effect to the issuance of the notes as if it had occurred as of June 30, 2003, and our subsidiaries had approximately $10.7 million of indebtedness and other obligations that effectively rank senior to the notes. The indenture under which the notes were issued does not restrict our or our subsidiaries' ability to incur additional senior or other indebtedness. See "Description of notes—Subordination of notes."
Security	We have purchased and pledged to the trustee under the indenture, as security for the notes and for the exclusive ratable benefit of the holders of the notes, approximately $20.7 million of US government securities. These US government securities are sufficient to provide for the payment in full of the first six scheduled interest payments on the notes when due. See "Use of Proceeds." The notes will not otherwise be secured. See "Description of notes—Security."
Sinking fund	None.

Redemption of notes at our option	On or after August 16, 2008, we may, at our option, redeem the notes, in whole or in part, for cash, at 100% of their principal amount, plus any accrued and unpaid interest to, but excluding, the redemption date. See "Description of notes—Redemption of notes at our option."
Purchase by us of notes at the holder's option	On each of August 16, 2010, August 16, 2013 and August 16, 2018, holders may require us to purchase all or a portion of their notes at 100% of their principal amount, plus any accrued and unpaid interest to, but excluding, such date. We will pay the purchase price for notes to be purchased on August 16, 2010 in cash. We will pay the purchase price for notes to be purchased on August 16, 2013 and August 16, 2018, solely at our option, in cash, shares of our common stock, or a combination of cash and shares of our common stock, provided that we will pay any accrued and unpaid interest in cash. The shares of common stock will be valued at 100% of the average closing sale price of our common stock for the 10 trading days immediately preceding, and including, the third business day immediately preceding the purchase date, as described in this prospectus. If we choose to pay all or part of the purchase price in shares of our common stock, we will notify holders of this not less than 20 business days before the applicable purchase date. See "Description of notes—Purchase of notes by us at the holder's option."
Right of holder to require us to repurchase	If a repurchase event, as described in this prospectus, occurs, each holder may notes if a repurchase event occurs require us to repurchase all or a portion of the holder's notes for cash at 100% of their principal amount, plus any accrued and unpaid interest to, but excluding, the repurchase date. See "Description of notes—Holders may require us to repurchase their notes upon a repurchase event."
Events of default	If an event of default on the notes has occurred and is continuing, the principal amount of the notes plus any accrued and unpaid interest may be declared immediately due and payable. These amounts automatically become due and payable upon certain events of default. See "Description of notes —Events of default."
Registration rights	We have agreed to keep the shelf registration statement, of which this prospectus constitutes a part, continuously effective under the Securities Act until such time as there are no longer any registrable securities covered thereby. If we do not comply with these requirements or certain other covenants set forth in the registration rights agreement, we will be required to pay liquidated damages to holders of the notes. See "Description of notes—Registration rights; liquidated damages."

Use of proceeds	We will not receive any of the proceeds from the sale by any selling securityholders of the notes or the common stock issuable upon conversion of the notes.
DTC eligibility	The notes will be issued in book-entry form and will be represented by permanent global certificates deposited with a custodian for, and registered in the name of, a nominee of The Depository Trust Company,

	or DTC, in New York, New York. Beneficial interests in any such securities will be shown on, and transfers will be effected only through, records maintained by DTC and its direct and indirect participants. Except in limited circumstances, no such interest may be exchanged for certificated securities. See "Description of notes—Form, denomination and registration of notes—Global securities."
Listing and trading	The notes are eligible for trading on The PORTAL Market. Our common stock is listed on The Nasdaq National Market under the symbol "PDLI."
Certain US federal tax considerations	For a discussion of certain US federal tax considerations relating to the purchase, ownership and disposition of the notes and common stock into which the notes are convertible, see "Certain US federal tax considerations."
Risk factors	In analyzing an investment in the notes offered by this prospectus, prospective investors should carefully consider, along with other matters referred to in this prospectus, the information set forth under "Risk factors."

For a more complete description of the terms of the notes, see "Description of notes." For a description of our common stock, see "Description of capital stock."

RISK FACTORS

You should carefully consider and evaluate all of the information included and incorporated by reference in this prospectus, including the risk factors listed below. Any of these risks could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the market price of the notes offered by this prospectus and the trading price of our common stock.

Keep these risk factors in mind when you read forward-looking statements contained in this prospectus and the documents incorporated by reference herein. These statements relate to our expectations about future events and time periods. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "intends," "plans," "believes," "anticipates," "expects," "estimates," "predicts," "potential," "continue" or "opportunity," the negative of these words or words of similar import. Similarly, statements that describe our reserves and our future plans, strategies, intentions, expectations, objectives, goals or prospects are also forward-looking statements. Forward-looking statements involve risks and uncertainties, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements.

RISKS RELATED TO OUR BUSINESS

We have a history of operating losses and may not achieve sustained profitability.

In general, our expenses have exceeded revenues. As of June 30, 2003, we had an accumulated deficit of approximately $128.6 million. We expect our expenses to increase because of the extensive resource commitments required to achieve regulatory approval and commercial success for any individual product. For example, over the next several years, we will incur substantial additional expenses as we continue to develop and manufacture our potential products, invest in research and improve and expand our manufacturing, marketing and sales capabilities. Since we or our partners or licensees may not be able to successfully develop additional products, obtain required regulatory approvals, manufacture products at an acceptable cost and with appropriate quality, or successfully market such products with desired margins, we may never achieve sustained profitable operations. The amount of net losses and the time required to reach sustained profitability are highly uncertain. We may be unable to achieve sustained profitability.

Our commitment of resources to the continued development of our products will require significant additional funds for development. Our operating expenses may also increase as:

- some of our earlier stage potential products move into later stage clinical development;
- additional potential products are selected as clinical candidates for further development;
- we invest in additional manufacturing capacity;
- we defend or prosecute our patents and patent applications; and
- we invest in research or acquire additional technologies, product candidates or businesses.

In the absence of substantial revenues from new agreements with third party business partners, significant royalties on sales of products licensed under our intellectual property rights, product sales or other uncertain sources of revenue, we will incur substantial operating losses.

Our revenues, expenses and operating results will likely fluctuate in future periods.

Our revenues have varied in the past and will likely continue to fluctuate considerably from quarter to quarter and from year to year. As a result, our revenues in any period may not be predictive

of revenues in any subsequent period. Our royalty revenues may be unpredictable and may fluctuate since they depend upon:

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the seasonality of sales of licensed products;

- the existence of competing products;
- the marketing efforts of our licensees;
- potential reductions in royalties receivable due to credits for prior payments to us;
- the timing of royalty reports, some of which are required quarterly and others semi-annually; and
- our ability to successfully defend and enforce our patents.

We receive royalty revenues on sales of the product Synagis. This product has higher sales in the fall and winter, which to date have resulted in much higher royalties paid to us in our first and second quarters than in other quarters. The seasonality of Synagis sales could contribute to fluctuation of our revenues from quarter to quarter.

License and other revenue may also be unpredictable and may fluctuate due to the timing of payments of non-recurring licensing and signing fees, payments for manufacturing and clinical development services, and payments for the achievement of milestones under new and existing agreements with third party business partners. Revenue historically recognized under our prior agreements may not be an indicator of non-royalty revenue from any future collaborations.

Our expenses may be unpredictable and may fluctuate from quarter to quarter due to the timing of expenses, including clinical trial expenses as well as payments owed by us and to us under collaborative agreements for reimbursement of expenses and which are recorded under our policy during the quarter in which such expenses are reported to us or to our partners and agreed to by us or our partners.

In addition, our expenses or other operating results may fluctuate due to the accounting treatment of securities we own or may purchase or securities we have issued or may issue. In May 2002, we entered into an agreement with our Chairman of the Board under which vesting of his stock options may accelerate in certain events, and such acceleration would trigger an accounting expense. In addition, we hold a $30.0 million five-year convertible note receivable we purchased from Exelixis, Inc. in May 2001. Accounting rules require the conversion feature of some convertible notes to be separated from the debt agreement in which the conversion feature is contained and accounted for as a derivative instrument, and therefore reflected in the note purchaser's financial statements based upon the fair market value of the stock into which the note is convertible. Due in part to the number of shares into which this note receivable would currently convert and the average daily trading volume of Exelixis stock, the Exelixis note is not currently considered a derivative instrument and, therefore, changes in the market value of Exelixis stock are not required to be recorded in our financial statements. However, a significant increase in the average daily trading volume of Exelixis stock, or new accounting pronouncements or regulatory rulings could require us to report the value of the Exelixis stock in our financial statements. Such a requirement could cause changes in the Exelixis stock price to contribute to fluctuation of our operating results from quarter to quarter.

Our humanization patents are being opposed and a successful challenge or refusal to take a license could limit our future revenues.

Most of our current revenues are related to our humanization patents and the related licenses that third parties enter into with us for rights to those patents. If our rights are successfully challenged or third parties decline to take licenses for the patents, our future revenues would be adversely affected.

At an oral hearing in March 2000, the Opposition Division of the European Patent Office decided to revoke the broad claims of our first European humanization patent. We have appealed this decision. We recently received notice that an oral hearing before the Technical Board of Appeal of the European Patent Office has been scheduled to consider this case in November 2003. Until our appeal is resolved, we may be limited in our ability to collect royalties or to negotiate future licensing or collaborative research and development arrangements based on this and our other humanization patents. Moreover, if our appeal is unsuccessful, our ability to collect royalties on European sales of antibodies humanized by others would depend on the scope and validity of our second European patent, whether the antibodies are manufactured in a country outside of Europe where they are covered by one of our patents, and in that case the terms of our license agreements with respect to that situation. Also, the Opposition Division's decision could encourage challenges of our related patents in other jurisdictions, including the United States. This decision may lead some of our licensees to stop making royalty payments or lead potential licensees not to take a license, either of which might result in us initiating formal legal actions to enforce our rights under our humanization patents. In such a situation, a likely defensive strategy to our action would be to challenge our patents in that jurisdiction. During the appeals process with respect to our first European patent, if we were to commence an infringement action to enforce that patent, such an action would likely be stayed until the appeal is decided by the European Patent Office. As a result, we may not be able to successfully enforce our rights under our European or related US and Japanese patents.

Eight notices of opposition have been filed with respect to our second European antibody humanization patent and we have filed our response with the European Patent Office. Oral hearings are scheduled to take place in October 2003.

Also, three opposition statements were filed with the Japanese Patent Office with respect to our Japanese humanization patent. The Japanese Opposition Board's subsequent decision supported one aspect of the position of the opponents, to which we filed two responses. Ultimately, we received a final determination from the Japanese Patent Office examiner affirming the Opposition Board's earlier decision. We have appealed this decision to the Tokyo High Court. The patent will remain valid and enforceable during this appeal process. If this appeal is unsuccessful, we will then have an opportunity to appeal to the Japanese Supreme Court.

We intend to vigorously defend the European patents and the Japanese patent in these proceedings; however, we may not prevail in the opposition proceedings or any litigation contesting the validity of these patents. If our appeal with respect to our first European patent is unsuccessful or if the outcome of the other European or Japanese opposition proceedings or any litigation involving our antibody humanization patents were to be unfavorable, our ability to collect royalties on existing licensed products and to license our patents relating to humanized antibodies may be materially harmed. In addition, these proceedings or any other litigation to protect our intellectual property rights or defend against infringement claims by others could result in substantial costs and diversion of management's time and attention, which could harm our business and financial condition.

Our ability to maintain and increase our revenues from licensing is dependent upon third parties entering into new patent licensing arrangements, exercising rights under existing patent rights agreements, and paying royalties under existing patent licenses with us. To date, we have been successful in obtaining such licensing arrangements, and in receiving royalties on product sales, from parties whose products may be covered by our patents. However, there can be no

assurance that we will continue to be successful in our licensing efforts in the future. For example, Genentech recently announced that it had initiated the market launch of Xolair, a humanized antibody. Based on our evaluation to date of publicly available information, we believe that Xolair is covered under the claims of our humanization patents and therefore subject to our existing patent rights arrangement with Genentech. Genentech has stated that it does not believe Xolair is covered by our patents and we are having discussions with Genentech in an effort to resolve this issue. Additionally, other antibody-based

therapeutics that may be approved by the FDA in the near future, with respect to which we may receive royalties, include Raptiva and Avastin, two Genentech products. There can be no assurance that Genentech will exercise its rights to obtain licenses under our antibody humanization patents or that other licensees or prospective licensees will take licenses, or exercise rights to obtain licenses to these or other products, or that existing licensees will continue to honor the terms, including royalty obligations, of their license agreements with us. If we experience difficulty in enforcing our patent rights through licenses, or if our licensees, or prospective licensees challenge our antibody humanization patents, our revenues and financial condition could be adversely affected and we could be required to undertake additional actions, including litigation, in order to enforce our rights. Such efforts would increase our expenses and could be unsuccessful.

If we are unable to protect our patents and proprietary technology, we may not be able to compete successfully.

Our pending patent applications may not result in the issuance of valid patents or our issued patents may not provide competitive advantages. Also, our patent protection may not prevent others from developing competitive products using related or other technology. A number of companies, universities and research institutions have filed patent applications or received patents in the areas of antibodies and other fields relating to our programs. Some of these applications or patents may be competitive with our applications or contain material that could prevent the issuance of patents to us or result in a significant reduction in the scope of our issued patents. For example, BTG International Limited (successor in interest to the Medical Research Council) recently has been issued a US patent, to which we have a license, with claims that might be construed to overlap with our issued humanization patents. While the significance of this new US patent is unclear, if it conflicts with our US patents or patent applications, we may become involved in patent office or legal proceedings to determine which company was the first to invent the technology and processes contained in the conflicting patents. These proceedings could be expensive, last several years and either prevent issuance of additional patents to us relating to humanization of antibodies or result in a significant reduction in the scope or invalidation of our patents. Any limitation would reduce our ability to negotiate or collect royalties or to negotiate future collaborative research and development agreements based on these patents.

The scope, enforceability and effective term of patents can be highly uncertain and often involve complex legal and factual questions. No consistent policy has emerged regarding the breadth of claims in biotechnology patents, so that even issued patents may later be modified or revoked by the relevant patent authorities or courts. Moreover, the issuance of a patent in one country does not assure the issuance of a patent with similar claims in another country, and claim interpretation and infringement laws vary among countries, so we are unable to predict the extent of patent protection in any country. In addition to seeking the protection of patents and licenses, we also rely upon trade secrets, know-how and continuing technological innovation that we seek to protect, in part, by confidentiality agreements with employees, consultants, suppliers and licensees. If these agreements are not honored, we might not have adequate remedies for any breach. Additionally, our trade secrets might otherwise become known or patented by our competitors.

We may require additional patent licenses in order to manufacture or sell our potential products.

Other companies, universities and research institutions may obtain patents that could limit our ability to use, import, manufacture, market or sell our products or impair our competitive position. As a result, we might be required to obtain licenses from others before we could continue using, importing, manufacturing, marketing, or selling our products. We may not be able to obtain required licenses on terms acceptable to us, if at all. If we do not obtain required licenses, we may encounter

significant delays in product development while we redesign potentially infringing products or methods or may not be able to market our products at all.

Celltech has been granted a European patent covering humanized antibodies, which we have opposed. At an oral hearing in September 2000, the Opposition Division of the European Patent Office decided to revoke this patent. Celltech has appealed that decision. Also, Celltech has a second issued divisional patent in Europe, which has claims that may be broader in scope than its first European patent, and which we have opposed. In addition, Celltech has a third divisional application currently drafted with broad claims directed towards humanized antibodies. We cannot predict whether Celltech will be able to successfully appeal the decision of the Opposition Division with respect to their first European patent or whether Celltech's second European patent will be modified or revoked in any future opposition proceedings, or whether it will be able to obtain the grant of a patent from the pending divisional application with claims broad enough to generally cover humanized antibodies. Celltech has also been issued a corresponding US patent that contains claims that may be considered broader in scope than their first European patent. We have entered into an agreement with Celltech providing each company with the right to obtain nonexclusive licenses for up to three antibody targets under the other company's humanization patents. Nevertheless, if our humanized antibodies were covered by Celltech's European or US patents and if we were to need more than the three licenses under those patents currently available to us under the agreement, we would be required to negotiate additional licenses under those patents or to significantly alter our processes or products. We might not be able to successfully alter our processes or products to avoid conflict with these patents or to obtain the required additional licenses on commercially reasonable terms, if at all.

In addition, if the Celltech US patent or any related patent applications conflict with our US patents or patent applications, we may become involved in proceedings to determine which company was the first to invent the products or processes contained in the conflicting patents. These proceedings could be expensive, last several years and either prevent issuance of additional patents to us relating to humanization of antibodies or result in a significant reduction in the scope or invalidation of our patents. Any limitation would reduce our ability to negotiate or collect royalties or to negotiate future collaborative research and development agreements based on these patents.

Lonza Biologics, Inc. has a patent issued in Europe to which we do not have a license that may cover a process that we use to produce our potential products. In addition, we do not have a license to an issued US patent assigned to Stanford University and Columbia University, which may cover a process we use to produce our potential products. We have been advised that an exclusive license has been previously granted to a third party, Centocor, Inc., under this patent. If our processes were found to be covered by either of these patents, we might be required to obtain licenses or to significantly alter our processes or products. We might not be able to successfully alter our processes or products to avoid conflicts with these patents or to obtain licenses on acceptable terms.

We are also aware of issued patents that could apply to one or more of our specific products. For example, a US patent recently issued to Advanced Biotherapy, Inc. has claims to the use of anti-gamma interferon antibodies to treat certain autoimmune diseases. The claims issued to Advanced Biotherapy, Inc., however, do not cover treatment of either Crohn's disease or psoriasis, the two indications currently being investigated in our HuZAF (anti-gamma interferon antibody) clinical trials. However, a European patent issued to Genentech in 1998 and a US patent issued in 2003 do have claims to the use of anti-gamma interferon inhibitors, including antibodies, for treatment of inflammatory bowel disease, including Crohn's disease. Additional examples include a recently issued US patent to Genentech claiming humanized antibodies with certain framework region substitutions that may cover some of our antibodies in development. As a result, we might be required to obtain licenses from others. We may not be able to obtain required licenses on terms acceptable to us, if at all. If we do not obtain required licenses, we may encounter significant delays in product development

while we redesign potentially infringing products or methods or we may not be able to market our products at all.

If our research efforts are not successful, we may not be able to effectively develop new products.

We are engaged in research activities intended to identify antibody product candidates that we may enter into clinical development. These research activities include efforts to discover and validate new targets for antibodies in our areas of therapeutic focus. We obtain new targets through our own drug discovery efforts and through in-licensing targets from institutions or other biotechnology or pharmaceutical companies. Our success in identifying new antibody product candidates depends upon our ability to discover and validate new targets, either through our own research efforts, or through in-licensing or collaborative arrangements. In order to increase the possibilities of identifying antibodies with a reasonable chance for success in clinical studies, part of our business strategy is to identify a number of potential targets. If we are unsuccessful in our research efforts to identify and obtain rights to new targets, our ability to develop new products could be harmed.

Clinical development is inherently uncertain and expense levels may fluctuate unexpectedly because we cannot accurately predict the timing and level of such expenses.

Our future success depends in large part upon the results of clinical trials designed to assess the safety and efficacy of our potential products, and the majority of our expenses are to support these activities. The completion of clinical trials often depends significantly upon the rate of patient enrollment, and our expense levels will vary depending upon the rate of enrollment. In addition, the length of time necessary to complete clinical trials and submit an application for marketing and manufacturing approvals varies significantly and is difficult to predict. The expenses associated with each phase of development depend upon the design of the trial. The design of each phase of trials depends in part upon results of prior phases, and additional trials may be needed at each phase. As a result the expense associated with future phases can not predicted in advance. Further, we may decide to terminate or suspend ongoing trials. Failure to comply with extensive FDA regulations may result in unanticipated delay, suspension or cancellation of a trial or the FDA's refusal to accept test results. The FDA may also suspend our clinical trials at any time if it concludes that the participants are being exposed to unacceptable risks. As a result of these factors, we cannot predict the actual expenses that we will incur with respect to trials for any of our potential products, and we expect that our expense levels will fluctuate unexpectedly in the future.

If we cannot successfully complete our clinical trials, we will be unable to obtain regulatory approvals required to market our products.

To obtain regulatory approval for the commercial sale of any of our potential products or to promote these products for expanded indications, we must demonstrate through preclinical testing and clinical trials that each product is safe and effective for use in indications for which approval is requested. We have had, and may in the future have, clinical setbacks that prevent us from obtaining regulatory approval for our potential products. We recently announced that we have discontinued additional clinical studies of the humanized anti-IL-4 antibody after data from a Phase IIa clinical trial of the antibody in steroid-naïve, mild/moderate asthma indicated that the anti-IL-4 antibody did not demonstrate clinical benefit compared to placebo at either of the dose levels tested. Earlier clinical trials such as Phase I and II trials generally are designed to gather information to determine whether further trials are appropriate and, if so, how such trials should be designed. As a result, data gathered in these trials may indicate that the endpoints selected for these trials are not the most relevant for purposes of assessing the product or the design of future trials. Moreover, success or failure in meeting such early clinical trial endpoints may not be dispositive of whether further trials are appropriate and, if so, how such trials should be designed.

Larger or later stage clinical trials may not produce the same results as earlier trials. Many companies in the pharmaceutical and biotechnology industries, including our company, have suffered significant setbacks in clinical trials, including advanced clinical trials, even after promising results had been obtained in earlier trials. As an example, we recently announced the discontinuance of studies aimed at the treatment of steroid-refractory graft-versus-host-disease following bone marrow transplantation with Nuvion after partial, preliminary results in a Phase II trial showed that Nuvion was not, on average, associated with a significant prolongation of survival relative to historic controls.

Even when a drug candidate shows evidence of efficacy in a clinical trial, it may be impossible to further develop or receive regulatory approval for the drug if it causes an unacceptable incidence or severity of side effects, or further development may be slowed down by the need to find dosing regimens that do not cause such side effects. For example, while Nuvion has shown biological activity in some patients in a Phase I/II trial for psoriasis, it has also caused a level of side effects that would be unacceptable in this patient population. Enrollment in this trial currently is suspended and our current plan is not to continue this trial and not to further develop Nuvion for psoriasis.

In addition, we may not be able to successfully commence and complete all of our planned clinical trials without significant additional resources and expertise because we have a relatively large number of potential products in clinical development. Additionally, regulatory review of our clinical trial protocols may cause us in some cases to delay or abandon our planned clinical trials. Our potential inability to commence or continue clinical trials, to complete the clinical trials on a timely basis or to demonstrate the safety and efficacy of our potential products, further adds to the uncertainty of regulatory approval for our potential products.

Our clinical trial strategy may increase the risk of clinical trial difficulties.

Research, preclinical testing and clinical trials may take many years to complete and the time required can vary depending on the indication being pursued and the nature of the product. We may at times elect to use aggressive clinical strategies in order to advance potential products through clinical development as rapidly as possible. For example, we may commence clinical trials without conducting preclinical animal efficacy testing where an appropriate animal efficacy testing

model does not exist, or we may conduct later stage trials based on limited early stage data. We anticipate that only some of our potential products may show safety and efficacy in clinical trials and some may encounter difficulties or delays during clinical development.

We may be unable to enroll sufficient patients to complete our clinical trials.

The rate of completion of our clinical trials, and those of our collaborators, is significantly dependent upon the rate of patient enrollment. Patient enrollment is a function of many factors, including:

- the size of the patient population
- perceived risks and benefits of the drug under study
- availability of competing therapies
- availability of clinical drug supply
- availability of clinical trial sites
- design of the protocol
- proximity of and access by patients to clinical sites
- patient referral practices of physicians

- eligibility criteria for the study in question, and
- efforts of the sponsor of and clinical sites involved in the trial to facilitate timely enrollment.

We may have difficulty obtaining sufficient patient enrollment or clinician support to conduct our clinical trials as planned, and we may need to expend substantial additional funds to obtain access to resources or delay or modify our plans significantly. These considerations may lead us to consider the termination of ongoing clinical trials or development of a product for a particular indication.

Our revenues from licensed technologies depend on the efforts and successes of our licensees.

In those instances where we have licensed rights to our technologies, the product development and marketing efforts and successes of our licensees will determine the amount and timing of royalties we may receive, if any. We have no assurance that any licensee will successfully complete the product development, regulatory and marketing efforts required to sell products. The success of products sold by licensees will be affected by competitive products, including potential competing therapies that are marketed by the licensee or others.

If our collaborations are not successful, we may not be able to effectively develop and market some of our products.

We have agreements with pharmaceutical and other companies to develop, manufacture and market certain of our potential products. In some cases, we are relying on our partners to manufacture such products, to conduct clinical trials, to compile and analyze the data received from these trials, to obtain regulatory approvals and, if approved, to market these licensed products. As a result, we may have little or no control over the manufacturing, development and marketing of these potential products and little or no opportunity to review clinical data prior to or following public announcement.

Our agreements can generally be terminated by our partners on short notice. A partner may terminate its agreement with us or separately pursue alternative products, therapeutic approaches or technologies as a means of developing treatments for the diseases targeted by us or our collaborative effort. Even if a partner continues to contribute to the arrangement, it may nevertheless determine not to actively pursue the development or commercialization of any resulting products. In these circumstances, our ability to pursue potential products could be severely limited.

Continued funding and participation by partners will depend on the timely achievement of our research and development objectives, the retention of key personnel performing work under those agreements and on each partner's own financial, competitive, marketing and strategic considerations. Such considerations include:

- the commitment of each partner's management to the continued development of the licensed products or technology;
- the relationships among the individuals responsible for the implementation and maintenance of the development efforts; and
- the relative advantages of alternative products or technology being marketed or developed by each partner or by others, including their relative patent and proprietary technology positions, and their ability to manufacture potential products successfully.

Our ability to enter into new relationships and the willingness of our existing partners to continue development of our potential products depends upon, among other things, our patent position with respect to such products. If we are unable to successfully maintain our patents we may be unable to collect royalties on existing licensed products or enter into additional agreements.

Our lack of experience in sales, marketing and distribution may hamper market introduction and acceptance of our products.

We intend to market and sell a number of our products either directly or through sales and marketing partnership arrangements with partners. To market products directly, we must either establish a marketing group and direct sales force or obtain the assistance of another company. We may not be able to establish marketing, sales and distribution capabilities or succeed in gaining market acceptance for our products. If we were to enter into co-promotion or other marketing arrangements with pharmaceutical or biotechnology companies, our revenues would be subject to the payment provisions of these arrangements and could largely depend on these partners' marketing and promotion efforts.

If we do not attract and retain key employees, our business could be impaired.

To be successful we must retain our qualified clinical, manufacturing, scientific and management personnel. If we are unsuccessful in retaining qualified personnel, our business could be impaired.

Manufacturing difficulties could delay commercialization of our products.

Of the products that we currently have in clinical development, Hoffmann-La Roche Inc. and its affiliates (Roche) are responsible for manufacturing Zenapax. We are responsible for manufacturing our other products for our own development. We intend to continue to manufacture potential products for use in preclinical and clinical trials using our manufacturing facility in accordance with standard procedures that comply with appropriate regulatory standards. The manufacture of sufficient quantities of antibody products that comply with these standards is an expensive, time-consuming and complex process and is subject to a number of risks that could result in delays and/or the inability to produce sufficient quantities of such products in a commercially viable manner. We and our collaborative partners have experienced some manufacturing difficulties. Product supply interruptions could significantly delay clinical development of our potential products, reduce third party or clinical researcher interest and support of proposed clinical trials, and possibly delay commercialization and sales of these products. Manufacturing difficulties can even interrupt the supply of marketed products, thereby reducing revenues and risking loss of market share. For example, in December 1999, Roche received a warning letter from the FDA regarding deficiencies in the manufacture of various products. Although the letter primarily related to products other than Zenapax, Roche has also experienced difficulties in the manufacture of Zenapax leading to interruptions in supply. If future manufacturing difficulties arise and are not corrected in a timely manner, Zenapax supplies could be interrupted, which could cause a delay or termination of our clinical trials of Zenapax in autoimmune disease and could force Roche to withdraw Zenapax from the market temporarily or permanently, resulting in loss of revenue to us. These occurrences could impair our competitive position.

We do not have experience in manufacturing commercial supplies of our potential products, nor do we currently have sufficient facilities to manufacture our potential products on a commercial scale. To obtain regulatory approvals and to create capacity to produce our products for commercial sale at an acceptable cost, we will need to improve and expand our existing manufacturing capabilities. We are currently improving our existing manufacturing plant in order to manufacture initial commercial supplies of certain products. Our ability to file for, and to obtain, regulatory approvals for such products, as well as the timing of such filings, will depend on our ability to successfully improve our existing manufacturing plant. We may be unable to do so, or to obtain regulatory approval or to successfully produce commercial supplies on a timely basis. Failure to do so could delay commercialization of our products.

In addition, we have begun construction of a new commercial manufacturing plant. As we implement these plans, we will incur substantial costs. Any construction or other delays could impair

our ability to obtain necessary regulatory approvals and to produce adequate commercial supplies of our potential products on a timely basis. Failure to do so could delay commercialization of some of our products and could impair our competitive position.

Our revenue may be adversely affected by competition and rapid technological change.

Potential competitors have developed and are developing human and humanized antibodies or other compounds for treating autoimmune and inflammatory diseases, transplantation, asthma and cancers. In addition, a number of academic and commercial organizations are actively pursuing similar technologies, and several companies have developed or may develop technologies that may compete with our SMART antibody technology. Competitors may succeed in more rapidly developing and marketing technologies and products that are more effective than our products or that would render our products or technology obsolete or noncompetitive. Our collaborative partners may also independently develop products that are competitive with products that we have licensed to them. This could reduce our revenues under our agreements with these partners.

Any product that we or our collaborative partners succeed in developing and for which regulatory approval is obtained must then compete for market acceptance and market share. The relative speed with which we and our collaborative partners can develop products, complete the clinical testing and approval processes, and supply commercial quantities of the products to the market compared to competitive companies will affect market success. In addition, the amount of marketing and sales resources and the effectiveness of the marketing used with respect to a product will affect its marketing success. For example, Novartis, which has a significant marketing and sales force directed to the transplantation market, has received approval to market Simulect, a product competitive with Zenapax, in the United States and Europe. Novartis has acquired a significant interest in Roche. We cannot predict the impact, if any, that this relationship may have on Roche's efforts to market Zenapax.

We may be unable to obtain or maintain regulatory approval for our products.

All of our products in development are subject to risks associated with applicable government regulations. The manufacturing, testing and marketing of our products are subject to regulation by numerous governmental authorities in the United States and other countries. In the United States, pharmaceutical products are subject to rigorous FDA regulation. Additionally, other federal, state and local regulations govern the manufacture, testing, clinical and non-clinical studies to assess safety and efficacy, approval, advertising and promotion of pharmaceutical products. The process of obtaining approval for a new pharmaceutical product or for additional therapeutic indications within this regulatory framework requires a number of years and the expenditure of substantial resources. Companies in the pharmaceutical and biotechnology industries, including us, have suffered significant setbacks in various stages of clinical trials, even in advanced clinical trials after promising results had been obtained in earlier trials.

As part of the regulatory approval process, we must demonstrate the ability to manufacture the pharmaceutical product. Accordingly, the manufacturing process and quality control procedures must conform to rigorous guidelines in order to receive FDA approval. Pharmaceutical product manufacturing establishments are subject to inspections by the FDA and local authorities as well as inspections by authorities of other countries. To supply pharmaceutical products for use in the United States, foreign manufacturing establishments must comply with these FDA approved guidelines. These foreign manufacturing

establishments are subject to periodic inspection by the FDA or by corresponding regulatory agencies in these countries under reciprocal agreements with the FDA. Moreover, pharmaceutical product manufacturing facilities may also be regulated by state, local and other authorities.

For the marketing of pharmaceutical products outside the United States, we and our collaborative partners are subject to foreign regulatory requirements and, if the particular product is manufactured in the United States, FDA and other US export provisions. Requirements relating to the manufacturing, conduct of clinical trials, product licensing, promotion, pricing and reimbursement vary widely in different countries. Difficulties or unanticipated costs or price controls may be encountered by us or our licensees or marketing partners in our respective efforts to secure necessary governmental approvals. This could delay or prevent us, our licensees or our marketing partners from marketing potential pharmaceutical products.

Both before and after approval is obtained, a biologic pharmaceutical product, its manufacturer and the holder of the BLA for the pharmaceutical product are subject to comprehensive regulatory oversight. The FDA may deny approval to a BLA if applicable regulatory criteria are not satisfied. Moreover, even if regulatory approval is granted, such approval may be subject to limitations on the indicated uses for which the pharmaceutical product may be marketed. Further, regulatory approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems with the pharmaceutical product occur following approval. In addition, under a BLA, the manufacturer continues to be subject to facility inspection and the applicant must assume responsibility for compliance with applicable pharmaceutical product and establishment standards. Violations of regulatory requirements at any stage may result in various adverse consequences, which may include, among other adverse actions, withdrawal of the previously approved pharmaceutical product or regulatory approvals and/or the imposition of criminal penalties against the manufacturer and/or BLA holder.

Manufacturing changes may result in delays in obtaining regulatory approval or marketing for our products.

Manufacturing of antibodies for use as therapeutics in compliance with regulatory requirements is complex, time-consuming and expensive. If we make changes in the manufacturing process, we may be required to demonstrate to the FDA and corresponding foreign authorities that the changes have not caused the resulting drug material to differ significantly from the drug material previously produced. This is particularly important if we want to rely on results of prior preclinical studies and clinical trials performed using the previously produced drug material. Depending upon the type and degree of differences between the newer and older drug material, we may be required to conduct additional animal studies or human clinical trials to demonstrate that the newly produced drug material is sufficiently similar to the previously produced drug material. We have made manufacturing changes and are likely to make additional manufacturing changes for the production of our products currently in clinical development. These manufacturing changes could result in delays in development or regulatory approvals or in reduction or interruption of commercial sales and could impair our competitive position.

Our business may be harmed if we cannot obtain sufficient quantities of raw materials.

We depend on outside vendors for the supply of raw materials used to produce our product candidates. Once a supplier's materials have been selected for use in our manufacturing process, the supplier in effect becomes a sole or limited source of that raw material due to regulatory compliance procedures. If the third party suppliers were to cease production or otherwise fail to supply us with quality raw materials and we were unable to contract on acceptable terms for these services with alternative suppliers, our ability to produce our products and to conduct preclinical testing and clinical trials of product candidates would be adversely affected. This could impair our competitive position.

We may be subject to product liability claims, and our insurance coverage may not be adequate to cover these claims.

We face an inherent business risk of exposure to product liability claims in the event that the use of products during research and development efforts or after commercialization results in adverse effects. This risk will exist even with respect to any products that receive regulatory approval for commercial sale. While we have obtained liability insurance for our products, it may not be sufficient to satisfy any liability that may arise. Also, adequate insurance coverage may not be available in the future at acceptable cost, if at all.

We may incur significant costs in order to comply with environmental regulations or to defend claims arising from accidents involving the use of hazardous materials.

We are subject to federal, state and local laws and regulations governing the use, discharge, handling and disposal of materials and wastes used in our operations. As a result, we may be required to incur significant costs to comply with these laws and regulations. We cannot eliminate the risk of accidental contamination or injury from these materials. In the event of such an accident, we could be held liable for any resulting damages and incur liabilities which exceed our resources. In addition, we cannot predict the extent of the adverse effect on our business or the financial and other costs that might result from any new government requirements arising out of future legislative, administrative or judicial actions.

Changes in the US and international health care industry could adversely affect our revenues.

The US and international health care industry is subject to changing political, economic and regulatory influences that may significantly affect the purchasing practices and pricing of pharmaceuticals. Cost containment measures, whether instituted by health care providers or imposed by government health administration regulators or new regulations, could result in greater selectivity in the purchase of drugs. As a result, third-party payors may challenge the price and cost effectiveness of our products. In addition, in many major markets outside the United States, pricing approval is required before sales can commence. As a result, significant uncertainty exists as to the reimbursement status of approved health care products.

We may not be able to obtain or maintain our desired price for our products. Our products may not be considered cost effective relative to alternative therapies. As a result, adequate third-party reimbursement may not be available to enable us to maintain prices sufficient to realize an appropriate return on our investment in product development. Also, the trend towards managed health care in the United States and the concurrent growth of organizations such as health maintenance organizations, as well as legislative proposals to reform health care or reduce government insurance programs, may all result in lower prices, reduced reimbursement levels and diminished markets for our products. These factors will also affect the products that are marketed by our collaborative partners.

Our common stock price is volatile and an investment in our company could decline in value.

Market prices for securities of biotechnology companies, including ourselves, have been highly volatile so that investment in our securities involves substantial risk. Additionally, the stock market from time to time has experienced significant price and volume fluctuations that may be unrelated to the operating performance of particular companies. The following are some of the factors that may have a significant effect on the market price of our common stock:

- developments or disputes as to patent or other proprietary rights;
- disappointing sales of approved products;
- approval or introduction of competing products and technologies;

- results of clinical trials;
- failures or unexpected delays in obtaining regulatory approvals or unfavorable FDA advisory panel recommendations;
- delays in manufacturing or clinical trial plans;
- fluctuations in our operating results;
- disputes or disagreements with collaborative partners;
- market reaction to announcements by other biotechnology or pharmaceutical companies;
- announcements of technological innovations or new commercial therapeutic products by us or our competitors;
- initiation, termination or modification of agreements with our collaborative partners;
- loss of key personnel;
- litigation or the threat of litigation;
- public concern as to the safety of drugs developed by us;
- sales of our common stock held by collaborative partners or insiders;
- comments and expectations of results made by securities analysts; and
- general market conditions.

If any of these factors causes us to fail to meet the expectations of securities analysts or investors, or if adverse conditions prevail or are perceived to prevail with respect to our business, the price of the common stock would likely drop significantly. A significant drop in the price of a company's common stock often leads to the filing of securities class action litigation against the company. This type of litigation against us could result in substantial costs and a diversion of management's attention and resources.

Legislative actions, potential new accounting pronouncements and higher insurance costs are likely to impact our future financial position or results of operations.

Future changes in financial accounting standards may cause adverse, unexpected revenue fluctuations and affect our financial position or results of operations. New pronouncements and varying interpretations of pronouncements have occurred with frequency and may occur in the future and we may make changes in our accounting policies in the future. Compliance with changing regulation of corporate governance and public disclosure may result in additional expenses. Changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new SEC regulations and Nasdaq National Market rules, are creating uncertainty for companies such as ours and insurance costs are increasing as a result of this uncertainty and other factors. We are committed to maintaining high standards of corporate governance and public disclosure. As a result, we intend to invest all reasonably necessary resources to comply with evolving standards, and this investment may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

Prior and future acquisitions could be difficult to integrate, disrupt our business, dilute stockholder value and harm our operating results.

In April 2003, we completed the acquisition of a privately owned company, Eos Biotechnology, Inc. We expect to continue to review opportunities to acquire other businesses, products or technologies that would complement our current products, expand the breadth of our markets or enhance our

technical capabilities, or that may otherwise offer growth opportunities. In our acquisition of Eos, we issued stock as all of the consideration, and we may be obligated to release additional shares from escrow. The issuance of stock in these and any future transactions will dilute stockholders' percentage ownership.

Other risks associated with acquiring the operations of other companies include:

- problems assimilating the purchased operations, technologies or products;
-

unanticipated costs associated with the acquisition;

- diversion of management's attention from our existing business;
- the potential loss of key collaborators of the acquired companies;
- lack of synergy, or the inability to realize expected synergies, resulting from the acquisition;
- adverse effects on existing relationships with other third party business partners;
- risks associated with entering markets in which we have no or limited prior experience; and
- potential loss of key employees of acquired organizations.

We cannot assure that we would be successful in overcoming problems encountered in connection with such acquisitions, and our inability to do so could significantly harm our business. In addition, to the extent that the economic benefits associated with such acquisitions diminish in the future, we may be required to record write downs of goodwill, intangible assets or other assets associated with such acquisitions.

RISKS RELATED TO THE NOTES

We have substantial outstanding indebtedness, which could adversely affect our financial condition and prevent us from fulfilling our obligations under the notes.

In connection with our sale of the notes in July 2003, we incurred $250.0 million of indebtedness, set to mature in August 2023. As adjusted to include the sale of the notes, our total consolidated long-term debt as of June 30, 2003 was $410.7 million and constituted approximately 43% of our total pro forma as adjusted capitalization as of such date. The indenture relating to the notes does not restrict our ability to incur additional indebtedness, including debt that is senior to the notes.

The degree to which we are leveraged could have important consequences to you, because:

- it could affect our ability to satisfy our obligations under the notes offered hereby;
- a substantial portion of our cash flow from operations will be required to be dedicated to interest and principal payments and may not be available for operations, working capital, capital expenditures, expansion, acquisition or general corporate or other purposes;
- our ability to obtain additional financing in the future may be impaired;
- we may be more highly leveraged than some of our competitors, which may place us at a competitive disadvantage;
- our flexibility in planning for, or reacting to, changes in our business and industry may be limited; and
- it may make us more vulnerable in the event of a downturn in our business, our industry or the economy in general.

Our ability to make payments on and, if necessary, to refinance our debt, including the notes, will depend on our ability to generate cash in the future. This, to a certain extent, is subject to general

economic, business, financial, competitive, legislative, regulatory and other factors that are beyond our control.

We cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available in an amount sufficient to enable us to pay our debt, including the notes, or to fund our other liquidity needs. We may need to refinance all or a portion of our debt, including the notes, on or before maturity. We cannot assure you that we would be able to refinance any of our debt, including the notes, on commercially reasonable terms or at all.

The notes are subordinated to our senior indebtedness and are effectively subordinated to all liabilities of our subsidiaries.

The notes are junior in right of payment to all of our existing and future senior indebtedness and are effectively subordinated to all liabilities of our subsidiaries, including trade payables. However, payment to the holders of the notes from the proceeds of the US government securities pledged to the trustee as security for the exclusive ratable benefit of the holders of the notes, as described under "Description of notes—Security," will not be subordinated to any senior indebtedness or subject to the subordination restrictions described in this prospectus. As of June 30, 2003, on a pro forma basis giving effect to our sale of the notes as if it had occurred as of June 30, 2003, we had approximately $150.0 million of consolidated indebtedness that would rank pari passu to the notes and our subsidiaries had approximately $10.7 million of indebtedness and other obligations that would effectively rank senior to the notes. The indenture governing the notes does not restrict the incurrence of senior indebtedness or other debt by us or our subsidiaries, nor does it restrict the issuance of liens on our property. None of our subsidiaries has guaranteed or otherwise become obligated with respect to the notes, and, as a result, the notes are effectively subordinated to all indebtedness and other obligations of our subsidiaries with respect to our subsidiaries' assets. By reason of such subordination, except as described in "Description of Notes—Security," in the event of the insolvency, bankruptcy, liquidation, reorganization, dissolution or winding up of our business, our assets will be available to pay the amounts due on the notes only after all of our senior indebtedness has been paid in full, and, therefore, there may not be sufficient assets remaining to pay amounts due on any or all of the notes then outstanding. See "Description of notes—Subordination of notes."

We may not have the ability to raise the funds to repurchase the notes on the repurchase date or to finance any repurchase offer required by the indenture.

On each of August 16, 2010, August 16, 2013 and August 16, 2018, holders may require us to repurchase all or a portion of their notes at 100% of their principal amount, plus any accrued and unpaid interest to, but excluding, such date. For notes to be repurchased on August 16, 2010, we must pay for the repurchase in cash, and we may pay for the repurchase of notes to be repurchased on August 16, 2013 and August 16, 2018, at our option, in cash, shares of our common stock or a combination of cash and shares of our common stock. In addition, if a repurchase event occurs (as defined in the indenture), each holder of the notes may require us to repurchase all or a portion of the holder's notes. We cannot assure you that there will be sufficient funds available for any required repurchases of these securities. In addition, the terms of any agreements related to borrowing which we may enter into from time to time may prohibit or limit our repurchase of notes or make our repurchase of notes an event of default under certain circumstances. If a repurchase event occurs at a time when a credit agreement prohibits us from purchasing the notes, we could seek the consent of the lender to purchase the notes or could attempt to refinance the debt covered by the credit agreement. If we do not obtain a consent, we may not purchase the notes. Our failure to purchase tendered notes would constitute an event of default under the indenture, which might also constitute a default under the terms of our other debt. In such circumstances, or if a repurchase event would constitute an event of default under our senior indebtedness, the subordination provisions of the indenture may limit or

prohibit payments to you. See "Description of notes—Purchase of notes by us at the holder's option" and "Description of notes—Holders may require us to repurchase their notes upon a repurchase event."

The term "repurchase event" is limited to certain specified transactions and may not include other events that might harm our financial condition or the value of our securities. Our obligation to purchase the notes upon a repurchase event would not necessarily afford holders of notes protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us. See "Description of notes—Purchase of notes by us at the holder's option" and "Description of notes—Consolidation, merger and sale of assets."

We have made only limited covenants in the indenture, which may not protect your investment if we experience significant adverse changes in our financial condition or results of operations.

The indenture governing the notes does not:

- require us to maintain any financial ratios or specified levels of net worth, revenues, income, cash flow or liquidity and, therefore, does not protect holders of the notes in the event that we experience significant adverse changes in our financial condition or results of operations;
- limit our ability or the ability of any of our subsidiaries to incur additional indebtedness that is senior to or equal in right of payment to the notes;
- restrict our ability or that of our subsidiaries to issue securities that would be senior to the common stock of our subsidiaries;
- restrict our ability to pledge our assets or those of our subsidiaries; or
- restrict our ability to make investments or to pay dividends or make other payments in respect of our common stock or other securities ranking junior to the notes.

Therefore, you should not consider the covenants contained in the indenture as a significant factor in evaluating whether we will be able to comply with our obligations under the notes.

Volatility in the market price of our common stock may adversely affect the trading price of the notes.

The market price of our common stock has experienced, and may continue to experience, substantial volatility. Over the past eight quarters, the market price of our common stock has ranged from a low of $6.85 per share in March 2003 to a high of $45.46 per share (on a split-adjusted basis) in June 2001.

Because the notes are convertible into shares of our common stock, volatility in the price of our common may adversely affect the trading price of the notes. In addition, holders who receive common stock upon conversion of their notes will also be subject to the risk of volatility and depressed prices of our common stock.

Many factors, including many over which we have no control, may have a significant impact on the market price of our common stock, including, among other things:

- current events affecting the political, economic and social situation in the United States and other countries where we operate;
- trends in our industry and the market in which we operate;
- changes in financial estimates and recommendations by securities analysts;
- acquisitions and financings;

- quarterly variations in operating results;
- the operating and stock price performance of other companies that investors may deem comparable; and
- purchases or sales of blocks of our common stock.

In addition, the stock market in recent years has experienced extreme price and trading volume fluctuations that often have been unrelated or disproportionate to the operating performance of individual companies. These broad market fluctuations may adversely affect the price of our stock regardless of our operating performance. Sales of substantial amounts of shares of our common stock in the public market after this offering, including issuances by us, or the perception that

those sales or issuances may occur, could cause the market price of our common stock to decline. Furthermore, if holders elect to require us to purchase their notes on August 16, 2013 or August 16, 2018 and we elect to pay all or a portion of the purchase price in shares of our common stock, this may cause substantial dilution to our stockholders and may depress the price of our common stock and the notes. These factors, among others, could significantly depress the trading price of the notes and the price of the our common stock issued upon conversion of the notes.

You may not be able to resell the notes or the common stock issuable upon conversion.

We have agreed to keep the shelf registration statement, of which this prospectus constitutes a part, continuously effective under the Securities Act until such time as these are no longer any registrable securities covered thereby. Although we are obligated to register resales of the notes and the common stock issuable upon the conversion of the notes under the Securities Act for a limited period of time, we cannot assure you as to the ability of holders to sell their notes or the common stock issuable upon conversion of the notes or that the registration statement will be available to holders at all times. In addition, selling security holders may be subject to certain restrictions and potential liability under the Securities Act.

Illiquidity and the absence of a public market for the notes could cause purchasers of the notes to be unable to resell them for an extended period of time.

There is no established trading market for the notes. We have been informed by the initial purchasers that they intend to make a market in the notes after the offering is completed. The initial purchasers may cease their market-making at any time without notice. Although the notes are designated for trading on The PORTAL Market, an active trading market for the notes may not develop or, if such market develops, it could be very illiquid. The relatively small size of the original issue ($250.0 million) could have a negative impact on the liquidity of the notes.

Holders of the notes may experience difficulty in reselling, or an inability to sell, the notes. If a market for the notes develops, any such market may be discontinued at any time. If a trading market develops for the notes, future trading prices of the notes will depend on many factors, including, among other things, the price of our common stock into which the notes are convertible, prevailing interest rates, our operating results, liquidity of the issue and the market for similar securities. Depending on the price of our common stock into which the notes are convertible, prevailing interest rates, liquidity of the issue, the market for similar securities and other factors, including our financial condition, the notes may trade at a discount from their principal amount.

USE OF PROCEEDS

We will not receive any proceeds from the sale by an securityholders of the notes or the shares of our common stock issuable upon conversion of the notes. See "Selling Securityholders."

PRICE RANGE OF COMMON STOCK

Our common stock trades on The Nasdaq National Market under the symbol "PDLI." The following table sets forth for the periods indicated the high and low closing bid prices for our common stock as quoted on The Nasdaq National Market. On October 9, 2001, we effected a two-for-one stock split of our common stock in the form of a dividend of one share of Protein Design Labs, Inc. common stock for each share held at the close of business on September 18, 2001. Our stock began trading on a split-adjusted basis as of October 10, 2001.

	High	Low
2001		
First Quarter	$ 42.25	$ 17.38
Second Quarter	45.20	17.47
Third Quarter	42.09	20.48
Fourth Quarter	40.56	23.43
2002		
First Quarter	$ 31.48	$ 14.93
Second Quarter	20.02	8.95
Third Quarter	13.54	8.30
Fourth Quarter	9.82	7.43
2003		
First Quarter	$ 9.90	$ 6.98
Second Quarter	18.91	7.49
Third Quarter (through September 10)	15.77	10.81

On September 10, 2003, the closing bid price quoted on The Nasdaq National Market for the common stock was $13.31 per share. On September 8, 2003, there were approximately 258 holders of record of our common stock. Because many of these shares are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

DIVIDEND POLICY

We have never paid any cash dividends on our capital stock and we do not anticipate paying any cash dividends in the foreseeable future.

RATIO OF EARNINGS TO FIXED CHARGES

The following summary is qualified by the more detailed information and historical consolidated financial statements, including the notes to those financial statements, appearing in the computation table found in Exhibit 12.1, appearing elsewhere, or incorporated by reference in this prospectus.

	Years Ended					Six Months Ended June 30, 2003
	1998	1999	2000	2001	2002	
Ratio of earnings to fixed charges	N/A	N/A	1.07	1.26	N/A	N/A

DESCRIPTION OF NOTES

We issued the 2.75% Convertible Subordinated Notes due 2023 under an indenture dated as of July 14, 2003, between us and J.P. Morgan Trust Company, National Association, as trustee. The following summary of the terms of the notes, the indenture and the registration rights agreement does not purport to be complete and is subject, and qualified in its entirety by reference, to the detailed provisions of these documents. We will provide copies of the indenture and the registration rights agreement to prospective investors upon request, and they are also available for inspection at the office of the trustee. Those documents, and not this description, define your legal rights as a holder of the notes. For purposes of this summary, the terms "Protein Design Labs," "we," "us" and "our" refer only to Protein Design Labs, Inc. and not to any of its subsidiaries. References to "interest" shall be deemed to include "liquidated damages," unless the context otherwise requires.

GENERAL

Except as described under "—Security," the notes constitute unsecured indebtedness and are subordinated in right of payment to our senior indebtedness as described under "—Subordination of notes." The notes are convertible into our common stock as described under "—Conversion Rights." Under the circumstances described under "—Holders may require us to repurchase their notes upon a repurchase event" and "—Purchase of notes by us at the holder's option," a holder may require us to purchase notes prior to maturity or redemption. The notes will be limited to $250,000,000 aggregate principal amount. Interest on the notes will be payable semi-annually on February 16 and August 16 of each year, with the first interest payment to be made on February 16, 2004, at the rate of 2.75% per annum, to the persons who are registered holders of the notes at the close of business on the preceding February 1 and August 1, respectively. Unless previously redeemed, repurchased or converted, the notes will mature on August 16, 2023. If any payment date with respect to the notes falls on a day that is not a business day, we will make that payment on the next succeeding business day. The payment made on the next succeeding business day will be treated as though it had been made on the original payment date, and no interest will accrue on the payment for the additional period of time.

The notes may be issued only in denominations of $1,000 and integral multiples thereof. Payments in respect of the notes represented by the global securities will be made by wire transfer of immediately available funds to the accounts specified by the holders of the global securities. With respect to any notes subsequently issued in certificated form, we will make payments by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a check to each holder's registered address.

Holders may convert notes at the office of the conversion agent and may present notes for registration of transfer at the office of the registrar for the notes. The conversion agent and registrar for the notes initially will be the trustee. Interest on the notes will be paid on the basis of a 360-day year of twelve 30-day months. No sinking fund is provided for the notes. The indenture does not contain any financial covenants and does not limit our ability to incur additional indebtedness (including senior indebtedness), pay dividends or repurchase our securities. In addition, the indenture does not provide any protection to holders of notes in the event of a highly leveraged transaction or a change in control, except, and only to the limited extent, as described under "—Holders may require us to repurchase their notes upon a repurchase event" and "—Consolidation, merger and sale of assets."

SECURITY

On July 14, 2003, the closing date of the offering, we purchased US government securities in an aggregate amount equal to $20.7 million which is sufficient to provide for payment in full of the first six scheduled interest payments on the notes when due. The US government securities have been pledged to the trustee as security for the notes and for the exclusive ratable benefit of the holders of

the notes (and not for the benefit of our other creditors) and will be held and invested by the trustee in accordance with the terms of the pledge agreement that we have entered into with the trustee. We refer to payments on the notes derived from the pledged US government securities as "permitted payments" in this prospectus. The US government securities have been pledged to the trustee for the exclusive ratable benefit of the holders of the notes, which is held by the trustee in a pledge account in accordance with a pledge agreement dated as of July 14, 2003 between Protein Design Labs and J.P. Morgan Trust Company in its capacity as trustee and a control agreement dated as of July 14, 2003 by and among Protein Design Labs and J.P. Morgan in its capacity as trustee and J.P. Morgan Chase Bank in its capacity as securities intermediary and depository bank. Immediately prior to each of the first six interest payment dates, the trustee will release from the pledge account proceeds sufficient to pay interest then due on the notes. We may also make additional payments to the trustee to ensure that sufficient funds are available to pay interest then due on the notes, if necessary. A failure to pay interest on the notes when due through the first six scheduled interest payment dates will constitute an event of default under the indenture. The pledged US government securities and the pledge account will also secure, to the extent available, the repayment of the principal amount on the notes. If prior to August 16, 2006:

- an event of default under the notes or the indenture occurs and is continuing; and
- the trustee or the holders of not less than 25% in aggregate principal amount of the notes then outstanding accelerate the notes by declaring the principal amount of the notes plus accrued and unpaid interest to be immediately due and payable (by written consent, at a meeting of holders of the notes or otherwise), except for the occurrence of an event of default relating to our bankruptcy, insolvency or reorganization, or that of any of our significant subsidiaries, upon which the notes will be accelerated automatically,

then the proceeds from the pledged US government securities will be promptly released for payment to the holders of the notes, subject to the automatic stay provisions of bankruptcy law, if applicable. Distributions from the pledge account will be applied:

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first, to any accrued and unpaid interest on the notes; and

- second, to the extent available, to the repayment of a portion of the principal amount of the notes.

If an event of default is not cured prior to the acceleration of the notes by the trustee or holders of the notes referred to above, the trustee and the holders of the notes will be able to accelerate the notes as a result of that event of default. For example, if the first two interest payments were made when due but the third interest payment was not made when due and the holders of the notes promptly exercised their right to declare the principal amount of the notes to be immediately due and payable, then, assuming the automatic stay provisions of bankruptcy law are not applicable and the proceeds of the pledged US government securities are promptly distributed from the pledge account:

- an amount equal to the interest payment due on the third interest payment would be distributed from the pledge account as payment for accrued interest; and

- the balance of the proceeds of the pledge account would be distributed as payment for a portion of the principal amount of the notes.

In addition, holders would have an unsecured claim against us for the remainder of the principal amount of their notes.

Once we make the first six scheduled interest payments on the notes, all of the remaining pledged US government securities and cash, if any, will be released to us from the pledge account, and the notes will thereafter be unsecured.

CONVERSION RIGHTS

Holders of notes are entitled, at any time after the initial issuance of the notes and before the close of business on the date of maturity, subject to prior repurchase, to convert the notes or portions thereof (if the portions are $1,000 or whole multiples thereof) into 49.6618 shares of our common stock per $1,000 of principal amount of notes, subject to adjustment as described below. This rate results in an initial conversion price of approximately $20.14 per share. We will not issue fractional shares of common stock upon conversion of notes and instead will pay a cash adjustment based on the market price of the common stock on the last trading day prior to the conversion date.

If a note is converted after the close of business on a record date for the payment of interest and prior to the next succeeding interest payment date, notes submitted for conversion must be accompanied by funds equal to the interest payable to the registered holder on the interest payment date on the principal amount of such notes submitted for conversion. We will then make the interest payment due on the interest payment date to the registered holder of the note on the record date. Notwithstanding the foregoing, any notes submitted for conversion need not be accompanied by any funds if they have been called for redemption.

As soon as practicable following the conversion date, we will deliver through the conversion agent a certificate for the number of full shares of common stock into which any note is converted, together with any cash payment for fractional shares. For a discussion of the tax treatment of a holder receiving common shares upon surrendering notes for conversion, see "Certain US federal tax considerations—US holders—Conversion of the notes" and "Certain US federal tax considerations—Non-US holders—Conversion of the notes." We will adjust the conversion rate for:

- dividends or distributions on shares of our common stock payable in shares of our common stock;

- subdivisions, combinations or certain reclassifications of our common stock;

- distributions to all or substantially all holders of our common stock of certain rights or warrants entitling them for a period of not more than 60 days to purchase common stock or securities convertible into common stock at a price per share less than the current market price at the time (provided, that the conversion rate will be readjusted to the extent the rights or warrants are not exercised prior to their expiration);

- dividends or other distributions to all or substantially all holders of our common stock of shares of capital stock other than our common stock, evidences of indebtedness or other assets (other than cash dividends) or the dividend or other distribution to all or substantially all holders of our common stock of certain rights or warrants (other than those covered above) to purchase our securities; provided, however, that if these rights or warrants are only exercisable upon the occurrence of specified triggering events, then the conversion rate will not be adjusted until the triggering events occur;

- cash dividends or distributions to all or substantially all holders of our common stock; or

- distributions of cash or other consideration by us or any of our subsidiaries in respect of a tender offer or exchange offer for our common stock, where such cash and the value of any such other consideration per share of our common stock exceeds the closing sale price per share of our common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer.

If we distribute cash in accordance with the fifth bullet point above, then the conversion rate will be increased so that it equals the rate determined by multiplying the conversion rate in effect on the record date with respect to the cash distribution by a fraction whose numerator is the 10-day average closing sales price of a share of our common stock on the record date and whose denominator is the

same price per share on the record date less the amount of the distribution. We will not adjust the conversion rate, however, if we make provision for holders of notes to participate in the transaction without conversion.

No adjustment in the effective conversion rate will be required unless the adjustment would require a change of at least 1% in the then effective conversion price; provided that any adjustment that would otherwise be required to be made will be carried forward and taken into account in any subsequent adjustment.

We may at any time increase the conversion rate by any amount for any period of time, provided that the then effective conversion price is not less than the par value of a share of our common stock, the period during which the increased rate is in effect is at least 20 days or such longer period as may be required by law and the increased rate is irrevocable during such period. We may also increase the conversion rate to avoid or diminish income tax to holders of our common stock in connection with a dividend or distribution of stock or similar event. We are required to give at least 15 days' prior notice of any increase in the conversion rate.

If we reclassify our common stock or are party to a consolidation, merger or binding share exchange, or a transaction involving the sale or other conveyance of all or substantially all of our assets, pursuant to which our common stock is converted into cash, securities or other property, then at the effective time of the transaction, the right to convert a note into common stock will be 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 note immediately prior to the transaction. This calculation will be based on the assumption that the holder would not have exercised any rights of election that the holder would have had as a holder of common stock to select a particular type of consideration. Any such change could substantially lessen or eliminate the value of the conversion privilege associated with the notes in the future. For example, if we were acquired in a cash merger, each note would be convertible into cash and would no longer be convertible into securities whose value would vary depending on our future prospects and other factors.

There is no precise, established definition of the term "all or substantially all of our assets" under applicable law. Accordingly, there may be uncertainty as to whether the foregoing provision would apply to a sale or other conveyance of less than all of our assets.

If we implement a stockholders' rights plan, we will be required under the indenture to provide that the holders of notes will receive the rights upon conversion of the notes, whether or not these rights were separated from the common stock prior to conversion. Except as stated above, the number of shares issuable on conversion will not be adjusted for the issuance of common stock or any securities convertible into or exchangeable for common stock, or carrying the right to purchase any of the foregoing.

In the event of:

- a taxable distribution to holders of shares of common stock which results in an adjustment of the conversion rate; or
- an increase in the conversion rate at our discretion,

the holders of the notes may, in certain circumstances, be deemed to have received a distribution subject to US federal income tax as a dividend. See "Certain US federal tax considerations—US holders—Adjustment to conversion price." A note for which a holder has delivered a notice, as described below, requiring its repurchase may be surrendered for conversion only if such notice is withdrawn in accordance with the indenture.

REDEMPTION OF NOTES AT OUR OPTION

Prior to August 16, 2008, we cannot redeem the notes. On or after August 16, 2008, we will have the option to redeem the notes, in whole or in part, on any date not less than 30 nor more than 60 days after the mailing of a redemption notice to each holder of notes to be redeemed at the holder's address in the security register for a price equal to 100% of the principal amount of the notes to be redeemed plus any accrued and unpaid interest to, but excluding, the redemption date. However, if a redemption date is an interest payment date, the semi-annual payment of interest becoming due on such date will be payable to the holder of record on the relevant record date and the redemption price will not include such interest payment.

If we will redeem less than all of the outstanding notes, the trustee will select the notes to be redeemed in integral multiples of $1,000 principal amount by lot, on a pro rata basis or in accordance with any other method the trustee considers fair and appropriate. If a portion of a holder's notes is selected for partial redemption and the holder converts a portion of the notes, the converted portion shall be deemed to be the portion selected for redemption.

PURCHASE OF NOTES BY US AT THE HOLDER'S OPTION

On each of August 16, 2010, August 16, 2013 and August 16, 2018 (each, a "purchase date"), a holder shall have the option to require us to purchase, at a price equal to 100% of the principal amount of the notes to be purchased, plus any accrued and unpaid interest to, but excluding, the purchase date, all or a portion of such holder's outstanding notes for which the holder has given, and not withdrawn, a written purchase notice, subject to certain additional conditions. Holders may submit their written purchase notice to the paying agent at any time from the opening of business on the date that is 20 business days prior to the purchase date until the close of business on the business day immediately preceding the purchase date. We will pay the purchase price for notes to be purchased on August 16, 2010 in cash. We will pay the purchase price for notes to be purchased on August 16, 2013 and August 16, 2018 in cash, shares of our common stock or a combination of cash and shares of our common stock, solely at our option, provided that we will pay any accrued and unpaid interest in cash. The number of shares of our common stock a holder will receive will equal the portion of the purchase price to be paid in shares of our common stock divided by the average of the closing sale price of our common stock for the 10 trading days immediately preceding, and including, the third business day immediately preceding the purchase date, subject to the provisions of the indenture. The closing sale price of our common stock used in this calculation will be adjusted appropriately in the event of a stock split, stock dividend or a subdivision or combination of our common stock or a similar event that occurs during such 10 trading days. Because this average closing sale price of our common stock is determined before the purchase date, holders bear the market risk that our common stock will decline in value between the date this average sale price is determined and the purchase date. Upon determining the actual number of shares of our common stock to be paid to purchase the notes, we will disseminate a press release through PR Newswire containing this information or publish the information on our website or through such other public medium as we may use at that time.

Notwithstanding the above, we may not pay the purchase price in shares of our common stock, or a combination of cash and shares of our common stock, unless we satisfy certain conditions, as provided in the indenture, before the close of business on the business day immediately preceding the purchase date, including the following:

- registering the shares of our common stock to be issued as payment for the notes to be purchased under the Securities Act;
- qualifying the shares of our common stock to be issued as payment for the notes to be purchased under applicable state securities laws, if necessary; and

- listing the shares of our common stock to be issued as payment for the notes to be purchased on a US national securities exchange or qualifying the shares for quotation on The Nasdaq National Market.

For a discussion of the tax treatment of a holder receiving cash, shares of our common stock or a combination of cash and shares of our common stock, see "Certain US federal tax considerations."

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; and
- the procedures that holders must follow to require us to purchase their notes.

With respect to notes to be purchased on August 16, 2013 or August 16, 2018, the notice shall also state:

- whether we will pay the purchase price of the notes in cash, shares of our common stock or a combination of cash and shares of our common stock, specifying the percentages of each; and
- if we elect to pay with shares of our common stock, the method of calculating the price of our common stock.

The purchase notice of holders electing to require us to purchase notes shall state:

- the certificate numbers of the holder's notes to be delivered for purchase;
- the portion of the principal amount of notes to be purchased, which must be an integral multiple of $1,000; and
- that we are to purchase the notes pursuant to the applicable provisions of the notes.

With respect to notes to be purchased on August 16, 2013 or August 16, 2018, the purchase notice shall also state:

- in the event we elect, pursuant to our notice to holders described above, to pay the purchase price in shares of our 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 shares of our common stock is not satisfied before the close of business on the business day immediately preceding the purchase date, whether the holder elects:
- to withdraw the purchase notice as to some or all of the notes to which it relates, stating such amount to be so withdrawn, which amount must be an integral multiple of $1,000; or
- to receive cash in respect of the entire purchase price for all notes subject to the purchase notice.

If the holder fails to indicate the holder's choice with respect to the election described in the bullet point above, the holder will be deemed to have elected to receive cash in respect of the entire purchase price for all notes subject to the purchase notice.

A holder may withdraw a purchase notice 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 being withdrawn, which must be an integral multiple of $1,000;
- the certificate numbers of the notes being withdrawn; and

- the principal amount, if any, of the notes that remain subject to the purchase notice.

In connection with any purchase offer, we will, if required:

- 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 a Schedule TO or any other required schedule under the Exchange Act.

Payment of the purchase price for a note for which a purchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the note, together with necessary endorsements, to the paying agent at any time after delivery of the purchase notice. Payment of the purchase price for the note will be made as soon as practicable but in no event more than three business days after the later of the purchase date or the date the note is delivered.

If the paying agent holds money and/or shares of our common stock, as applicable, sufficient to pay a note's purchase price on the purchase date in accordance with the indenture, then, immediately after the purchase date, the note will cease to be outstanding and cash interest on such note will cease to accrue, whether or not the note is delivered to the paying agent. Thereafter, all other rights of the note's holder shall terminate, other than the right to receive the purchase price upon delivery of the note.

We cannot assure you that we would have the financial resources, or would be able to arrange for financing, to pay the purchase price for all notes delivered by holders seeking to exercise the purchase right. Further, our payment of the purchase price could be prohibited under the indenture's subordination provisions or the terms of our existing or future indebtedness. Our failure to purchase the notes when required would result in an event of default with respect to the notes. Such event of default may, in turn, cause a default under our senior indebtedness. For more details, see "Subordination of notes."

We will not be able to purchase the notes at the holders' option if an event of default exists with respect to the notes, other than a default in the payment of the purchase price with respect to such notes.

HOLDERS MAY REQUIRE US TO REPURCHASE THEIR NOTES UPON A REPURCHASE EVENT

If a repurchase event (as described below) occurs, each holder will have the right, at its option, subject to the terms and conditions of the indenture, to require us to repurchase for cash all or any portion of the holder's notes in integral multiples of $1,000 principal amount, at a price equal to 100% of the principal amount of the notes tendered, plus any accrued and unpaid interest to, but excluding, the repurchase date. We will be required to repurchase the notes no later than 30 days after notice of a repurchase event has been mailed as described below. We refer to this date as the "repurchase date."

Within 15 days after the occurrence of a repurchase event, we must mail to the trustee and to all holders of notes at their addresses shown in the register of the registrar and to beneficial owners as required by applicable law a notice regarding the repurchase event, which notice must state, among other things:

- the events causing the repurchase event;
- the date of such repurchase event;
- the last date on which a holder may exercise the repurchase right;
- the repurchase price;
- the repurchase date;

- the name and address of the paying agent and the conversion agent;
- the conversion rate and any adjustments to the conversion rate that will result from the repurchase event;
- that notes with respect to which a repurchase notice is given by a holder may be converted, if otherwise convertible, only if the repurchase notice has been withdrawn in accordance with the indenture; and
- the procedures that holders must follow to exercise these rights.

To exercise this right, the holder must transmit to the paying agent a written repurchase notice, and the paying agent must receive it no later than the close of business on the business day immediately preceding the repurchase date. The notice must state:

- the certificate numbers of the notes to be delivered by the holder, if applicable;
- the portion of the principal amount of notes to be repurchased, which portion must be an integral multiple of $1,000; and
- that such notes are being tendered for repurchase pursuant to the repurchase event repurchase provisions of the indenture.

A holder may withdraw any repurchase notice by delivering to the paying agent a written notice of withdrawal prior to the close of business on the business day immediately preceding the repurchase date. The notice of withdrawal must state:

- the principal amount of notes being withdrawn, which must be an integral multiple of $1,000;
- the certificate numbers of the notes being withdrawn, if applicable; and
- the principal amount, if any, of the notes that remain subject to a repurchase notice.

Our obligation to pay the repurchase price for a note for which a repurchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the note, together with necessary endorsements, to the paying agent at any time after the delivery of such repurchase notice. We will cause the repurchase price for such note to be paid promptly following the later of the repurchase date or the time of delivery of such note.

If the paying agent holds money sufficient to pay a note's repurchase price on the repurchase date in accordance with the indenture, then, immediately after the repurchase date, the note will cease to be outstanding, and interest on such note will cease to accrue, whether or not the note is delivered to the paying agent. Thereafter, all other rights of the note's holder shall terminate, other than the right to receive the repurchase price upon delivery of the note.

A "repurchase event" shall be deemed to have occurred upon the occurrence of either a "change in control" or a "termination of trading."

A "change in control" will be deemed to have occurred at such time as:

- any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% or more of the total voting power of all classes of our capital stock entitled to vote generally in the election of directors ("voting stock");
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at any time the following persons cease for any reason to constitute a majority of our board of directors:

- individuals who on the issue date of the notes constituted our board of directors; and

- any new directors whose election to our board of directors or whose nomination for election by our stockholders was approved by at least a majority of the directors then still in office who were directors on the issue date of the notes or whose election or nomination for election was previously so approved;

- we consolidate with, or merge with or into, another person or any person consolidates with, or merges with or into, us, in any such event other than pursuant to a transaction in which the persons that "beneficially owned," directly or indirectly, the shares of our voting stock immediately prior to such transaction, "beneficially own," directly or indirectly, immediately after such transaction, shares of our voting stock representing at least a majority of the total voting power of all outstanding classes of voting stock of the continuing or surviving corporation;

- the sale, lease, transfer or other conveyance or disposition of all or substantially all of our assets or property to any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act; or

- we are liquidated or dissolved, or our stockholders approve any plan or proposal for our liquidation or dissolution.

However, a change in control will not be deemed to have occurred if:

- the closing sales price of our common stock for each of any five trading days during the 10 trading days immediately preceding the change in control is equal to at least 105% of the conversion price in effect on such trading day;

- in the case of a merger or consolidation, all of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' or appraisal rights) in the merger or consolidation constituting the change in control consists of common stock traded on a US national securities exchange or quoted on The Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such change in control) and as a result of such transaction or transactions the notes become convertible solely into such common stock; or

- in the case of a qualifying foreign merger (as described under "—Consolidation, merger and sale of assets"), all of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' or appraisal rights) in the qualifying foreign merger constituting the change in control consists of common stock or American Depository Shares representing such common stock traded on a US national securities exchange or quoted on The Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such change in control) and as a result of such transaction or transactions the notes become convertible solely into such common stock or American Depository Shares.

There is no precise, established definition of the term "all or substantially all of our assets" under applicable law. Accordingly, there may be uncertainty as to whether the foregoing provisions would apply to a sale or other conveyance of less than all of our assets.

A "termination of trading" shall occur if our common stock (or other common stock into which the notes are then convertible) is neither listed for trading on a US national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States. A "termination of trading" shall not be deemed to have occurred solely by reason of our having engaged in a qualifying foreign merger, so long as, immediately after such merger, the holders shall have the right to convert their notes solely into common stock or American Depository Shares representing such common stock traded on a US national securities exchange or quoted on The Nasdaq

National Market, until such time as the common stock or American Depository Shares on such common stock into which the notes are solely convertible are no longer so traded or quoted.

We cannot assure you that we would have the financial resources, or would be able to arrange financing, to pay the repurchase price for all notes delivered by holders seeking to exercise the repurchase right. Further, our payment of the repurchase price could be prohibited under the indenture's subordination provisions or the terms of our existing or future indebtedness. Our failure to repurchase the notes when required would result in an event of default with respect to the notes, whether or not such repurchase is permitted by the subordination provisions. Such event of default may, in turn, cause a default under our senior indebtedness. For more details, see "Subordination of notes." We will not be able to repurchase the notes for cash at the holders' option if an event of default exists with respect to the notes, other than a default in the payment of the repurchase price with respect to such notes.

In connection with any repurchase event offer, we will to the extent applicable:

- 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 a Schedule TO or any other required schedule under the Exchange Act.

The notes' repurchase feature would not necessarily protect holders of the notes from the adverse effects on them of highly leveraged or other transactions involving us. In addition, the repurchase feature of the notes may in certain circumstances make more difficult or discourage our takeover. We are not aware, however, of any specific effort to accumulate shares of our common stock or to obtain control of us by means of a merger, tender offer, solicitation or otherwise.

SUBORDINATION OF NOTES

The payment of principal of, and premium, if any, and liquidated damages, if any, and interest on, the notes, other than permitted payments, is subordinated in right of payment, as set forth in the indenture, to the prior payment in full in cash or cash equivalents of all senior indebtedness, whether outstanding on the date of the indenture or thereafter incurred. Except for permitted payments, the notes also are effectively subordinated to all indebtedness and other liabilities of our subsidiaries, including trade payables and lease obligations, if any.

In the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding, relating to us or to our assets, or any liquidation, dissolution or other winding-up of us, whether voluntary or involuntary, or any assignment for the benefit of our creditors or other marshaling of our assets or liabilities, the senior indebtedness must be paid in full in cash or cash equivalents, or provision must be made for such payment in full, before any payment or distribution of any kind or character on account of principal of, or premium, if any, or liquidated damages, if any, or interest on, the notes is made.

No payment or distribution of any of our assets of any kind or character, whether in cash, property or securities, other than permitted payments, may be made by us or on our behalf on account of the principal of, or premium, if any, liquidated damages, if any, or interest on, the notes or on account of the redemption, repurchase or other acquisition of notes, upon the occurrence of any payment default in respect of designated senior indebtedness until such payment default has been cured or waived in writing or has ceased to exist or such designated senior indebtedness has been discharged or paid in full in cash or cash equivalents. A "payment default" means a default in payment, whether at scheduled maturity, upon a scheduled installment, by acceleration or otherwise, of principal of, or premium, if any, or interest on, designated senior indebtedness beyond any applicable grace period. "Designated senior indebtedness" means our obligations under any particular senior indebtedness that expressly provides that it is "designated senior indebtedness" for purposes of the indenture.

No payment or distribution of any of our assets of any kind or character, whether in cash, property or securities, other than permitted payments, may be made by us or on our behalf on account of principal of, or premium, if any, liquidated damages, if any, or interest on, the notes or on account of the redemption, repurchase or other acquisition of notes for the period specified below (a "payment blockage period"), upon the occurrence of any default or event of default with respect to any designated senior indebtedness, other than a payment default, pursuant to which maturity thereof may be accelerated (a "non-payment default") and receipt by the trustee of written notice thereof from us or a representative of holders of such designated senior indebtedness (a "payment blockage notice"). A payment blockage period will commence on the date that the trustee receives written notice from us or a representative of holders of the designated senior indebtedness to which the non-payment default relates, and shall end on the earliest of:

- 179 days thereafter, provided that the designated senior indebtedness to which the non-payment default relates has not theretofore been accelerated;
- the date on which such non-payment default is cured or waived or ceases to exist;
- the date on which such designated senior indebtedness is discharged or paid in full; or
- the date on which such payment blockage period shall have been terminated by written notice to the trustee from the representative initiating such payment blockage period,

after which we will resume making any and all required payments in respect of the notes, including any missed payments. Not more than one payment blockage period may be commenced during any period of 365 consecutive days. No non-payment default that existed or was continuing on the date a payment blockage period started can be the basis for the commencement of a subsequent payment blockage period, unless such non-payment default has been cured or waived for a period of not less than 90 consecutive days subsequent to the commencement of such initial payment blockage period.

By reason of the foregoing subordination provisions, funds which would otherwise be payable to holders of the notes may be paid over to holders of senior indebtedness. As a result of the subordination provisions, holders of notes may recover less, ratably, than holders of senior indebtedness.

The notes will also be effectively subordinated to all liabilities, including trade payables and lease obligations, if any, of our subsidiaries. Our right to receive the assets of any of our subsidiaries upon its liquidation or reorganization, and the consequent right of the holders of the notes to participate in these assets, will be effectively subordinated to the claims of that subsidiary's creditors, except to the extent that we are recognized as a creditor of such subsidiary, in which case our claims would still be subordinated to any security interests in such subsidiary's assets and any indebtedness of such subsidiary that is senior to that held by us.

Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due pursuant to the notes or to make any funds available therefor, whether by dividends, loans or other payments. In addition, our subsidiaries' payment of dividends and making of loans and advances to us may be subject to statutory, contractual or other restrictions and would depend upon their earnings or financial condition and would be subject to various business considerations. As a result, we may be unable to gain access to our subsidiaries' cash flow and assets.

The indenture does not limit the amount of additional indebtedness, including senior indebtedness, which we can create, incur, assume or guarantee. Also, it does not limit the amount of indebtedness or other liabilities that our subsidiaries can create, incur, assume or guarantee.

"Senior indebtedness" is defined in the indenture as all "indebtedness" (as defined below) of ours outstanding at any time, except (i) the notes, (ii) indebtedness that by its terms provides that it is not "senior" in right of payment to the notes and (iii) indebtedness that by its terms provides that it is "pari passu" or "junior" in right of payment to the notes. Senior indebtedness does not include indebtedness for trade payables or any account payable or other accrued current liability or obligation we incur in the ordinary course of business in connection with the obtaining of materials or services. In addition, senior indebtedness does not include our indebtedness to any of our subsidiaries, except for amounts due under our lease agreement with Fremont Holding L.L.C., our wholly-owned subsidiary. The 5.50% convertible subordinated notes in the aggregate principal amount of $150.0 million currently outstanding will rank *pari passu* with the notes.

"Indebtedness" of any person is defined as the principal of, premium, if any, and interest on, and all other obligations in respect of:

(a) all of such person's indebtedness for borrowed money (including all indebtedness evidenced by notes, bonds, debentures or other securities);

(b) all obligations (other than trade payables) such person incurs in acquiring (whether by way of purchase, merger, consolidation or otherwise and whether by such person or another person) any business, real property or other assets;

(c) all of such person's reimbursement obligations with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such person;

(d) all of such person's capital lease obligations and facility leases between such person as lessee and a subsidiary of such person as lessor;

(e) all of such person's net obligations under interest rate swap, currency exchange or similar agreements to which it is a party;

(f) all obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, conditional sale or other title retention agreement, in connection with the lease of real property or improvements thereon (or any personal property included as part of any such lease) which provides that such person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed-upon residual value of the leased property, including such person's obligations under such lease or related document to purchase or cause a third party to purchase such leased property or pay an agreed-upon residual value of the leased property to the lessor;

(g) guarantees by such person of indebtedness described in clauses (a) through (f) of another person, pledges of any of such person's assets as security for another person's indebtedness; and

(h) all renewals, extensions, refundings, deferrals, restructurings, amendments and modifications of any indebtedness, obligation, guarantee, pledge or liability of the kind described in clauses (a) through (g).

CONSOLIDATION, MERGER AND SALE OF ASSETS

The indenture provides that we may not consolidate with or merge with or into any other person or sell, convey, transfer, lease or otherwise dispose of all or substantially all of our properties and assets to another person (whether in a single transaction or series of related transactions), unless, among other things:

- the resulting, surviving or transferee person is (A) a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any state thereof or the District of Columbia, or (B) a corporation, limited liability company, partnership or trust

organized and existing under the laws of a jurisdiction outside the United States; provided, however, that in the case of a transaction where the resulting, surviving or transferee person is organized under the laws of a foreign jurisdiction, we may not consummate the transaction unless (v) such person has common stock or American Depository Shares representing such common stock traded on a national securities exchange in the United States or quoted on The Nasdaq National Market; (w) such person has a worldwide total market capitalization of its equity securities (before giving effect to such consolidation, merger or disposition) of at least $5 billion; (x) such entity has consented to service of process in the United States; (y) we have made provision for the satisfaction of our obligations to repurchase notes following a repurchase event, if any; and (z) we have obtained an opinion of tax counsel experienced in such matters to the effect that, under the then-existing US federal tax laws, there would be no material adverse tax consequences to holders of the notes resulting from such transaction (we refer to a transaction that satisfies these conditions as a "qualifying foreign merger" in this prospectus);

- such person assumes all of our obligations under the notes and the indenture; and

- we or such successor person shall not immediately thereafter be in default under the indenture.

Upon the assumption of our obligations by such a person in such circumstances, except in the case of a lease, we shall be discharged from all of our obligations under the notes and the indenture.

Certain of the foregoing transactions could constitute a repurchase event permitting holders to require us to repurchase notes as described in "—Holders may require us to repurchase their notes upon a repurchase event."

EVENTS OF DEFAULT

The following are events of default under the indenture:

- if we fail to pay the principal of or premium, if any, on any note when due, whether at maturity, upon redemption, on the purchase date with respect to a purchase at the option of the holder, on a repurchase date with respect to a repurchase event or otherwise (even if such payment is prohibited by the indenture's subordination provisions);

- if we fail to pay an installment of interest or liquidated damages, if any, on the notes, when due, if such failure continues for 30 days after the date when due (even if such payment is prohibited by the indenture's subordination provisions); provided, that a failure to make any of the first six scheduled interest payments on the notes within three business days of the applicable interest payment date will constitute an event of default with no additional grace or cure period;

- if we fail to provide timely notice as described under "—Purchase of notes by us at the holder's option" or under "—Holders may require us to repurchase their notes upon a repurchase event";

- if we fail to comply with any other term, covenant or agreement contained in the notes or the indenture and such failure continues for 60 days following notice to us by the trustee or to the trustee and us by holders of not less than 25% in aggregate principal amount of the notes then outstanding in accordance with the indenture;

- if we fail to perform or observe any of our obligations under the pledge agreement (and related agreements), or if our representations and warranties set forth in such agreements fail to be true and correct, in all material respects, when deemed made;

- if the pledge agreement ceases to be in full force and effect or enforceable in accordance with its terms;

- failure by us or any of our subsidiaries to pay final judgments, the uninsured portion of which aggregates in excess of $10.0 million, which judgments are not paid, discharged or stayed, for a period of 30 days;

- default by us or any of our subsidiaries in the payment when due, after the expiration of any applicable grace period, of principal of, or premium, if any, or interest on, indebtedness for money borrowed, in the aggregate principal amount then outstanding of $15.0 million or more, or acceleration of any indebtedness for money borrowed in such aggregate principal amount so that it becomes due and payable prior to the date on which it would otherwise have become due and payable and such acceleration is not rescinded or such default is not cured within 30 days after notice to us by the trustee or to the trustee and us by holders of not less than 25% in aggregate principal amount of notes then outstanding in accordance with the indenture; and

- certain events of bankruptcy, insolvency or reorganization affecting us or any of our subsidiaries that is a "significant subsidiary" (as defined in Regulation S-X under the Exchange Act) or any group of subsidiaries of ours that in the aggregate would constitute a "significant subsidiary."

If an event of default exists, either the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding notes may declare the principal amount of the notes plus accrued and unpaid interest, if any, on the notes through the date of such declaration to be immediately due and payable. In the case of certain events of default involving our bankruptcy, insolvency or reorganization, the principal amount of the notes plus accrued and unpaid interest, if any, accrued thereon through the occurrence of such event of default shall automatically become immediately due and payable.

After any such acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of the outstanding notes may, under certain circumstances, rescind such acceleration if all events of default, other than the non-payment of accelerated principal or interest, have been cured or waived.

Subject to the indenture's provisions relating to the trustee's duties, if an event of default exists, the trustee will not be obligated to exercise any of its rights or powers at the request of the holders, unless they have offered to the trustee reasonable indemnity. Subject to the indenture, applicable law and the trustee's indemnification, the holders of a majority in aggregate principal amount of the outstanding notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to the notes.

No holder will have any right to institute any proceeding under the indenture, or for the appointment of a receiver or a trustee, or for any other remedy under the indenture unless:

- the holder has previously given the trustee written notice of a continuing event of default;

- the holders of at least 25% in aggregate principal amount of the notes then outstanding have made a written request and have offered reasonable indemnity to the trustee to institute such proceeding as trustee; and

- the trustee has failed to institute such proceeding within 60 days after such notice, request and offer, and has not received from the holders of a majority in aggregate principal amount of the outstanding notes a direction inconsistent with such request within 60 days after such notice, request and offer.

However, the above limitations do not apply to a holder's suit to enforce payment of the principal of or any premium or interest on any note on or after the applicable due date or the right to convert the note in accordance with the indenture.

Generally, the holders of not less than a majority of the aggregate principal amount of outstanding notes may waive any default or event of default and its consequences other than:

- our failure to pay principal, premium, interest or liquidated damages on any note when due;

- our failure to convert any note into common stock following delivery of a conversion notice; or

- our failure to comply with any of the provisions of the indenture that would require the consent of the holder of each outstanding note affected.

We are required to promptly notify the trustee upon learning of any event of default. In addition, we are required to furnish to the trustee, on an annual basis, a statement by our officers as to whether or not we are in default in the performance or observance of any of the terms, provisions and conditions of the indenture, specifying any known defaults.

MODIFICATION AND WAIVER

The indenture may be amended or supplemented with the consent of the holders of a majority in aggregate principal amount of the outstanding notes. In addition, the holders of a majority in aggregate principal amount of the outstanding notes may waive our compliance with any provision of the indenture. Notwithstanding the foregoing, no amendment, supplement or waiver may be made without the consent of the holder of each outstanding note if it would:

- change the stated maturity of the principal of, or the payment date of any installment of interest or liquidated damages payable on, any note;

- reduce the principal amount of, or any premium or interest or liquidated damages on, any note;

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reduce the amount of principal payable upon acceleration of the maturity of any note;

- change the place or currency of payment of principal of, or any premium or interest on, any note;
- impair the right to institute suit for the enforcement of any payment on, or with respect to, any note;
- modify the provisions of the indenture relating to the right of the holders to require us to purchase notes at their option or upon a repurchase event, in a manner adverse to holders;
- modify the subordination provisions in a manner adverse to the holders of notes;
- adversely affect the holders' rights to convert notes other than as provided in the indenture;
- reduce the percentage in principal amount of outstanding notes required to modify or amend any indenture provision;
- reduce the percentage in principal amount of outstanding notes needed to waive compliance with certain provisions of the indenture or for waiver of certain defaults; or
- modify the provisions of the indenture with respect to modification and waiver (including waiver of events of default), except to increase the percentage required for modification or waiver or to provide for the consent of each affected holder.

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

- to evidence a successor to us and such successor's assumption of our obligations under the indenture and the notes;

- to add to our covenants for the holders' benefit or to surrender any right or power conferred upon us;
- to secure our obligations in respect of the notes;
- to make provision with respect to adjustments to the conversion rate as required by the indenture or to increase the conversion rate in accordance with the indenture;
- to make any changes or modifications to the indenture needed in connection with the registration of the public offer and sale of the notes under the Securities Act pursuant to the registration rights agreement or the qualification of the indenture under the Trust Indenture Act;
- to cure any ambiguity, defect, omission or inconsistency in the indenture in a manner that does not adversely affect any holder's rights; or
- to add or modify any other provisions which we and the trustee jointly deem necessary or desirable and which will not adversely affect any holder's rights.

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

- waive our compliance 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 principal of, or premium, interest or liquidated damages on, the notes or in the payments of the redemption price, the purchase price or the repurchase price or a default with respect to our obligation to deliver shares of common stock upon conversion of any note or in respect of any provision which under the indenture cannot be modified or amended without the consent of the holder of each outstanding note affected.

DISCHARGE

We may satisfy and discharge our obligations under the indenture by delivering to the trustee for cancellation all outstanding notes or by depositing with the trustee, the paying agent or the conversion agent, if applicable, after the notes have become due and payable, whether at stated maturity or any redemption date, purchase date, repurchase date or otherwise, cash sufficient to pay all of the outstanding notes and paying all other sums payable under the indenture.

CALCULATIONS IN RESPECT OF NOTES

We are responsible for making all calculations called for under the notes. These calculations include determining the average market prices of the notes and of our common stock and amounts of interest payments payable on the notes. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on the holders. 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.

RULE 144A INFORMATION

We have agreed in the indenture to furnish to the beneficial owners of the notes, and prospective purchasers of the notes designated by such beneficial owners, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act if, at any time while the notes or the common stock issuable upon conversion of the notes are restricted securities within the meaning of the Securities Act, we are not subject to the informational requirements of the Exchange Act.

REPORTS TO TRUSTEE

We will regularly furnish to the trustee copies of our annual report to stockholders, containing audited financial statements, and any other financial reports which we furnish to our stockholders.

UNCLAIMED MONEY

If money deposited with the trustee or paying agent for the payment of principal or interest remains unclaimed for two years, the trustee and paying agent shall notify us and shall pay the money back to us at our written request. Thereafter, holders of notes entitled to the money must look to us for payment, subject to applicable law, and all liability of the trustee and the paying agent shall cease.

PURCHASE AND CANCELLATION

All notes surrendered for payment, redemption, registration of transfer or exchange or conversion shall, if surrendered to any person other than the trustee, be delivered to the trustee. All notes delivered to the trustee for cancellation will be cancelled promptly by the trustee. No notes will be authenticated in exchange for any notes cancelled as provided in the indenture.

We may, to the extent permitted by law, purchase notes in the open market or by tender offer at any price or by private agreement. Any notes purchased by us, may, to the extent permitted by law, be reissued or resold or may, at our option, be surrendered to the trustee for cancellation. Any notes surrendered for cancellation may not be reissued or resold and will be promptly cancelled.

REPLACEMENT OF NOTES

We will replace mutilated, destroyed, stolen or lost notes at the holder's expense upon delivery to the trustee of the mutilated notes, or evidence of the loss, theft or destruction of the notes satisfactory to the trustee and us. In the case of a lost, stolen or destroyed note, indemnity satisfactory to the trustee and us may be required at the expense of the holder of such note before a replacement note will be issued.

TRUSTEE AND TRANSFER AGENT

The trustee for the notes is The J.P. Morgan Trust Company, National Association and has been appointed by us as paying agent, conversion agent, registrar and custodian with regard to the notes.

The holders of a majority in principal amount of the then outstanding notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, subject to certain exceptions. If an event of default occurs, the trustee must exercise its rights and powers under the indenture using the same degree of care and skill as a prudent person would use under the circumstances in the conduct of his or her own affairs. The trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to the trustee against any loss, liability, or expense.

The transfer agent for our common stock is Mellon Investor Services, L.L.C.

LISTING AND TRADING

The notes are eligible for trading on The PORTAL Market. Our common stock is listed on The Nasdaq National Market under the symbol "PDLI."

FORM, DENOMINATION AND REGISTRATION OF NOTES

General

The notes are issued in denominations of $1,000 and integral multiples thereof, in the form of global securities, as further provided below.

The trustee is not required:

- to issue, register the transfer of or exchange any note for a period of 15 days before a selection of notes to be redeemed, or
- to register the transfer of or exchange any note that has been selected for redemption or for which the holder has delivered, and not withdrawn, a repurchase notice or purchase notice, except, in the case of a partial redemption or repurchase, that portion of the notes not being redeemed or repurchased.

See "—Global securities," "—Certificated securities" and "Notice to investors" for a description of additional transfer restrictions applicable to the notes.

No service charge will be imposed in connection with any transfer or exchange of any note, but we may in general require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

Global securities

Global securities have been deposited with the trustee as custodian for The Depository Trust Company (DTC) and registered in the name of DTC or a nominee for DTC.

Except in the limited circumstances described below and in "—Certificated securities," holders of notes will not be entitled to receive notes in certificated form. Unless and until it is exchanged in whole or in part for certificated securities, each global security may not be transferred except as a whole by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC.

The global securities have been accepted by DTC in its book-entry settlement system. The custodian and DTC will electronically record the principal amount of notes represented by global securities held within DTC. Beneficial interests in the global securities are shown on records maintained by DTC and its direct and indirect participants. So long as DTC or its nominee is the registered owner or holder of a global security, DTC or such nominee will be considered the sole owner or holder of the notes represented by such global security for all purposes under the indenture and the notes. No owner of a beneficial interest in a global security will be able to transfer such interest except in accordance with DTC's applicable procedures and the applicable procedures of its direct and indirect participants.

Payments of principal and interest under each global security will be made to DTC's nominee as the registered owner of such global security. We expect that the nominee, upon receipt of any such payment, will immediately credit DTC participants' accounts with payments proportional to their respective beneficial interests in the principal amount of the relevant global security as shown on the records of DTC. We also expect that payments by DTC participants to owners of beneficial interests will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in the names of nominees for such customers. Such payments will be the responsibility of such participants, and none of us, the trustee, the custodian or any paying agent or registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in any global security or for maintaining or reviewing any records relating to such beneficial interests.

DTC has advised us that it is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under the Exchange Act. DTC was created to hold the securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, some of whom (and/or their representatives) own the depository. 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. The ownership interest and transfer of ownership interest of each actual purchaser of each security held by or on behalf of DTC are recorded on the records of the participants and indirect participants.

Certificated securities

If DTC notifies us that it is unwilling or unable to continue as depositary for a global security and a successor depositary is not appointed by us within 90 days of such notice, or an event of default has occurred and the trustee has received a request from DTC, the trustee will exchange each beneficial interest in that global security for one or more certificated securities registered in the name of the owner of such beneficial interest, as identified by DTC.

Same-day settlement and payment

The indenture requires that payments in respect of the notes represented by global securities be made by wire transfer of immediately available funds to the accounts specified by holders of the global securities. With respect to notes in certificated form, we will make all payments by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a check to each holder's registered address.

The notes are expected to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such notes will, therefore, be required by DTC to be settled in immediately available funds. We expect that secondary trading in any certificated securities will also be settled in immediately available funds.

Transfers between participants in DTC will be effected in the ordinary way in accordance with DTC rules and will be settled in same-day funds.

The information described above concerning DTC has been obtained from sources that we believe to be reliable, but neither we nor the trustee take any responsibility for the accuracy thereof.

Although DTC has agreed to the foregoing procedures to facilitate transfers of interests in the global securities among participants in DTC, they are under no obligation to perform or to continue those procedures, and those procedures may be discontinued at any time. Neither we nor the trustee have any responsibility for the performance by DTC or its direct or indirect participants of their respective obligations under the rules and procedures governing their operations.

REGISTRATION RIGHTS; LIQUIDATED DAMAGES

We and the initial purchasers have entered into a registration rights agreement dated as of July 14, 2003. Pursuant to the registration rights agreement, we have agreed to use our reasonable best efforts to keep a shelf registration statement continuously effective under the Securities Act until such time as there are no longer any registrable securities covered thereby.

Notwithstanding the foregoing, we are permitted to prohibit offers and sales of registrable securities pursuant to the shelf registration statement for a period not to exceed 30 days in any three-month period and not to exceed an aggregate of 90 days in any 12-month period, under certain circumstances and subject to certain conditions (any period during which offers and sales are prohibited being referred to as a "suspension period"). "Registrable securities" means each note and any underlying share of common stock until the earlier of (x) the date on which such note or underlying share of common stock has been effectively registered under the Securities Act and disposed of pursuant to the shelf registration statement and (y) the date which is two years after the later of the date of original issue of such notes and the last date that we or any of our affiliates was the owner of such notes (or any predecessor thereto), or such other period of time as such note or underlying share of common stock may be resold without restriction pursuant to Rule 144(k) under the Securities Act or any successor provision thereto.

Holders of registrable securities are required to deliver certain information to be used in connection with, and to be named as selling security holders in, the shelf registration statement in order to have their registrable securities included in the shelf registration statement. We have previously provided such holders a form of notice and questionnaire to be completed and delivered by each holder interested in selling securities pursuant to the shelf registration statement. Any holder that does not complete and deliver a questionnaire or provide the information required thereby will not be named as a selling securityholder in the registration statement, will not be permitted to sell any registrable securities held by such holder pursuant to the registration statement and will not be entitled to receive any of

the liquidated damages described in the following paragraph. We cannot assure you that we will be able to maintain an effective and current registration statement as required.

The absence of such a registration statement may limit a holder's ability to sell such registrable securities or adversely affect the price at which such registrable securities can be sold.

If:

- we fail, with respect to a holder that supplies the questionnaire described below after the effective date of the shelf registration statement, to supplement or amend the shelf registration statement, or file a new registration statement, in accordance with the terms of the registration rights agreement in order to add such holder as a selling securityholder; or

- the shelf registration statement is filed and declared effective but shall thereafter cease to be effective (without being succeeded immediately by an additional registration statement filed and declared effective) or usable for the offer and sale of registrable securities for a period of time (including any suspension period) which shall exceed 30 days in the aggregate in any three-month period or 90 days in the aggregate in any 12-month period,

(each such event referred to in the bullets above being referred to as a "registration default") we will pay liquidated damages to each holder of registrable securities included in the registration statement who has provided the required selling securityholder information to us (or in the case of the third bullet point above, the applicable holder(s)). The amount of liquidated damages payable during any period during which a registration default shall have occurred and be continuing is:

- in the case of notes, at a rate per year equal to 0.25% for the first 90-day period, increasing with respect to each 90-day period thereafter by an additional 0.25%, up to a maximum rate per year of 0.75% of the aggregate principal amount of the notes, or

- in the case of common stock issued upon conversion of the notes, at an equivalent rate based upon the conversion rate.

So long as a registration default continues, we will pay additional liquidated damages in cash on February 16 and August 16 of each year to each holder of record of notes or shares of common stock

issued upon conversion of the notes, as the case may be, and entitled to receive liquidated damages, on the immediately preceding February 1 or August 1, as the case may be. Following the cure of a registration default, liquidated damages will cease to accrue with respect to such registration default.

The registration rights agreement provides that we will use our reasonable best efforts to cause the shelf registration statement to be effective until such time as all of the notes and underlying common stock cease to be registrable securities.

A holder of registrable securities that does not provide us with a completed questionnaire or the information called for thereby prior to the date that is two business days before effectiveness of the shelf registration statement may thereafter provide us with a completed questionnaire, following which we will, as promptly as reasonably practicable, but in any event within five business days of such receipt (subject to certain qualifications set forth in the registration rights agreement), file a supplement to the prospectus relating to the registration statement or, if required, file a post-effective amendment or a new shelf registration statement in order to permit resales of such holder's registrable securities; provided, however, that if a post-effective amendment or a new registration statement is required in order to permit resales by holders seeking to include registrable securities in the registration statement following the effectiveness of the original shelf registration statement, we will not be required to file more than one post-effective amendment or new registration statement for such purpose in any 45-day period. We understand that the SEC may not permit selling securityholders to be added to the shelf registration statement after it is declared effective by means of a supplement to the prospectus relating thereto. Accordingly, to the extent that a holder does not deliver a complete questionnaire prior to the date that is two business days before effectiveness of the original shelf registration statement and such holder thereafter requests such holder's registrable securities to be included in the shelf registration statement, such holder could experience significant additional delay due to the fact that we may be required to file a post-effective amendment or a new registration statement before such holder is able to resell registrable securities pursuant to the shelf registration statement (or a new shelf registration statement). We strongly encourage holders to submit a completed questionnaire as promptly as possible following completion of this offering and prior to the date that is two business days before effectiveness of the shelf registration statement.

To the extent that any holder of registrable securities is deemed to be an "underwriter" within the meaning of the Securities Act, such holder may be subject to certain liabilities under the federal securities laws for misstatements and omissions contained in a registration statement and any related prospectus. To the extent that any holder of registrable securities identified in the shelf registration statement is a broker-dealer, or is an affiliate of a broker-dealer that did not acquire its registrable securities in the ordinary course of its business or that at the time of its purchase of registrable securities had an agreement or understanding, directly or indirectly, with any person to distribute the registrable securities, we understand that the SEC may take the view that such holder is, under the SEC's interpretations, an "underwriter" within the meaning of the Securities Act.

The foregoing summary of certain provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the provisions of the registration rights agreement.

GOVERNING LAW

The indenture, the notes and the registration rights agreement are governed by and construed in accordance with the laws of the State of New York, without giving effect to such state's conflicts of laws principles.

DESCRIPTION OF CAPITAL STOCK

This summary does not purport to be complete and is subject to, and qualified in its entirety by, the provisions of our certificate of incorporation, as amended, and all applicable provisions of Delaware law.

General

We are authorized to issue 250,000,000 shares of common stock, $.01 par value, and 10,000,000 shares of preferred stock, $.01 par value.

Common stock

As of September 8, 2003, we had issued and outstanding 93,662,059 shares of common stock held of record by approximately 258 stockholders. Holders of common stock are entitled to one vote per share for the election of directors and all other matters submitted to a vote of our stockholders. Subject to the rights of any holders of preferred stock that may be issued in the future, the holders of common stock are entitled to share ratably in such dividends as may be declared by our board of directors out of funds legally available therefor. In the event of our dissolution, liquidation or winding up, holders of common stock are entitled to share ratably in all assets remaining after payment of all liabilities and liquidation preferences of any preferred stock. Holders of common stock have no preemptive, subscription, redemption, conversion rights or similar rights. Our certificate of incorporation does not provide for cumulative voting rights with respect to the election of directors. All outstanding common stock is, and the common stock issuable on conversion of the notes will be, fully paid and nonassessable. Shares of the Company's common stock are reserved for issuance under the Company's option and employee stock purchase plans, and there are options outstanding under the Company's stock plans for shares of common stock.

Preferred stock

Our board of directors has the authority, without any action by our stockholders, to issue preferred stock in one or more series with such designations, rights and preferences (including dividend, conversion, voting or other rights or liquidation preferences) as determined by our board of directors. The issuance of preferred stock could delay, defer or prevent a change of control of PDL and could decrease the amount of earnings and assets available for distribution to, or adversely affect the voting power or other rights of, holders of common stock. In addition, the issuance of preferred stock could have the effect of decreasing the market price of our common stock. As of September 10, 2003, there are no shares of preferred stock outstanding.

Transfer agent

The transfer agent for our common stock is Mellon Investor Services, L.L.C. Their address is 235 Montgomery Street, 23rd Floor, San Francisco, California 94104. Their telephone number is (415) 743-1424.

CERTAIN US FEDERAL TAX CONSIDERATIONS

The following is a summary of certain United States federal income tax considerations relating to the purchase, ownership and disposition of the notes and the common stock into which the notes may be converted. This summary is based on laws, regulations, rulings and decisions now in effect, all of which are subject to change. This summary deals only with holders that will hold the notes and common stock as "capital assets" within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended, which we sometimes refer to as the Code and does not address tax considerations applicable to investors that may be subject to special tax rules, such as financial institutions, mutual funds, tax-exempt organizations, insurance companies, dealers in securities or currencies, traders in securities who elect to apply mark-to-market method of accounting, persons that will hold notes as a position in a hedging transaction, "straddle" or "conversion transaction" for tax purposes or persons deemed to sell notes under the constructive sale provisions of the Code.

We have not sought any ruling from the Internal Revenue Service (or IRS) with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with such statements and conclusions. In addition, the IRS is not precluded from successfully adopting a contrary position. This summary assumes that the IRS will respect the classification of the notes as indebtedness for U.S. federal income tax purposes. This summary does not consider the effect of any applicable foreign, state, local or other tax laws.

All prospective purchasers of notes should consult their own tax advisors with respect to the application of the United States federal income and estate tax laws to their particular situation as well as any tax consequences arising under the laws of any state, local or foreign taxing jurisdiction or under any applicable tax treaty.

U.S. Holders

For purposes of this summary, the term "U.S. Holder" means a beneficial holder of a note or common stock that is, as determined for United States federal income tax purposes, either (1) a citizen or resident of the United States, or U.S.; (2) an entity formed under the laws of the U.S. or a state of the U.S.; (3) an estate the income of which is subject to U.S. federal income tax regardless of its source; or (4) a trust subject to the primary supervision of a court within the U.S. which has one or more U.S. persons with authority to control all substantive decisions, or which has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person. A "Non-U.S. Holder" is any holder other than a U.S. Holder.

If a partnership (including for this purpose any entity, foreign or domestic, classified as a partnership for U.S. federal income tax purposes) is a beneficial owner of the notes or the common stock into which the notes may be converted, the U.S. federal income tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership. As a general matter, income earned through a foreign or domestic partnership is attributed to its owners for U.S. federal income tax purposes. A holder of the notes or the common stock that is a partnership, and the partners in such partnership, should consult their individual tax advisors regarding the federal, state, local and foreign tax consequences of the purchase, ownership and disposition of the notes (and the common stock).

Taxation of Interest

Interest paid on the notes will be included in the income of a holder as ordinary income at the time it is treated as received or accrued, in accordance with the holder's regular method of tax accounting.

In general, if the terms of a debt instrument entitle a holder to receive payments other than fixed periodic interest that exceed the issue price of the instrument, the holder may be required to recognize additional interest as "original issue discount" over the term of the instrument. Further, if the amount or timing of any additional payments on a Note is contingent, the Note could be subject to special rules that apply to contingent debt instruments. These rules generally require a holder to accrue interest income at a rate higher than the stated interest rate on the Note and to treat as ordinary income, rather than capital gain, any gain realized on a sale, exchange or retirement of a Note before the resolution of the contingencies. If we fail to maintain the effectiveness of the registration statement, we will cause additional interest to accrue on the notes in the manner described under "Description of the Notes—Registration Rights; Liquidated Damages." According to Treasury Regulations, the possibility of a change in the interest rate due to our obligation to pay Liquidated Damages (see "Description of the Notes—Registration Rights; Liquidated Damages") will not affect the amount of interest income recognized by a holder, or the timing of such recognition, if the likelihood of the change, as of the date the notes are issued, is remote. We believe that the likelihood of a change in the interest rate on the notes is remote, and we do not intend to treat the possibility of a change in the interest rate as affecting the yield to maturity of any note. Similarly, we intend to take the position that the occurrence of an event requiring us to repurchase the notes is remote under the Treasury Regulations, and likewise do not intend to treat the possibility of the occurrence of an event requiring us to repurchase the notes as affecting the yield to maturity of any note. Our determination that the likelihood of additional payments is a remote or incidental contingency is binding on holders of the notes unless such holders explicitly disclose to the IRS that they are taking a different position on their tax return for the year during which they acquire the note. However, the IRS may take a contrary position from that described above, which could affect the timing and character of both each holder's income from the notes and our deduction with respect to additional payments under the notes. In the event that we pay liquidated damages, the holders would be required to recognize additional interest income.

Market Discount

A subsequent purchaser who buys a note for less than its stated redemption price at maturity may be considered to have purchased the note at a "market discount." If the market discount is less than 0.25% of the stated redemption price of the note at maturity multiplied by the number of complete years to maturity, then the market discount will be deemed to be zero.

A U.S. Holder may elect to include market discount in income currently as it accrues. Any such election will apply to all market discount bonds acquired during or after the year for which the election is made, and the election may be terminated only with the consent of the Internal Revenue Service.

If a U.S. Holder does not make an election to include market discount in income currently as it accrues, any principal amount received or gain realized by a U.S. Holder on the sale, exchange, retirement or other taxable disposition of a note will be treated as ordinary income to the extent of any accrued market discount on the note. Unless a U.S. holder irrevocably elects to accrue market discount under a constant-interest method, accrued market discount is the total market discount multiplied by a fraction, the numerator of which is the number of days the U.S. Holder has held the note and the denominator of which is the number of days from the date the holder acquired the note until its maturity. If a U.S. Holder exchanges or converts a note into common stock in a transaction that is otherwise tax free, any accrued market discount will carry over and generally be recognized upon a disposition of the common stock.

A U.S. Holder may be required to defer a portion of such holder's interest deductions for the taxable year attributable to any indebtedness incurred or continued to purchase or carry a note purchased with market discount. Any such deferred interest expense may not exceed the market discount that accrues during a taxable year and is, in general, allowed as a deduction not later than the

year in which the market discount is includible in income. This interest expense deferral will not apply if a U.S. Holder makes an election to include market discount in income currently as it accrues.

Market Premium

A subsequent purchaser who buys a note for more than its stated redemption price at maturity generally will be considered to have purchased the note at a "market premium." If an election is made, the market premium may generally be amortized using a constant yield method, over the remaining term of the note.

Interest otherwise required to be included in income with respect to the note during any tax year may be offset by the amount of any amortized market premium. An election to amortize market premium will apply to all market premium bonds acquired during or after the year for which the election is made, and the election may be terminated only with the consent of the Internal Revenue Service.

Sale, Exchange or Redemption of the Notes

Upon the sale, exchange (other than a conversion into common stock), redemption, retirement or other taxable disposition of a note, a holder will recognize gain or loss equal to the difference between the amount received on such disposition (other than amounts received in respect of accrued and unpaid interest, which will be taxable as such) and the holder's tax basis in the note. A holder's tax basis in a note will be, in general, the cost of the note to the holder, increased by any accrued market discount and decreased by any principal payments received and any amortizable market premium accrued. Gain or loss realized on the sale, exchange or retirement of a note generally will be capital gain or loss, and will be long-term capital gain or loss if, at the time of such sale, exchange or retirement, the note has been held for more than one year. Long-term capital gain recognized by an individual holder is generally subject to a maximum U.S. federal income tax rate of 15%. An individual's ability to offset capital losses against ordinary income is limited.

Conversion of the Notes

A holder will generally not recognize income, gain or loss upon conversion of the note into our common stock, except with respect to any cash received instead of a fractional share (which will generally result in capital gain or loss). The holder's tax basis in the common stock received upon conversion will be the same a the holder's tax basis in the note at the time of conversion (exclusive of any tax basis allocable to a fractional share), increased, for a cash method holder, by the amount of income recognized with respect to accrued interest. The holding period for the common stock received upon conversion will include the holding period of the note converted. If cash is received instead of a fractional share upon conversion of a note, the holder will be treated as having received the fractional share and as having immediately sold it for amount equal to such cash. The receipt of cash instead of a fractional share will generally result in capital gain or loss, if any, measured by the difference between the cash received and the holder's adjusted tax basis in the fractional share.

Adjustment to Conversion Price

Holders of convertible debt instruments such as the notes may, in certain circumstances, be deemed to have received constructive distributions where the conversion ratio of such instruments is adjusted. Adjustments to the conversion price made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing the dilution of the interest of the holders of the debt instruments, however, will generally not be considered to result in a constructive distribution of stock. Certain of the possible adjustments provided in the notes, including, without limitation, adjustments in respect of taxable dividends to our stockholders, will not qualify as being pursuant to a bona fide

reasonable adjustment formula. If such adjustments are made, the holders of notes might be deemed to have received constructive distributions taxable as dividends. Moreover, in certain other circumstances, the failure to adjust the conversion ratio on the notes may result in a deemed taxable dividend to holders of our common stock.

Dividends

Distributions, if any, paid on the common stock, other than certain pro rata distributions of common stock, to the extent made out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles, will be included in a U.S. Holder's income as ordinary income (subject to a possible dividends received deduction in the case of corporate holders) as they are paid. Distributions in excess of our current and accumulated earnings and profits will be treated as a return of capital to the extent of the U.S. Holder's basis in the common stock and thereafter as capital gain.

Sale of Common Stock

Upon the sale or exchange of our common stock, a holder generally will recognize capital gain or loss equal to the difference between (1) the amount of cash and the fair market value of any property received upon the sale or exchange and (2) such holder's adjusted tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if the holder's holding period in the commons tock is more than one year at the time of the sale or exchange. A holder's basis and holding period in our common stock received upon conversion of a note are determined as discussed above under "Conversion of the Notes."

Information Reporting and Backup Withholding Tax

In general, information reporting requirements will apply to payments of principal, premium, if any, and interest on a note, payments of dividends on the common stock, payments of the proceeds of the sale of a note and payments of the proceeds of the sale of the common stock, and a 28% backup withholding tax may apply to such payments if the holder either (1) fails to demonstrate that the holder comes within certain exempt categories of holders or (2) fails to furnish or certify his correct taxpayer identification number to the payor in the manner required, is notified by the IRS that he has failed to report payments of interest and dividends properly, or under certain circumstances, fails to certify that he has not been notified by the IRS that he is subject to backup withholding for failure to report interest and dividend payments. Any amounts withheld under the backup withholding rules from a payment to a holder will be allowed as a credit against such holder's U.S. federal income tax and may entitle the holder to a refund, provided that the required information is furnished to the IRS.

Non-U.S. Holders

The rules governing U.S. federal income taxation of a Non-U.S. Holder of Notes are complex, and we have provided only a summary of such rules. Special rules may apply to certain Non-U.S. Holders such as "controlled foreign corporations," "passive foreign investment companies" and "foreign personal holding companies." Non-U.S. Holders should consult with their own tax advisors to determine the effect of federal, state, local and foreign income tax laws, as well as treaties, with regard to an investment in the Notes, including any reporting requirements.

The following discussion is limited to the U.S. federal income tax consequences relevant to a Non-U.S. Holder. For purposes of withholding tax on interest and dividends discussed below, a Non-U.S. Holder (as defined above) includes a non-resident fiduciary of an estate or trust. For purposes of the following discussion, interest, dividends and gain on the sale, exchange or other disposition of a note or common stock will be considered to be "U.S. trade or business income" if such

income or gain is (1) effectively connected with the conduct of a U.S. trade or business or (2) in the case of a Non-U.S. Holder eligible for the benefits of an applicable bilateral income tax treaty, attributable to a permanent establishment (or, in the case of an individual, a fixed base) in the United States.

Taxation of Interest

Generally any interest paid to a Non-U.S. Holder of a note that is not U.S. trade or business income will not be subject to U.S. tax if the interest qualifies as "portfolio interest." Generally interest on the notes will qualify as portfolio interest if (1) the Non-U.S. Holder does not actually or constructively own 10% of more of the total voting power of all our voting stock and is not a "controlled foreign corporation" with respect to which we are a "related person" within the meaning of the Code and (2) the withholding agent receives a qualifying statement that the owner is not a U.S. resident and does not have actual knowledge or reason to know otherwise. To satisfy the qualifying statement requirement, the beneficial owner of a note must provide a properly executed IRS Form W-8BEN (or appropriate substitute form) prior to payment of the interest.

The gross amount of payments of interest to a Non-U.S. Holder that do not qualify for the portfolio interest exemption and that are not U.S. trade or business income will be subject to U.S. federal income tax at the rate of 30%, unless a U.S. income tax treaty applies to reduce or eliminate withholding. U.S. trade or business income will be taxed on a net income basis in the same manner as if the Non-U.S. Holder were a U.S. person, and will not be subject to withholding at the 30% gross rate. In the case of a Non-U.S. Holder that is a corporation, such U.S. trade or business income may also be subject to the branch profits tax (which is generally imposed on a foreign corporation on the actual or deemed repatriation from the United States of earnings and profits attributable to U.S. trade or business income) at a 30% rate. The branch profits tax may not apply (or any apply at a reduced rate) if a recipient is a qualified resident of certain countries with which the United States has an income tax treaty. To claim the benefit of a tax treaty or to claim exemption from withholding because the income is U.S. trade or business income, the Non-U.S. Holder must provide a properly executed Form W-8 BEN or W-8 ECI (or such successor forms as the IRS designates), as applicable, prior to the payment of interest. In addition, a Non-U.S. Holder may under certain circumstances be required to obtain a U.S. taxpayer identification number and make certain certifications to us. Special procedures are provided for payments through qualified intermediaries. A Non-U.S. Holder that is eligible for a reduced rate of

withholding tax pursuant to an applicable income tax treaty may obtain a refund of amounts withheld at a higher rate by filing an appropriate claim for refund with the IRS.

Sales, Exchange or Redemption of the Notes

Except as described below and subject to the discussion below concerning backup withholding, any gain realized by a Non-U.S. Holder on the sale, exchange or redemption of a note generally will not be subject to U.S. federal income tax unless (1) such gain is U.S. trade or business income, (2) subject to certain exceptions, the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of the disposition, (3) the Non-U.S. Holder is subject to tax pursuant to the provisions of U.S. tax law applicable to certain U.S. expatriates (including certain former citizens or residents of the United States), or (4) in the case of the disposition of our common stock, we are a U.S. real property holding corporation at any time within the shorter of the five-year period preceding such sale or other disposition or the period such holder held the common stock. We believe that we are not currently a "United States real property holding corporation" and that we will not become one in the future.

Conversion of the Notes

A Non-U.S. Holder generally will not be subject to U.S. federal income tax on the conversion of notes into our common stock, except with respect to cash (if any) received instead of a fractional share or interest which does not qualify for the portfolio interest exemption, is not U.S. trade or business income and has not previously included in income. Cash received instead of a fractional share may give rise to gain that would be subject to the rules described above for the sale of notes. Cash or common stock treated as issued for accrued interest would be treated as interest under the rules described above.

Taxation of Dividends

In general, dividends (including deemed dividends paid on the notes) paid to a Non-U.S. Holder of common stock will be subject to withholding of U.S. federal income tax at a 30% rate unless such rate is reduced by an applicable income tax treaty. Dividends that are U.S. trade or business income generally are subject to U.S. federal income tax at regular income tax rates, and generally are not subject to the 30% withholding tax or treaty-reduced rate if the Non-U.S. Holder files the appropriate form with the payor, as discussed directly above under "—Taxation of Interest." Any U.S. trade or business income received by a Non-U.S. Holder that is a corporation also may, under certain circumstances, be subject to an additional "branch profits tax" at a 30% (or, if applicable, treaty-reduced) rate. A Non-U.S. Holder of common stock who wishes to claim the benefit of an applicable treaty rate would be required to satisfy applicable certification and other requirements. A Non-U.S. Holder of common stock that is eligible for a reduced rate of withholding tax pursuant to an applicable income treaty may obtain a refund of amounts withheld at a higher rate by filing an appropriate claim for refund with the IRS.

Information Reporting and Backup Withholding Tax

We must report annually to the IRS and to each Non-U.S. Holder any interest or dividend that is subject to withholding or is exempt from U.S. withholding tax pursuant to a tax treaty, or interest that is exempt from U.S. tax under the portfolio interest exception. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides.

Information reporting and backup withholding of U.S. federal income tax at a current rate of 28% generally may apply to payments made by us or our agent to Non-U.S. Holders if the payee fails to make the appropriate certification that the holder is not a U.S. person or if we or our paying agent has actual knowledge that the payee is a U.S. person.

The payment of the proceeds from the disposition of the notes or common stock to or through the U.S. office of any broker, foreign or domestic, will be subject to information reporting and possible backup withholding unless the owner certifies as to its Non-U.S. Holder status under penalties of perjury or otherwise establishes an exemption, provided that the broker does not have actual knowledge that the holder is a U.S. person or that the conditions of any other exemption are not, in fact, satisfied. The payment of the proceeds from the disposition of a note or common stock to or through a non-U.S. office of a non-U.S. broker that is not a U.S. related person generally will not be subject to backup withholding. The payment of proceeds from the disposition of a Note or common stock through the foreign office of a broker that is either a U.S. person or a U.S. related person (as defined below) will be subject to information reporting, but not backup withholding, unless such broker has documentary evidence in its files of the Non-U.S. Holder's foreign status and certain other conditions are met or you otherwise establish an exemption.

Both backup withholding and information reporting will apply to the proceeds of such dispositions if the broker has actual knowledge that the payee is a U.S. Holder. A U.S. related person is (1) a

"controlled foreign corporation" for United States tax purposes, (2) a foreign person 50% or more of whose gross income from all sources for certain periods is effectively connected with a U.S. trade or business or (3) a foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons (as defined in Treasury Regulations under the Code) who in the aggregate hold more than 50% of the income or capital interest in the partnership or if, at any time during its tax year, such foreign partnership is engaged in a U.S. trade or business.

Any amounts withheld under the backup withholding rules from a payment to a Non-U.S. Holder will be allowed as a refund or a credit against such Non-U.S. Holder's U.S. federal income tax liability, provided that the requisite procedures are followed.

U.S. Federal Estate Tax

The U.S. federal estate tax will not apply to notes owned by an individual who is not a citizen or resident of the U.S. at the time of his or her death, provided that (1) the individual does not actually or constructively own 10% or more of the total combined voting power of our stock entitled to vote and (2) interest on the note would not have been, if received at the time of death, effectively connected with the conduct of a trade or business in the U.S. by such individual. However, common stock held by a decedent at the time of his or her death will be included in such Holder's gross estate for U.S. federal estate tax purposes unless an applicable estate tax treaty provides otherwise. Note holders that are individuals should be aware that there have been recent amendments to the U.S. federal estate tax rules, and such holders should consult with their own tax advisors with regard to an investment in the notes and the common stock.

THE PRECEDING DISCUSSION OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A HOLDER'S PARTICULAR SITUATION. ACCORDINGLY, EACH INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR AS TO PARTICULAR TAX CONSEQUENCES TO IT OF PURCHASING, HOLDING AND DISPOSING OF THE NOTES AND THE COMMON STOCK INTO WHICH THE NOTES MAY BE CONVERTED OR FOR WHICH THE NOTES MAY BE EXCHANGED, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY PROPOSED CHANGES IN APPLICABLE LAWS.

SELLING SECURITYHOLDERS

We originally issued the notes offered by the selling securityholders hereby in a private placement in July 2003. The initial purchasers of the notes resold them to persons they or their agents reasonably believed to be "qualified institutional buyers," as defined in Rule 144A under the Securities Act, in transactions exempt from the registration requirements of the Securities Act. The selling securityholders, which term as used in the prospectus includes the initial purchasers' transferees, pledges, donees or their successors, may from time to time offer and sell pursuant to this prospectus any or all of the notes and common stock issued upon conversion of the notes.

The following table sets forth information, unless otherwise noted, as of September 10, 2003, with respect to the selling securityholders and the respective principal amounts of notes and common stock that each selling securityholder beneficially owns that may be offered pursuant to this prospectus. Beneficial ownership is determined in accordance with SEC rules and includes voting or investment power with respect to the securities. We have obtained this information from the selling securityholders. Unless otherwise indicated, none of the selling securityholders has, or within the past three years has had, any position, office, or other material relationship with us or any of our predecessors or affiliates. Because the selling securityholders may offer all or some portion of the notes or the common stock issuable upon conversion of the notes pursuant to this prospectus, no estimate can be given to us as to the amount of the notes or the common stock issuable upon conversion of the notes that will be held by the selling securityholders upon termination of any particular offering. In addition, the selling securityholders identified below may have sold, transferred or otherwise disposed of all or a portion of their notes since the date on which they provided the information regarding their notes in transactions exempt from the registration requirements of the Securities Act. Information concerning the selling securityholders may change from time to time and, if necessary, we will supplement this prospectus accordingly.

The number of shares of common stock shown in the table set forth below assumes the conversion of the full amount of notes held by such holder at the initial conversion rate of 49.6618 shares per $1,000 principal amount of the notes. This conversion rate is subject to adjustment as described under "Description of notes —Conversion Rights." Accordingly, the number of shares of common stock may increase or decrease from time to time. Under the terms of the indenture, fractional shares will not be issued upon conversion of the notes. Cash will be paid instead of fractional shares, if any.

	Principal Amount of Notes		Number of Shares of Common Stock		
Selling Securityholder(1)	Beneficially Owned and Offered Hereby(1)	Percentage of Notes Outstanding	Common Stock Beneficially Owned Prior to Conversion(1)(2)	Common Stock Offered Hereby	Common Stock Beneficially Owned Following the Offering(3)
AIG DKR SoundShore Opportunity Holding Fund Ltd.(5)	$ 2,000,000.00	*	99,323	99,323	0
Akela Capital Master Fund, Ltd.(6)	$ 6,000,000.00	2.4%	297,970	297,970	0
Alpine Associates(7)(14)	$ 6,850,000.00	2.7%	340,183	340,183	0
Alpine Partners, L.P.(7)(14)	$ 900,000.00	*	44,695	44,695	0
Arbitex Master Fund, L.P.(8)	$ 4,000,000.00	1.6%	198,647	198,647	0
Argent Classic Convertible Arbitrage (Bermuda) Fund Ltd.	$ 4,200,000.00	1.7%	208,579	208,579	0
Argent Classic Convertible Arbitrage Fund, LP	$ 2,100,000.00	*	104,289	104,289	0
Attorney's Title Insurance Fund	$ 55,000.00	*	2,731	2,731	0
Boilermakers Blacksmith Pension Trust	$ 700,000.00	*	34,763	34,763	0
BP Amoco PLC Master Trust(9)	$ 351,000.00	*	17,431	17,431	0
BTES—Convertible ARB	$ 200,000.00	*	9,932	9,932	0
BTOP Growth vs Value	$ 800,000.00	*	39,729	39,729	0

Calamos® Market Neutral Fund—Calamos® Investment Trust(10)	$ 10,000,000.00	4.0%	496,618	496,618	0
Clinton Multistrategy Master Fund, Ltd.	$ 1,675,000.00	*	83,183	83,183	0
Clinton Riverside Convertible Portfolio Limited	$ 2,325,000.00	*	115,463	115,463	0
Consulting Group Capital Markets Funds(10)	$ 450,000.00	*	22,347	22,347	0
DBAG London	$ 34,000,000.00	13.6%	1,688,501	1,688,501	0
Delaware PERS	$ 775,000.00	*	38,487	38,487	0
Froley Revy Investment Convertible Security Fund	$ 75,000.00	*	3,724	3,724	0
Grace Convertible Arbitrage Fund, Ltd.(11)	$ 4,450,000.00	1.8%	220,995	220,995	0
Highbridge International LLC	$ 7,000,000.00	2.8%	347,632	347,632	0
Hotel Union & Hotel Industry of Hawaii Pension Plan(9)	$ 137,000.00	*	6,803	6,803	0
ICI American Holdings Trust	$ 175,000.00	*	8,690	8,690	0
JMG Capital Partners, L.P.(12)	$ 3,000,000.00	1.2%	148,985	148,985	0

JMG Triton Offshore Fund, Ltd.(13)	$	5,000,000.00	2.0%	248,309	248,309	0
Lord Abbett Bond Debenture Fund	$	5,000,000.00	2.0%	248,309	248,309	0
Man Convertible Bond Master Fund, Ltd.	$	2,920,000.00	1.2%	145,012	145,012	0
Marathon Global Convertible Master Fund, Ltd.	$	10,500,000.00	4.2%	521,448	521,448	0
Quantum Partners LDC	$	2,000,000.00	*	99,323	99,323	0
Southern Farm Bureau Life Insurance	$	400,000.00	*	19,864	19,864	0
Sphinx Convertible Arb Fund SPC(9)	$	126,000.00	*	6,257	6,257	0
SSI Blended Market Neutral L.P.(9)	$	219,000.00	*	10,875	10,875	0
SSI Hedged Convertible Market Neutral L.P.(9)	$	295,000.00	*	14,650	14,650	0
St. Thomas Trading, Ltd.	$	8,580,000.00	3.4%	426,098	426,098	0
State of Oregon/Equity	$	2,450,000.00	*	121,671	121,671	0
Syngenta AG	$	130,000.00	*	6,456	6,456	0
UBS O'Connor LLC f/b/o O'Connor Global Convertible Arbitrage Master Ltd.	$	2,500,000.00	1.0%	124,154	124,154	0
UBS O'Connor LLC f/b/o O'Connor Global Convertible Portfolio	$	250,000.00	*	12,415	12,415	0
UBS Securities LLC	$	2,770,000.00	1.1%	137,563	137,563	0
Van Kampen Harbor Fund(14)	$	5,000,000.00	2.0%	248,309	248,309	0
Viacom Inc. Pension Plan Master Trust(9)	$	12,000.00	*	595	595	0
Xavex Convertible Arbitrage 10 Fund	$	200,000.00	*	9,932	9,932	0
Zeneca Holdings Trust	$	500,000.00	*	24,830	24,830	0
Zurich Institutional Benchmarks Master Fund Ltd. (9)	$	860,000.00	*	42,709	42,709	0
All other holders of Notes or future transferees, pledgees, donees or successors of any such holder(4)	$	108,070,000.00	48.2%	5,987,723	5,987,723	
TOTAL	$	250,000,000.00	100.0%	12,415,450	12,415,450	0

* Less than 1.0%.

(1) Information concerning the selling securityholders may change from time to time. Any such changed information will be set forth in supplements to this prospectus if and when necessary.

(2) Assumes conversion at the initial conversion rate of 49.6618 shares per $1,000 principal amount of the notes. This conversion rate is subject to adjustment as described under "Description of notes—Conversion Rights." Accordingly, the number of shares of common stock beneficially owned by a selling securityholder may

increase or decrease from time to time. Under the terms of the Indenture, fractional shares will not be issued upon conversion of the notes. Cash will be paid instead of fractional shares, if any.

(3) Assumes sale, transfer or other disposition of all common stock issuable upon conversion of the Notes.

(4) Information concerning other selling securityholders will be set forth in supplements to this prospectus from time to time, if and when required.

(5) This selling securityholder is a non-public entity. DKR Capital Partners L.P. is a registered investment adviser with the SEC and as such, is the investment manager to the selling securityholder. DKR Capital Partners L.P. has retained certain portfolio managers to act as the portfolio manager to the selling securityholder. As such, DKR Capital Partners L.P. and certain portfolio managers have shared dispositive and voting power over the securities.

(6) This selling securityholder is a non-public entity. Anthony B. Boscor has voting and investment control over the securities that this selling securityholder beneficially owns.

(7) This selling securityholder is a non-public entity. Victoria Eckert, president of Eckert Corp, the sole shareholder of the selling securityholder, has voting and investment control over the securities that this selling securityholder beneficially owns.

(8) This selling securityholder is a non-public entity and affiliate of a registered broker-dealer. Clark Hunt and Johnathan Bren have voting and investment control over the securities that this selling securityholder beneficially owns. The selling securityholder purchased the securities with the expectation of reselling the securities in the ordinary course of business. The selling securityholder did not have an agreement or understanding, directly or indirectly, with any person to distribute the securities at the time it purchased the securities.

(9) This selling securityholder is a non-public entity. SSI Investment Management, Inc. has voting and investment control over the securities that this selling securityholder beneficially owns. The principal shareholders of SSI Investment Management, Inc. are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.

(10) This selling securityholder is a non-public entity. Nick Calamos has voting and investment control over the securities that this selling securityholder beneficially owns.

(11) This selling securityholder is a non-public entity. Michael Brailov and Bradford Whitmore have voting and investment control over the securities that this selling securityholder beneficially owns.

(12) This selling securityholder is a non-public entity and a California limited partnership. Its general partner is JMG Capital Management, LLC, a Delaware limited liability company and an investment adviser registered with the SEC. JMG Capital Management LLC has voting and dispositive power over the selling securityholder's investments, including the securities that this selling securityholder beneficially owns. The equity interests of JMG Capital

Management, LLC are owned by JMG Capital Management, Inc., a Delaware corporation, and Asset Alliance Holding Corp., a Delaware corporation. Jonathan M. Glaser is the Executive Officer and Director of JMG Capital Management, Inc. and has sole investment discretion over the selling securityholder's portfolio holdings.

(13) This selling securityholder is a non-public entity and an international business company under the laws of the British Virgin Islands. The selling securityholder's investment manager is Pacific Assets Management LLC, a Delaware limited liability company. Pacific Assets Management LLC is an investment adviser registered with the SEC and has voting and dispositive power over the selling securityholder's and investments, including the securities that this selling securityholder beneficially owns. The equity interests of Pacific Assets Management LLC are owned by Pacific Capital Management, Inc., a Delaware company and Asset Alliance Holding Corp., a Delaware company. The equity interests of Pacific Capital Management, Inc. are owned by Messrs. Roger Richter, Jonathan M. Glaser and Daniel A. David and Messrs. Glaser and Richter have sole investment discretion over the selling securityholder's portfolio holdings.

(14) Each of Alpine Associates, Alpine Partners, L.P. and Van Kampen Harbor Fund is a registered broker-dealer that acquired its securities for investment purposes and, accordingly, may be deemed to be an underwriter. Please see the discussion under "Plan of Distribution" for the required disclosure regarding broker-dealers.

PLAN OF DISTRIBUTION

We are registering for resale the notes and the shares of common stock issuable upon conversion of the notes on behalf of the selling securityholders, a list of whom is set forth in this prospectus under "Selling Securityholders," or pledgees, donees, transferees or other successors in interest that receive those shares as a gift, partnership distribution or other non-sale related transfer, referred to in this prospectus as the selling securityholders. We will receive no proceeds from this offering.

The selling securityholders may sell the notes or shares of common stock issuable upon conversion of the notes from time to time, if at all, as follows:

- to or through underwriters, brokers or dealers;
- directly to one or more other purchasers;
- through agents on a best-efforts basis; or
- otherwise through a combination of any of these methods of sale.

If a selling securityholder sells notes or shares of common stock issuable upon conversion of the notes through underwriters, dealers, brokers or agents, those underwriters, dealers, brokers or agents may receive compensation in the form of discounts, concessions or commissions from the selling securityholder and/or the purchasers of the notes or shares of common stock issuable upon conversion of the notes.

The notes and shares of common stock issuable upon conversion of the notes may be sold from time to time:

- in one or more transactions at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to prevailing market prices;
- at varying prices determined at the time of sale; or
- at negotiated prices.

These sales may be effected in transactions:

- on any national securities exchange or quotation service on which the notes or our common stock may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in block transactions in which the broker or dealer so engaged will attempt to sell the shares of common stock as agent but may position and resell a portion of the block as principal to facilitate the transaction, or in crosses, in which the same broker acts as an agent on both sides of the trade;
- in transactions otherwise than on exchanges or services or in the over-the-counter market;
- through the writing of options; or
- through other types of transactions.

In connection with sales of the notes or common stock issuable upon conversion of the notes or otherwise, the selling securityholders may enter into hedging transactions with brokers-dealers or others, who may in turn engage in short sales of the notes or common stock issuable upon conversion of the notes in the course of hedging the positions they assume. The selling securityholders may pledge or grant a security interest in some or all of the notes or common stock issuable upon conversion of

the notes and, if it defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the notes or common stock issuable upon conversion of the notes from time to time pursuant to this prospectus. The selling securityholders also may transfer and donate notes or shares of common stock issuable upon conversion of the notes in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling securityholders for purposes of this prospectus. The selling securityholders may sell short our common stock and may deliver this prospectus in connection with short sales and use the shares of common stock covered by the prospectus to cover short sales. In addition, any securities covered by this prospectus that qualify for sale pursuant to Rule 144 or any other available exemption from registration under the Securities Act may be sold under Rule 144 or another available exemption.

Our common stock trades on the Nasdaq National Market under the symbol "PDLI". Although the notes are eligible for trading in the PORTAL market, we do not intend to apply for listing of the notes on any securities exchange or for inclusion of the notes in any automated quotation system. Accordingly, no assurance can be given as to the development of liquidity or any trading market for the notes. See "Risk factors—Risks Related to the Notes."

At the time a particular offering of notes or shares of common stock is made, a prospectus supplement, if required, will be distributed which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any underwriters, dealers, brokers or agents, if any, and any discounts, commissions or concessions allowed or reallowed to be paid to brokers or dealers. To our knowledge, there are currently no agreements, arrangements or understandings with respect to the sale of any of the shares offered hereby.

Selling securityholders and any underwriters, dealers, brokers or agents who participate in the distribution of the shares of common stock may be deemed to be "underwriters" within the meaning of the Securities Act and any profits on the sale of the shares of common stock by them and any discounts commissions or concessions received by any underwriters, dealers, brokers or agents may be deemed to be underwriting discounts and commissions under the Securities Act. The selling securityholders and any other person participating in such distribution 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 notes and the underlying common stock by the selling securityholders and any other such person. In addition, Regulation M of the Exchange Act may restrict the ability of any person engaged in the distribution of the notes and the underlying common stock to engage in market-making activities with respect to the particular notes 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 notes and the underlying common stock and the ability of any person or entity to engage in market-making activities with respect to the notes and the underlying common stock.

The selling securityholders will be responsible for any fees, disbursements and expenses of any counsel for the selling securityholders. All other expenses incurred in connection with the registration of the shares, including printer's and accounting fees and the fees, disbursements and expenses of our counsel will be borne by us. Commissions and discounts, if any, attributable to the sales of the notes and shares of common stock will be borne by the selling securityholders. The selling securityholders may agree to indemnify any broker-dealer or agent that participates in transactions involving sales of the Notes and shares of common stock against certain liabilities, including liabilities arising under the Securities Act.

We and the selling securityholders will be indemnified by the other against liabilities under the Securities Act or will be entitled to contribution in connection with these liabilities.

We have agreed to keep the registration statement, of which this prospectus constitutes a part continuously effective under the Securities Act until such time as there are no longer any registrable

securities covered thereby. After this period, if we choose not to maintain the effectiveness of the registration statement of which this prospectus constitutes a part, the securities offered hereby may not be sold, pledged, transferred or assigned, except in a transaction which is exempt under the provisions of the Securities Act.

LEGAL MATTERS

Gray Cary Ware & Freidenrich LLP will pass upon the validity of the notes and the common stock issuable upon their conversion.

EXPERTS

Ernst & Young LLP, independent auditors, have audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2002, as well as the financial statements of Eos Biotechnology, Inc. appearing in our Current Report on Form 8-K/A dated June 17, 2003, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our consolidated financial statements, as well as the financial statements of Eos Biotechnology, Inc., are incorporated by reference in reliance of Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You can inspect, read and copy these reports, proxy statements and other information at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can also obtain copies of these materials at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. You can obtain information on the operation of the public reference facilities by calling the SEC at 1-800-SEC-0330. The SEC also maintains a web site (http://www.sec.gov) that makes available reports, proxy statements and other information regarding issuers that file electronically with it.

INCORPORATION BY REFERENCE

Some of the information that you may want to consider in deciding whether to invest in the notes is not included in this prospectus, but rather is incorporated by reference to certain reports that we have filed with the SEC. This permits us to disclose important information to you by referring to those documents rather than

repeating them in full in the prospectus. The information incorporated by reference in this prospectus contains important business and financial information. In addition, information that we file with the SEC after the date of this prospectus and prior to the completion of

this offering will update and supersede the information contained in this prospectus and incorporated filings. We incorporate by reference the following documents filed by us with the SEC:

Our SEC Filings	Period Covered or Date of Filing
Annual Report on Form 10-K	Year ended December 31, 2002
Quarterly Reports on Form 10-Q	Quarter ended March 31, 2003 Quarter ended June 30, 2003
Current Reports on Form 8-K and amendments thereto	June 17, 2003 July 7, 2003 July 9, 2003 August 14, 2003 August 15, 2003
All subsequent documents filed by us under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934	After the date of this prospectus and prior to the completion of this offering

Any statement contained in a document incorporated by reference, or deemed to be incorporated by reference, in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated by reference in this prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. Statements contained in this prospectus as to the contents of any contract or other document referred to in this prospectus do not purport to be complete, and where reference is made to the particular provisions of such contract or other document, such provisions are qualified in all respects by reference to all of the provisions of such contract or other document.

You may request a copy of each document incorporated by reference in this prospectus at no cost, by writing or calling us at the following address or telephone number:

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555
(510) 574-1400

Exhibits to a document will not be provided unless they are specifically incorporated by reference in that document.

The information in this prospectus may not contain all of the information that may be important to you. You should read the entire prospectus, as well as the documents incorporated by reference in the prospectus, before making an investment decision.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth the fees and expenses in connection with the issuance and distribution of the securities being registered hereunder. Except for the SEC registration fee, all amounts are estimates.

SEC registration fee	$	20,225
Accounting fees and expenses	$	10,000
Legal fees and expenses	$	30,000
Printing expenses	$	25,000
Trustee and Transfer Agent expenses	$	30,000
Miscellaneous expenses, including Listing Fees	$	5,000
Total	$	120,225

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law permits indemnification of officers, directors, and other corporate agents under certain circumstances and subject to certain limitations. Our restated certificate of incorporation and amended and restated bylaws provide that we shall indemnify our directors, officers, employees, and agents to the full extent permitted by Delaware law. The restated certificate of incorporation and amended and restated bylaws further provide that we may indemnify directors, officers, employees, and agents in circumstances in which indemnification is otherwise discretionary under Delaware law. In addition, we entered into separate indemnification agreements with our directors and officers which would require us, among other things, to indemnify them against certain

liabilities which may arise by reason of their status or service (other than liabilities arising from willful misconduct of a culpable nature) and to maintain directors' and officer's liability insurance, if available on reasonable terms.

These indemnification provisions and the indemnification agreements that we have entered into with our officers and directors may be sufficiently broad to permit indemnification of our officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended (the Securities Act).

We have a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances.

At present, there is no pending litigation or proceeding involving any of our directors, officers, employees or other agents in which indemnification is being sought. We are not aware of any threatened litigation that may result in a claim for indemnification by any of our directors, officers, employees or other agents.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

Exhibits:

EXHIBIT NUMBER	DESCRIPTION
4.1	Indenture between the Company and J.P. Morgan Trust Company, National Association, a national banking association, dated July 14, 2003

4.2	Registration Rights Agreement for the Company's 2.75% Convertible Subordinated Notes due 2023, between the Company and the Initial Purchasers dated July 14, 2003
5.1	Opinion of Gray Cary Ware & Freidenrich LLP
12.1	Statements Regarding Computations of Ratios
23.1	Consent of Gray Cary Ware & Freidenrich LLP (contained in Exhibit 5.1)
23.2	Consent of Independent Auditors
24	Power of Attorney (contained in the signature page hereof)
25	Statement of Eligibility of the Trustee on Form T-1

ITEM 17. UNDERTAKINGS.

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

The undersigned registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of 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 or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high 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 (1)(i) and (a)(1)(ii) above shall not apply if the registration statement is on Form S-3, Form S-8, or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished

to the Commission 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 purpose 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.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of Prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in the 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 part of this Registration Statement as of the time it was declared effective; and

(2) For the purpose of determining any liability under the Securities Act, 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 the 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 City of Fremont, State of California on September 10 , 2003.

PROTEIN DESIGN LABS, INC.

By: /s/ MARK MCDADE

Mark McDade
Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Mark McDade and Glen Y. Sato, and each of them, with full power of substitution and resubstitution and each with full power to act without the other, his or her true and lawful attorney-in-fact and agent, 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, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission or any state, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their, his or her substitutes or substitute, 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 by the following persons in the capacities and on the dates indicated.

Date: September 10, 2003 /s/ MARK MCDADE

Mark McDade
Chief Executive Officer and Director

Date: September 10, 2003 /s/ GLEN Y. SATO

Glen Y. Sato
Senior Vice President and Chief Financial Officer

Date: September 10, 2003 /s/ LAURENCE J. KORN

Laurence J. Korn
Chairman of the Board of Directors and Director

Date: September 10, 2003 /s/ CARY L. QUEEN

Cary L. Queen
Senior Vice President and Director

Date: September 10, 2003 /s/ JON S. SAXE

Jon S. Saxe
Director

Date: September 10, 2003	/s/ KAREN T. DAWES
	Karen T. Dawes Director
Date: September 10, 2003	/s/ GEORGE M. GOULD
	George M. Gould Director
Date: September 10, 2003	/s/ MAX LINK
	Max Link Director
Date: September 10, 2003	/s/ JÜRGEN DREWS
	Jürgen Drews Director
Date: September 10, 2003	/s/ L. PATRICK GAGE
	L. Patrick Gage Director

INDEX TO EXHIBITS

Exhibit No.	
4.1	Indenture between the Company and J.P. Morgan Trust Company, National Association, a national banking association, dated July 14, 2003
4.2	Registration Rights Agreement for the Company's 2.75% Convertible Subordinated Notes due 2023, between the Company and the Initial Purchasers dated July 14, 2003
5.1	Opinion of Gray Cary Ware & Freidenrich LLP
12.1	Statements Re: Computation of Ratio of Earnings to Fixed Charges
23.1	Consent of Gray Cary Ware & Freidenrich LLP (contained in Exhibit 5.1)
23.2	Consent of Independent Auditors
24	Power of Attorney (contained in the signature page hereof)
25	Statement of Eligibility of the Trustee on Form T-1

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PROTEIN DESIGN LABS, INC.

and

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

as Trustee

INDENTURE

Dated as of July 14, 2003

$250,000,000 Principal Amount

2.75% CONVERTIBLE SUBORDINATED NOTES DUE 2023

CROSS-REFERENCE TABLE

TIA Indenture		Indenture Section
310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	N.A.
	(a)(4)	N.A.
	(a)(5)	N.A.
	(b)	7.08; 7.10; 13.02
	(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)	7.06; 13.02
	(d)	7.06
314	(a)	4.02
	(b)	12.05
	(c)(1)	13.04
	(c)(2)	13.04
	(c)(3)	N.A.
	(d)	12.03
	(e)	13.05
	(f)	N.A.
315	(a)	7.01(B)
	(b)	7.05; 13.02
	(c)	7.01(A)
	(d)	7.01(C)
	(e)	6.11
316	(a)(last sentence)	2.09
	(a)(1)(A)	6.05
	(a)(1)(B)	6.04
	(a)(2)	N.A.
	(b)	6.07

	(c)	N.A.
	317(a)(1)	6.08
	(a)(2)	6.09
	(b)	2.04
318	(a)	13.01

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INDENTURE, dated as of July 14, 2003 between Protein Design Labs, Inc., a Delaware corporation (the "**Company**"), and J.P. Morgan Trust Company, National Association, a national banking association, as trustee (the "**Trustee**").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Company's 2.75% Convertible Subordinated Notes due 2023 (the "**Securities**").

I. DEFINITIONS AND INCORPORATION BY REFERENCE

1.01 DEFINITIONS.

"**Affiliate**" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. For this purpose, "control" shall mean the power to direct the management and policies of a person through the ownership of securities, by contract or otherwise.

"**Agent**" means any Registrar, Paying Agent, Conversion Agent or co-registrar or other co-agent.

"**Board of Directors**" means the Board of Directors of the Company or any committee thereof authorized to act for it hereunder.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of the Company and all warrants or options to acquire such capital stock.

"**Closing Sale Price**" means the price of a share of Common Stock on the relevant date, determined (a) on the basis of 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 (b) if the Common Stock is not listed on a national securities exchange, as reported by the National Association of Securities Dealers Automated Quotation System; or (c) if not so quoted, as reported by

National Quotation Bureau, Incorporated or a similar organization. In the absence of a quotation, the Closing Sale Price shall be such price as the Company shall reasonably determine on the basis of such quotations as most accurately reflecting the price that a fully informed buyer, acting on his own accord, would pay to a fully informed seller, acting on his own accord in an arms-length transaction, for a share of such Common Stock.

"**Common Stock**" means the common stock, par value $.01 per share, of the Company, or such other Capital Stock into which the Company's common stock is reclassified or changed.

"**Company**" means the party named as such above until a successor replaces it pursuant to the applicable provision hereof and thereafter means the successor.

"**Company Request**" or "**Company Order**" means a written request or order signed on behalf of the Company by its Chairman of the Board, its Chief Executive Officer, its President, its Chief Operating Officer, its Chief Financial Officer, any Executive Vice President or any Vice President and by its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary, and delivered to the Trustee.

"**Control Agreement**" means that certain Control Agreement, dated as of the date hereof, by and among the Company, the Trustee and JPMorgan Chase Bank, a New York banking corporation, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

"**Conversion Rate**" means **t**he number of shares of Common Stock issuable upon conversion of a Security per $1,000 of Principal Amount at Maturity, which Conversion Rate shall initially be 49.6618 shares of Common Stock per $1,000 Principal Amount at Maturity.

"**Conversion Price**" means, as of any date of determination, the dollar amount derived by dividing $1,000 of Principal Amount at Maturity by the Conversion Rate then in effect.

"**Corporate Trust Office of the Trustee**" shall be at the address of the Trustee specified in **Section 13.02** or such other address as the Trustee may give notice of to the Company.

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

"**Depositary**" means The Depository Trust Company, its nominees and successors.

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

"**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.

"**Initial Purchasers**" means UBS Securities LLC, Morgan Stanley & Co. Incorporated and CIBC World Markets Corp.

"**Interest**" includes liquidated damages, unless the context otherwise requires.

"**Issue Date**" means July 14, 2003.

"**Lien**," with respect to any asset, means any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset given to secure Indebtedness, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell, give or grant a security interest and any filing of, or agreement to give,

any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction with respect to any such lien, pledge, charge or security interest).

"**liquidated damages**" has the meaning ascribed to it in the Registration Rights Agreement.

"**Maturity Date**" means August 16, 2023.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, any Executive Vice President, any Vice President, the Treasurer or the Secretary of the Company.

"**Officers' Certificate**" means a certificate signed by two (2) Officers or by an Officer and an Assistant Treasurer or an Assistant Secretary of the Company.

"**Opinion of Counsel**" means a written opinion from legal counsel who may be an employee of or counsel for the Company, or other counsel reasonably acceptable to the Trustee.

"**Option**" means the Initial Purchasers' option to acquire up to $50,000,000 of additional Securities ("**Additional Securities**") as provided for in the Purchase Agreement.

"**Permitted Payments**" means any payments on the Securities that are directly or indirectly derived from the Pledged Financial Assets in accordance with the terms and provisions of the Pledge Agreement and this Indenture.

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

"**Pledge Account**" has the meaning ascribed to it in the Pledge Agreement.

"**Pledge Agreement**" means that certain Pledge Agreement, dated as of the date hereof, by and between the Company and Trustee, relating to, among other things, the establishment and maintenance of the Pledge Account and the disbursement of funds or other assets therefrom, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

"**Pledged Security Entitlements**" has the meaning ascribed to it in the Pledge Agreement.

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

"**Purchase Agreement**" means the Purchase Agreement dated as of July 9, 2003 between the Company and the Initial Purchasers.

"**Purchase Notice**" means a Purchase Notice in the form set forth in the Securities.

"**QIB**" means a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act.

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

"**Redemption Price**" means, with respect to a Security to be redeemed by the Company in accordance with **Article III**, one hundred percent (100%) of the outstanding principal amount of such Security to be redeemed.

"**Registration Rights Agreement**" means the Registration Rights Agreement dated as of the date hereof between the Company and the Initial Purchasers.

"**Repurchase Price**" means, with respect to a Security duly tendered for purchase by the Company in accordance with **Section 3.09**, one hundred percent (100%) of the outstanding principal amount of such Security so tendered.

"**Responsible Officer**" shall mean, 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 shall have direct responsibility for the administration of this Indenture.

"**Restricted Security**" means a Security that constitutes a "restricted security" within the meaning of Rule 144(a)(3) under the Securities Act; *provided*, *however*, that the Trustee shall be entitled to request and conclusively rely on an Opinion of Counsel with respect to whether any Security constitutes a Restricted Security.

"**Rule 144A**" means Rule 144A under the Securities Act.

"**SEC**" means the Securities and Exchange Commission.

"**Securities**" means the 2.75% Convertible Subordinated Notes due 2023 issued by the Company pursuant to this Indenture.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Significant Subsidiary**" with respect to any person means any subsidiary of such person that constitutes a "significant subsidiary" within the meaning of Rule 1-02 of Regulation S-X under the Securities Act, as such regulation is in effect on the date of this Indenture.

"**Subsidiary**" means (i) a corporation a majority of whose capital stock with voting power, under ordinary circumstances, to elect directors is at the time, directly or indirectly, owned by the Company, by one or more subsidiaries of the Company or by the Company and one or more of its subsidiaries or (ii) any other person (other than a corporation) in which the

Company, one or more its subsidiaries or the Company and one or more its subsidiaries, directly or indirectly, at the date of determination thereof, have at least majority ownership interest.

"**TIA**" means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb) as in effect on the date of this Indenture, except as provided in **Section 9.03**.

"**Trading Day**" means a day during which trading in securities generally occurs on the principal 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 such in this Indenture until a successor replaces it in accordance with the provisions hereof and thereafter means the successor.

"**Voting Stock**" means the total voting power of all classes of the Company's Capital Stock entitled to vote generally in the election of directors.

1.02 **OTHER DEFINITIONS.**

Term	Defined in Section
"**Additional Securities**"	1.01
"**Aggregate Amount**"	10.06
"**Bankruptcy Law**"	6.01
"**Business Day**"	13.07
"**Change in Control**"	3.09
"**Conversion Agent**"	2.03
"**Conversion Shares**"	10.06
"**Custodian**"	6.01
"**Designated Senior Indebtedness**"	11.02
"**Determination Date**"	10.06
"**Distribution Date**"	10.06
"**Event of Default**"	6.01
"**Expiration Date**"	10.06
"**Expiration Time**"	10.06
"**Global Security**"	2.01
"**Indebtedness**"	11.02
"**Legal Holiday**"	13.07
"**Market Price**"	3.08
"**Non-Payment Default**"	11.04
"**Notice of Default**"	6.01
"**Option Purchase Date**"	3.08
"**Option Purchase Notice**"	3.08
"**Option Purchase Price**"	3.08
"**Participants**"	2.15

"**Paying Agent**"	2.03
"**Payment Blockage Period**"	11.04
"**Payment Blockage Notice**"	11.04
"**Payment Default**"	11.04
"**Physical Securities**"	2.01
"**Private Placement Legend**"	2.17
"**Purchased Shares**"	10.06
"**Qualifying Foreign Merger**"	5.01
"**Redemption**"	3.01
"**Registrar**"	2.03
"**Release Amount**"	12.04
"**Release Distribution**"	12.04
"**Remaining Securities**"	12.04
"**Representative**"	11.02
"**Repurchase at Holder's Option**"	3.01
"**Repurchase Date**"	3.09
"**Repurchase Event**"	3.09
"**Repurchase Event Notice**"	3.09
"**Repurchase Right**"	3.09
"**Repurchase Upon Repurchase Event**"	3.01
"**Resale Restriction Termination Date**"	2.17
"**Rights**"	10.06
"**Senior Indebtedness**"	11.02
"**Termination of Trading**"	3.09

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 or a Holder;

"**indenture to be qualified**" means this Indenture;

"**indenture trustee**" or "**institutional trustee**" means the Trustee; and

"**obligor**" on the indenture securities means the Company or any successor.

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

1.04 **RULES OF CONSTRUCTION.**

Unless the context otherwise requires:

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

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

(iii) "or" is not exclusive;

(iv) words in the singular include the plural and in the plural include the singular;

(v) provisions apply to successive events and transactions; and

(vi) "herein", "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

II. THE SECURITIES

2.01 **FORM AND DATING.**

The Securities and the Trustee's certificate of authentication shall be substantially in the form set forth in **Exhibit A**, which is incorporated in and forms a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Security shall be dated the date of its authentication.

Securities offered and sold in reliance on Rule 144A under the Securities Act shall be issued initially in the form of one or more Global Securities, substantially in the form set forth in **Exhibit A** (the "**Global Security**"), deposited with the Trustee, as custodian for the Depositary, duly executed by the Company and authenticated by the Trustee as hereinafter provided and bearing the legends set forth in **Exhibits B-1** and **B-2**. The aggregate principal amount of the Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, as hereinafter provided; *provided*, that in no event shall the aggregate principal amount of the Global Security or Securities exceed $250,000,000 (or $300,000,000 if the Initial Purchasers elect to purchase Additional Securities pursuant to the Option).

Securities issued in exchange for interests in a Global Security pursuant to **Section 2.15** may be issued in the form of permanent certificated Securities in registered form in substantially the form set forth in **Exhibit A** (the "**Physical Securities**") and, if applicable, bearing any legends required by **Section 2.17**.

2.02 **EXECUTION AND AUTHENTICATION.**

One Officer shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

Upon a written order of the Company signed by one Officer, the Trustee shall authenticate Securities for original issue in the aggregate principal amount of $250,000,000 and such additional principal amount, if any, as shall be determined pursuant to the next sentence of this **Section 2.02**. Upon receipt by the Trustee of an Officers' Certificate stating that the Initial Purchasers have elected to purchase from the Company a specified principal amount of Additional Securities, not to exceed $50,000,000, pursuant to the Purchase Agreement, the Trustee shall authenticate and deliver such specified principal amount of Additional Securities to or upon the written order of the Company signed as provided in the immediately preceding sentence. Such Officers' Certificate must be received by the Trustee not later than the proposed date for delivering of such Additional Securities. The aggregate principal amount of Securities outstanding at any time may not exceed $300,000,000.

Upon a written order of the Company signed by two (2) Officers or by an Officer and an Assistant Treasurer of the Company, the Trustee shall authenticate Securities not bearing the Private Placement Legend to be issued to the transferee when sold pursuant to an effective registration statement under the Securities Act as set forth in **Section 2.16(B)**.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Agent. An authenticating agent has the same rights as an Agent to deal with the Company and its Affiliates.

If a written order of the Company pursuant to this **Section 2.02** has been, or simultaneously is, delivered, any instructions by the Company to the Trustee with respect to endorsement, delivery or redelivery of a Security issued in global form shall be in writing but need not comply with **Section 13.04** hereof and need not be accompanied by an Opinion of Counsel.

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

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 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 appoint or change one or more co-registrars, one or more additional paying agents and one or more additional conversion agents

without notice and may act in any such capacity on its own behalf. The term "**Registrar**" includes any co-registrar; the term "**Paying Agent**" includes any additional paying agent; and the term "**Conversion Agent**" includes any additional conversion agent.

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

The Company initially appoints the Trustee as Paying Agent, Registrar and Conversion Agent.

2.04 **PAYING AGENT TO HOLD MONEY IN TRUST.**

Each Paying Agent shall hold in trust for the benefit of the Securityholders or the Trustee all moneys held by the Paying Agent for the payment of the Securities, and shall notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent shall have no further liability for the money. If the Company acts as Paying Agent, it shall segregate and hold as a separate trust fund all money held by it as Paying Agent.

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 furnish to the Trustee on or before each interest payment date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders.

2.06 **TRANSFER AND EXCHANGE.**

Subject to **Sections 2.15** and **2.16** hereof, where Securities are presented to the Registrar with a request to register their transfer or to exchange them for an equal principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange if its requirements for such transaction are met. To permit registrations of transfer and exchanges, the Trustee shall authenticate Securities at the Registrar's request. The Company or the Trustee, as the case may be, shall not be required (a) to issue, authenticate, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the mailing of a notice of redemption of the Securities selected for redemption under **Section 3.04** and ending at the close of business on the day of such mailing or (b) to register the transfer of or exchange any Security that has been selected for redemption or for which a Purchase Notice has been delivered, and not withdrawn, in accordance with this Indenture, except the unredeemed or unrepurchased portion of Securities being redeemed or repurchased in part.

No service charge shall be made for any transfer, exchange or conversion of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer, exchange or conversion of Securities, other than exchanges pursuant to **Sections 2.10, 3.07, 3.08, 3.09, 9.05** or **10.02** not involving any transfer.

2.07 **REPLACEMENT SECURITIES.**

If the Holder of a Security claims that the Security has been mutilated, lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security upon surrender to the Trustee of the mutilated Security, or upon delivery to the Trustee of evidence of the loss, destruction or theft of the Security satisfactory to the Trustee and the Company. In the case of lost, destroyed or wrongfully taken Securities, if required by the Trustee, an indemnity bond must be provided by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee or any Agent from any loss which any of them may suffer if a Security is replaced. The Trustee may charge for its expenses in replacing a Security.

In case any such mutilated, lost, destroyed or wrongfully taken Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security when due.

Every replacement Security is an additional obligation of the Company only as provided in **Section 2.08**.

2.08 **OUTSTANDING SECURITIES.**

Securities outstanding at any time are all the Securities authenticated by the Trustee except for those converted, those cancelled by it, those delivered to it for cancellation and those described in this **Section 2.08** as not outstanding. Except to the extent provided in **Section 2.09**, a Security does not cease to be outstanding because the Company or one of the Subsidiaries or Affiliates holds the Security.

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

If the Paying Agent (other than the Company) holds, on an Option Purchase Date, money and/or shares of Common Stock, if applicable and as herein provided, or holds, on the Redemption Date, Repurchase Date or Maturity Date, money, sufficient to pay, as herein provided, the Option Purchase Price, the Redemption Price, the Repurchase Price or the principal amount, as the case may be, plus, if applicable, accrued and unpaid interest, if any, payable as herein provided in respect of Securities upon Repurchase at Holder's Option, Redemption, Repurchase Upon Repurchase Event or maturity, then immediately after such date such Securities shall be deemed to be no longer outstanding, and interest on them shall cease to accrue, and such Securities shall be deemed paid whether or not such Securities are delivered to the Paying Agent. Thereafter, all other rights of the Holders of such Securities shall terminate with respect to such Securities, other than the right to receive the Option Purchase Price, the

Redemption Price, the Repurchase Price or the principal amount, as the case may be, plus, if applicable, such accrued and unpaid interest.

If a Security is converted in accordance with **Article X**, then, from and after the time of such conversion on the conversion date, such Security shall cease to be outstanding, and interest, if any, shall cease to accrue on such Security.

2.09 **SECURITIES HELD BY THE COMPANY OR AN AFFILIATE.**

In determining whether the Holders of the required aggregate principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or any of the Subsidiaries or an Affiliate shall be considered as though not outstanding, except that for the purposes of determining whether a Responsible Officer of the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded.

2.10 **TEMPORARY SECURITIES.**

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities.

2.11 **CANCELLATION.**

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange, payment or conversion. The Trustee shall cancel all Securities surrendered for transfer, exchange, payment, conversion or cancellation in accordance with its customary procedures. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation or that any Securityholder has converted pursuant to **Article X**.

2.12 **DEFAULTED INTEREST.**

If and to the extent the Company defaults in a payment of interest on the Securities, the Company shall pay the defaulted interest in any lawful manner plus, to the extent not prohibited by applicable statute or case law, interest payable on the defaulted interest at the rate provided in the Securities. The Company

may pay the defaulted interest to the persons who are Securityholders on a subsequent special record date. The Company shall fix such record date and payment date. At least fifteen (15) days before the record date, the Company shall mail to Securityholders a notice that states the record date, payment date and amount of interest to be paid.

2.13 **CUSIP NUMBERS.**

The Company in issuing the Securities may use one or more "CUSIP" numbers, and if so, the Trustee shall use the CUSIP numbers in notices of redemption or exchange as a convenience to Holders; *provided*, *however*, that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of the CUSIP numbers printed in the notice or on the Securities, and that reliance may be placed only on the other identification numbers printed on the Securities. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

2.14 **DEPOSIT OF MONEYS.**

Prior to 11:00 A.M., New York City time, on each interest payment date, Maturity Date, Redemption Date, Option Purchase Date or Repurchase Date, the Company shall have deposited with the Paying Agent in immediately available funds money sufficient to make cash payments, if any, due on such interest payment date, Maturity Date, Redemption Date, Option Purchase Date or Repurchase Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such interest payment date, Maturity Date, Redemption Date, Option Purchase Date or Repurchase Date, as the case may be; *provided*, *however*, that, with respect to a Repurchase at Holder's Option where all or a portion of the Option Purchase Price is to be paid in shares of Common Stock as provided in, and in compliance with, **Section 3.08**, the Company shall similarly deposit with the Paying Agent the amount of shares of Common Stock payable under **Section 3.08** in respect of such Option Purchase Price.

2.15 **BOOK-ENTRY PROVISIONS FOR GLOBAL SECURITIES.**

(A) The Global Securities initially shall (i) be registered in the name of the Depositary or the nominee of such Depositary, (ii) be delivered to the Trustee as custodian for such Depositary and (iii) bear legends as set forth in **Section 2.17**.

Members of, or participants in, the Depositary ("**Participants**") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under the Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the 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 impair, as between the Depositary and Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(B) Transfers of Global Securities shall be limited to transfers in whole, but not in part, to the Depositary, its successors or their respective nominees. In addition, Physical Securities shall be transferred to all beneficial owners, as identified by the Depositary, in exchange for their beneficial interests in Global Securities only if (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for any Global Security and a successor Depositary is not appointed by the Company within ninety (90) days of such notice or

(ii) an Event of Default has occurred and is continuing and the Registrar has received a written request from the Depositary to issue Physical Securities.

(C) In connection with the transfer of a Global Security in its entirety to beneficial owners pursuant to **Section 2.15(B)**, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Physical Securities of authorized denominations.

(D) Any Physical Security constituting a Restricted Security delivered in exchange for an interest in a Global Security pursuant to **Section 2.15(B)** shall, except as otherwise provided by **Section 2.16**, bear the Private Placement Legend.

(E) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

2.16 **SPECIAL TRANSFER PROVISIONS.**

(A) **Restrictions on Transfer and Exchange of Global Securities**. Notwithstanding any other provisions of this Indenture, a Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(B) **Private Placement Legend**. Upon the transfer, exchange or replacement of Securities not bearing the Private Placement Legend, the Registrar or co-Registrar shall deliver Securities that do not bear the Private Placement Legend. Upon the transfer, exchange or replacement of Securities bearing the Private Placement Legend, the Registrar or co-Registrar shall deliver only Securities that bear the Private Placement Legend unless (i) the requested transfer is after the Resale Restriction Termination Date, (ii) there is delivered to the Trustee an Opinion of Counsel reasonably satisfactory to the Company to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (iii) such Security has been sold pursuant to an effective registration statement under the Securities Act and the Holder selling such Securities has delivered to the Registrar or co-Registrar a notice in the form of **Exhibit C** hereto. Upon the effectiveness of the Shelf Registration Statement (as defined in the

Registration Rights Agreement), the Company shall deliver to the Trustee a notice of effectiveness, a Security or Securities, an authentication order in accordance with **Section 2.02** and an opinion of counsel in the form of **Exhibit D** hereto and, if required by the Depositary, the Company shall deliver to the Depositary a letter of representations in a form reasonably acceptable to the Depositary.

(C) **General**. By its acceptance of any Security bearing the Private Placement Legend, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Security only as provided in this Indenture.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to **Section 2.15** or this **Section 2.16**. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(D) **Transfers of Securities Held by Affiliates**. Any certificate (i) evidencing a Security that has been transferred to an Affiliate within two (2) years after the Issue Date, as evidenced by a notation on the assignment form for such transfer or in the representation letter delivered in respect thereof or (ii) evidencing a Security that has been acquired from an Affiliate (other than by an Affiliate) in a transaction or a chain of transactions not involving any public offering, shall, until two (2) years after the last date on which the Company or any Affiliate was an owner of such Security (or such longer period of time as may be required under the Securities Act or applicable state securities laws, as set forth in an Opinion of Counsel), in each case, bear the Private Placement Legend, unless otherwise agreed by the Company (with written notice thereof to the Trustee).

2.17 **RESTRICTIVE LEGENDS.**

Each Global Security and Physical Security that constitutes a Restricted Security shall bear the legend (the "**Private Placement Legend**") as set forth in **Exhibit B-1** on the face thereof until after the second anniversary of the later of (i) the Issue Date and (ii) the last date on which the Company or any Affiliate was the owner of such Security (or any predecessor security) (or such shorter period of time as permitted by Rule 144(k) under the Securities Act or any successor provision thereunder) (or such longer period of time as may be required under the Securities Act or applicable state securities laws, as set forth in an Opinion of Counsel, unless otherwise agreed between the Company and the Holder thereof) (such date, the "**Resale Restriction Termination Date**").

Each Global Security shall also bear the legend as set forth in **Exhibit B-2**.

III. REDEMPTION

3.01 **RIGHT OF REDEMPTION.**

Redemption of the Securities, as permitted by any provision of this Indenture, shall be made in accordance with **paragraphs 6 and 7** (a "**Redemption**"), with respect to a repurchase at the Holder's option, **paragraph 8** (a "**Repurchase at Holder's Option**"), and with respect to any repurchase upon a Repurchase Event, **paragraph 9** (a "**Repurchase Upon Repurchase Event**") of the Securities, in each case in accordance with the applicable provisions of this **Article III**.

The Company will comply with all federal and state securities laws in connection with any offer to sell or solicitations of offers to buy Securities pursuant to this **Section 3.01**.

Prior to August 16, 2008, the Company will not have the right to redeem any Securities. On or after August 16, 2008, the Company will have the right to redeem all or any part of the

Securities at the Redemption Price plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date.

3.02 **NOTICES TO TRUSTEE.**

If the Company elects to redeem Securities pursuant to **paragraph 6** of the Securities, it shall notify the Trustee at least fifteen (15) days prior to the mailing of the notice of Redemption (unless a shorter notice period shall be satisfactory to the Trustee) of the Redemption Date and the aggregate principal amount of Securities to be redeemed.

3.03 **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 by lot, on a *pro rata* basis or in accordance with any other method the Trustee considers fair and appropriate. The Trustee shall make the selection from Securities outstanding not previously called for Redemption. The Trustee may select for Redemption portions of the principal of Securities that have denominations larger than $1,000 principal amount. Securities and portions of them the Trustee selects shall be in amounts of $1,000 principal amount or integral multiples of $1,000 principal amount. The Trustee shall promptly notify the Company in writing of the Securities selected for Redemption and the principal amount thereof to be redeemed.

The Registrar need not transfer or exchange any Securities selected for Redemption, except the unredeemed portion of the Securities redeemed in part. Also, the Registrar need not transfer or exchange any Securities for a period of fifteen (15) days before selecting Securities to be redeemed.

3.04 **NOTICE OF REDEMPTION.**

At least thirty (30) days but not more than sixty (60) days before a Redemption Date, the Company shall mail by first-class mail, overnight delivery or telecopy a notice of Redemption to each Holder whose Securities are to be redeemed, at the address of such Holder appearing in the security register.

The notice shall identify the Securities and the aggregate principal amount thereof to be redeemed and shall state:

(i) the Redemption Date;

(ii) the Redemption Price plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date;

(iii) the Conversion Rate and the Conversion Price;

(iv) the names and addresses of the Paying Agent and the Conversion Agent;

(v) the date on which the right to convert the principal of the Securities called for Redemption will terminate and the place or places where such Securities may be surrendered for conversion;

(vi) that Holders who want to convert Securities must satisfy the requirements in **Article X**;

(vii) the paragraph of the Securities pursuant to which the Securities are to be redeemed;

(viii) that Securities called for Redemption must be surrendered to the Paying Agent to collect the Redemption Price plus accrued and unpaid interest, if any, payable as herein provided upon Redemption;

(ix) that unless the Company shall default in the payment of the Redemption Price, or accrued and unpaid interest, if any, payable as herein provided upon Redemption, interest on Securities called for Redemption ceases to accrue on and after the Redemption Date and that the Securities will cease to be convertible after the close of business on the Business Day immediately preceding the Redemption Date; and

(x) the CUSIP number or numbers, as the case may be, of the Securities.

The date on which the right to convert the principal of the Securities called for Redemption will terminate shall be at the close of business on the Business Day immediately preceding the Redemption Date.

At the Company's request, upon reasonable prior notice, the Trustee shall give the notice of Redemption in the Company's name and at the Company's expense; *provided* that the form and content of such notice shall be prepared by the Company.

3.05 **EFFECT OF NOTICE OF REDEMPTION.**

Once notice of Redemption is mailed, Securities called for Redemption become due and payable on the Redemption Date at the Redemption Price plus accrued and unpaid interest to, but excluding, the Redemption Date, and, on and after such Redemption Date (unless the Company shall default in the payment of the Redemption Price or such accrued and unpaid interest), such Securities shall cease to bear interest. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price plus accrued interest to, but excluding, the Redemption Date, unless the Redemption Date is an interest payment date, in which case the accrued interest will be paid in the ordinary course.

3.06 **DEPOSIT OF REDEMPTION PRICE.**

On or before the Redemption Date, the Company shall deposit with the Paying Agent money in funds immediately available on the Redemption Date sufficient to pay the Redemption Price, plus accrued and unpaid interest to, but excluding, the Redemption Date, of all Securities to be redeemed on that date. The Paying Agent shall return to the Company, as soon as practicable, any money not required for that purpose.

3.07 **SECURITIES REDEEMED IN PART.**

Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder a new Security or Securities in an aggregate principal amount equal to the unredeemed portion of the Security surrendered.

If any Security selected for partial Redemption is converted in part, the converted portion of such Security shall be deemed to be the portion selected for Redemption.

3.08 **PURCHASE OF SECURITIES AT OPTION OF THE HOLDER.**

(A) At the option of the Holder thereof, Securities shall be purchased by the Company pursuant to **paragraph 8** of the Securities on August 16, 2010, August 16, 2013 and August 16, 2018 (each, an "**Option Purchase Date**"), at one hundred percent (100%) of the principal amount of the Securities (the "**Option Purchase Price**"), plus accrued and unpaid interest, if any, to, but excluding, the Option Purchase Date, upon:

(i) delivery to the Paying Agent, by the Holder, of a Purchase Notice, in the form set forth in the Securities, or any other form of written notice substantially similar thereto, at any time from the opening of business on the date that is twenty (20) Business Days prior to the applicable Option Purchase Date until the close of business on the Business Day immediately preceding the applicable Option Purchase Date, stating:

(I) the certificate number of the Securities which the Holder will deliver to be purchased;

(II) the principal amount of Securities to be purchased, which must be $1,000 or an integral multiple thereof;

(III) that such Principal amount of Securities shall be purchased as of the applicable Option Purchase Date pursuant to the terms and conditions specified in **paragraph 8** of the Securities and in this Indenture; and

(IV) if the applicable Option Purchase Date is August 16, 2013 or August 16, 2018, whether, in the event the Company shall elect, pursuant to **Section 3.08(C)**, to pay the Option Purchase Price, in whole or in part, in shares of Common Stock, and such portion of the Option Purchase Price shall ultimately be paid to such Holder entirely in cash because any of the conditions, as provided in this **Section 3.08**, to payment of the Option Purchase Price in shares of Common Stock is not satisfied prior to the close of business on the Business Day immediately preceding the applicable Option Purchase Date, 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 and certificate numbers, if any, of the Securities to be so withdrawn, which amount must be $1,000 or an integral multiple thereof) or (ii) to receive cash in respect of the entire Option Purchase Price for the Securities (or portions thereof) to which such Purchase Notice relates; and

(ii) delivery of such Securities (together with all necessary endorsements) to the Paying Agent after delivery of the Purchase Notice at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Option Purchase Price therefor plus accrued and unpaid interest thereon, if any, to, but excluding, the applicable Option Purchase Date; *provided, however*, that such Option Purchase Price and such accrued and unpaid interest shall be so paid pursuant to this **Section 3.08** only if the Securities 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.

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 (together with accrued and unpaid interest, if any,) as promptly as practicable following the later of the applicable Option Purchase Date and the time of delivery of the Security, but in no event more than three (3) Business Days following the later of the applicable Option Purchase Date or the time of delivery of the Security. In accordance with the preceding sentence, if all or a portion of the Option Purchase Price is to be paid in shares of Common Stock pursuant to and in accordance with this **Section 3.08,** the Company shall deliver to each Holder entitled to receive shares of Common Stock through the Paying Agent, a certificate for the number of full shares of Common Stock issuable in full or partial payment of the Option Purchase Price as herein provided and cash in lieu of any fractional interests. The person in whose name the certificate for the shares of Common Stock is registered shall be treated as a holder of record of Common Stock on the Business Day following the date of delivery of such certificate as described in the previous sentence. Except as otherwise provided in this **Section 3.08**, no payment or adjustment will be made for dividends on the shares of Common Stock the record date for which occurred on or prior to the applicable Option Purchase Date.

If a Holder, in such Holder's Purchase Notice, fails to indicate such Holder's choice with respect to the election set forth in **Section 3.08(A)(i)(IV)**, such Holder shall be deemed to have elected to receive, in the circumstances set forth in such **Section 3.08(A)(i)(IV)**, cash in respect of the entire Option Purchase Price for all Securities (or portions thereof) subject to such Purchase Notice.

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 by delivery, at any time prior to the close of business on the Business Day prior to the applicable Option Purchase Date, of a written notice of withdrawal to the Paying Agent, which notice shall contain the information specified in **Section 3.08(E)(viii)**.

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

(B) The Option Purchase Price, plus accrued and unpaid interest, if any, payable as herein provided in respect of Securities upon a Repurchase at Holder's Option, shall be paid in cash if the applicable Option Purchase Date is August 16, 2010.

(C) Upon a Repurchase at Holder's Option where the applicable Option Purchase Date is August 16, 2013 or August 16, 2018, the Option Purchase Price may be paid for, in

whole or in part, at the election of the Company, in cash or shares of Common Stock or in any combination of cash and shares of Common Stock; *provided, however*, that:

(i) no portion of the Option Purchase Price shall be paid in shares of Common Stock unless the conditions set forth in **Section 3.08(D)** are satisfied;

(ii) nothing in this **Section 3.08** shall permit the Company to pay accrued and unpaid interest, if any, payable as herein provided in respect of Securities upon a Repurchase at Holder's Option in shares of Common Stock; the Company shall pay such accrued and unpaid in interest, if any, in cash; and

(iii) the Company shall not issue fractional shares of Common Stock in payment of the Option Purchase Price and shall instead pay cash for all fractional shares, which cash shall be in an amount equal to the Market Price of such fractional shares; for purposes of determining the existence of potential fractional interests, all Securities subject to such Repurchase at Holder's Option held by a Holder shall be considered together without regard to the number of separate certificates representing such Securities.

Except as provided in this **Section 3.08**, once the Company has given the Option Purchase Notice to Holders, the Company shall not change its election set forth in such Option Purchase Notice pursuant **Section 3.08(E)(xi)(I)** with respect to the portion of the Option Purchase Price to be paid in cash or shares of Common Stock.

Except as otherwise provided in this **Section 3.08**, each Holder whose Securities are purchased pursuant to this **Section 3.08(C)** shall receive the same percentage of cash or shares of Common Stock in payment of the Option Purchase Price for such Securities.

The portion of the Option Purchase Price to be paid in shares of Common Stock, if payment in shares of Common Stock is permitted pursuant to this **Section 3.08**, shall be paid by the issuance of a number of shares of Common Stock equal to a fraction whose numerator is such portion of the Option Purchase Price to be paid in shares of Common Stock and whose denominator is the Market Price per share of Common Stock as determined by the Company, except that (i) accrued and unpaid interest, if any, payable as herein provided in respect of Securities upon a Repurchase at Holder's Option shall be paid in cash and (ii) fractional shares of Common Stock shall be paid in cash as provided in **Section 3.08(C)(iii)**.

All shares of Common Stock delivered as full or partial payment of the Option Purchase Price pursuant to this **Section 3.08** 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.

If a Holder is paid in shares of Common Stock as full or partial payment of the Option Purchase Price pursuant to this **Section 3.08**, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of Common Stock. However, the Holder shall pay any such tax which is due because the Holder requests the 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 shares of 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.

"**Market Price**" means the average of the Closing Sale Price for each Trading Day in the period of ten (10) consecutive Trading Days ending on, and including, the third Business Day prior to the applicable Option Purchase Date (if the third Business Day prior to the applicable Option Purchase Date is not a Trading Day, then ending on, and including, the last Trading Day prior to such third Business Day), appropriately adjusted to take into account the occurrence, during such ten (10) Trading Day period, of any event described in **Section 10.06**, subject, however, to the provisions of **Section 10.07**.

(D) The Company shall not be entitled to pay any portion of the Option Purchase Price in shares of Common Stock pursuant to **Section 3.08(C)** unless all of the following conditions are satisfied:

(i) The Company shall have specified, in the Option Purchase Notice timely given to all Holders in accordance with **Section 3.08(E)**, that the Company will pay all or a portion of the Option Purchase Price in shares of Common Stock and shall have specified in such Option Purchase Notice the percentages of the Option Purchase Price in respect of which the Company will pay in cash or shares of Common Stock;

(ii) At least three (3) Business Days before an Option Purchase Notice is given to Holders pursuant to **Section 3.08(E)**, the Company shall have delivered 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)** to be included in the Option Purchase Notice and (III) if the Company elects to pay all or a portion of the Option Purchase Price in shares of Common Stock, that the conditions to such manner of payment set forth in this **Section 3.08** have been, or will be, complied with;

(iii) the information necessary to calculate the Market Price is published in a daily newspaper of national circulation;

(iv) the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price shall be registered under the Securities Act;

(v) the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price shall be duly qualified or registered under applicable state securities laws or shall be qualified for an available exemption from such qualification and registration;

(vi) the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price shall be listed on a U.S. national securities exchange or qualified for quotation on The Nasdaq National Market;

(vii) before the close of business on the Business Day immediately preceding the applicable Option Purchase Date, the Trustee shall have received an Officers' Certificate stating:

(I) that the conditions in clauses (i), (iii), (iv), (v) and (vi) above have been satisfied; and

(II) the number of shares of Common Stock to be issued for each $1,000 principal amount of Securities and the Closing Sale Price per share of Common Stock on each Trading Day in the period during which the Market Price is calculated pursuant to this **Section 3.08**;

(viii) before the close of business on the Business Day immediately preceding the applicable Option Purchase Date, the Trustee shall have received an Opinion of Counsel stating that:

(I) the shares of Common Stock to be issued by the Company in full or partial payment of the Option Purchase Price have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Option Purchase Price, will be validly issued, fully paid and non-assessable and, to the best of such counsel's knowledge, free from preemptive rights;

(II) the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price are registered under the Securities Act;

(III) the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price are duly qualified or registered under applicable state securities laws or are qualified for an available exemption from such qualification and registration; and

(IV) the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price are qualified for listing on a U.S. national securities exchange or for quotation on The Nasdaq National Market; and

(ix) upon determination of the actual number of shares of Common Stock to be delivered as provided in this **Section 3.08** in full or partial payment of the Option Purchase Price, the Company shall have disseminated a press release through PR Newswire containing this information or shall have published the information on the Company's web site or through such other public medium as the Company may use at that time.

If, as of the Business Day immediately preceding the applicable Option Purchase Date, any of the foregoing conditions are not satisfied, with respect to a Holder of Securities subject to the Repurchase at Holder's Option and the Company has elected, pursuant to this **Section 3.08**, to pay all or a portion of the Option Purchase Price in shares of Common Stock, the Company shall pay the entire Option Purchase Price of such Securities in cash.

(E) The Company shall give notice ("**Option Purchase Notice**") on a date not less than twenty (20) Business Days prior to the applicable Option Purchase Date to all Holders at their addresses shown in the register and to beneficial owners as required by applicable law. Such notice shall state:

(i) the Option Purchase Price plus accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date 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 X** 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 Option Purchase Price plus accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date;

(v) that the Option Purchase Price, plus accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date, for any Security as to which a Purchase Notice has been given and not withdrawn will be paid as promptly as practicable following the later of the applicable Option Purchase Date or the time of delivery of the Security, but in no event more than three (3) Business Days following the later of the applicable Option Purchase Date or the time of delivery of the Security as described in (iv);

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

(vii) briefly, the conversion rights of the Securities and that Holders who want to convert Securities must satisfy the requirements set forth in **paragraph 10** of the Securities;

(viii) that a Holder will be entitled to withdraw its election if the Company (if acting as its own Paying Agent), or the Paying Agent receives, at any time prior to the close of business on the Business Day prior to the applicable Option Purchase Date, or such longer period as may be required by law, a letter or telegram, telex or facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth (I) the name of such Holder, (II) statement that such Holder is withdrawing his election to have Securities repurchased, (III) the principal amount of Securities of such Holder to be so withdrawn, which amount must be $1,000 or an integral multiple thereof, (IV) the certificate number of such Securities to be so withdrawn, (V) the principal amount, if any, of Securities of such Holder that remain subject to the Purchase Notice delivered by such Holder in accordance with this **Section 3.08**, which amount must be $1,000 or an integral multiple thereof, and (VI) that Securities with respect to which a Purchase Notice is given by such Holder may be converted, if otherwise convertible, only if the Purchase Notice has been withdrawn in accordance with the terms hereof;

(ix) that, unless the Company defaults in making payment of such Option Purchase Price or such accrued and unpaid interest, interest on Securities surrendered for purchase will cease to accrue, and such Securities shall cease to be convertible on and after the applicable Option Purchase Date;

(x) the CUSIP number of the Securities; and

(xi) if the applicable Option Purchase Date is August 16, 2013 or August 16, 2018:

(I) whether the Company will pay the Option Purchase Price in cash or shares of Common Stock or in a combination thereof, in each case specifying the percentages of the Option Purchase Price in respect of which the Company will pay in cash or shares of Common Stock;

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

(III) if applicable, the method of calculating the Market Price of the shares of Common Stock to be delivered as payment, in whole or in part, of the Option Purchase Price; and

(IV) if applicable, that because the Market Price of shares of Common Stock will be determined prior to the applicable Option Purchase Date, Holders of the Securities will bear the market risk that the Common Stock will decline in value between the date such Market Price is determined and the applicable Option Purchase Date.

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

There shall be no purchase of any Securities pursuant to this **Section 3.08** 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) and is continuing an Event of Default (other than a default in the payment of the Option Purchase Price or accrued and unpaid interest, if any, payable as herein provided upon Repurchase at Holder's Option). The Paying Agent will promptly return to the respective Holders thereof any Securities held by it during the continuance of an Event of Default (other than a default in the payment of the Option Purchase Price or such accrued and unpaid interest) in which case, upon such return, the Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Notwithstanding anything herein to the contrary, if the option granted to Securityholders to require the repurchase of the Securities on an Option Purchase Date is determined to constitute a tender offer, the Company will comply with all applicable tender offer rules under the Exchange Act, including Rules 13e-4 and 14e-1, and file Schedule a TO or any other schedules required under the Exchange Act.

3.09 **REPURCHASE AT OPTION OF HOLDER UPON A REPURCHASE EVENT.**

Upon any Repurchase Event (as defined below) of the Company, each Holder of Securities shall have the right (the "**Repurchase Right**"), at the Holder's option, subject to the rights of the holders of Senior Indebtedness under **Article XI**, to require the Company to repurchase all of such Holder's Securities, or a portion thereof which is $1,000 in principal amount or any integral multiple thereof, on a date (the "**Repurchase Date**") no later than thirty (30) days after the date the Repurchase Event Notice (as defined below) is mailed in accordance with the immediately succeeding paragraph, at the Repurchase Price plus accrued and unpaid interest, if any, to, but excluding, the Repurchase Date.

Within fifteen (15) days after the occurrence of a Repurchase Event of the Company, the Company shall mail to all Holders of record of the Securities at their addresses shown in the register of the Registrar, and to beneficial owners as required by applicable law, a notice (the "**Repurchase Event Notice**") of the occurrence of such Repurchase Event and the Repurchase Right arising as a result thereof. The Company shall deliver a copy of the Repurchase Event Notice to the Trustee and shall cause a copy to be published at the expense of the Company in **THE NEW YORK TIMES** or **THE WALL STREET JOURNAL** or another newspaper of national circulation.

Each Repurchase Event Notice shall state:

(i) the events causing the Repurchase Event;

(ii) the date of such Repurchase Event;

(iii) the Repurchase Date;

(iv) the date by which the Repurchase Right must be exercised;

(v) the Repurchase Price plus accrued and unpaid interest, if any, to, but excluding, the Repurchase Date;

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

(vii) a description of the procedure which a Holder must follow to exercise a Repurchase Right;

(viii) that, in order to exercise the Repurchase Right, the Securities must be surrendered for payment of the Repurchase Price plus accrued and unpaid interest, if any, payable as herein provided upon Repurchase Upon Repurchase Event;

(ix) that a Holder will be entitled to withdraw its election if the Company (if acting as its own Paying Agent), or the Paying Agent receives, prior to the close of business on the Business Day immediately preceding the Repurchase Date, or such longer period as may be required by law, a letter or telegram, telex or facsimile transmission (receipt of which is confirmed and promptly followed by a letter) setting forth (I) the name of such Holder, (II) statement that such Holder is withdrawing his

election to have Securities repurchased, (III) the principal amount of Securities of such Holder to be so withdrawn, which amount must be $1,000 or an integral multiple thereof, (IV) the certificate number of such Securities to be so withdrawn, (V) the principal amount, if any, of Securities of such Holder that remains subject to the Purchase Notice delivered by such Holder in accordance with this **Section 3.09**, which amount must be $1,000 or an integral multiple thereof, and (VI) that Securities with respect to which a Purchase Notice is given by such Holder may be converted, if otherwise convertible, only if the Purchase Notice has been withdrawn in accordance with the terms hereof;

(x) the Conversion Rate and any adjustments to the Conversion Rate that will result from the Repurchase Event;

(xi) that Securities with respect to which a Purchase Notice is given by a Holder may be converted, if otherwise convertible in accordance with **Article X**, only if such Purchase Notice has been withdrawn in accordance with this **Section 3.09**;

(xii) the place or places where such Securities may be surrendered for conversion; and

(xiii) the CUSIP number or numbers, as the case may be, of the Securities.

No failure of the Company to give the foregoing notice shall limit any Holder's right to exercise a Repurchase Right.

To exercise a Repurchase Right, a Holder shall deliver to the Company (if it is acting as its own Paying Agent), or to a Paying Agent designated by the Company for such purpose in the Repurchase Event Notice, (i) no later than the close of business on the Business Day immediately preceding the Repurchase Date, a Purchase Notice, in the form set forth in the Securities or any other form of written notice substantially similar thereto, in each case, duly completed and signed, with appropriate signature guarantee, and stating (A) the certificate number of the Security which the Holder will deliver to be repurchased, (B) the principal amount of Securities to be repurchased, which must be $1,000 or an integral multiple thereof, and (C) that such Security is being tendered for repurchase pursuant to the terms and conditions specified in **paragraph 9** of the Securities and in this Indenture; and (ii) at any time after the delivery of such Purchase Notice, such Securities with respect to which the Repurchase Right is being exercised, duly endorsed for transfer to the Company. Upon such delivery of Securities to the Company (if it is acting as its own Paying Agent) or such Paying Agent, such Holder shall be entitled to receive from the Company or such Paying Agent, as the case may be, a nontransferable receipt of deposit evidencing such delivery.

In the event a Repurchase Right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid the Repurchase Price, plus accrued and unpaid interest, if any, to, but excluding, the Repurchase Date, with respect to the Securities as to which the Repurchase Right shall have been exercised to the Holder thereof promptly following the later of the Repurchase Date or the time of delivery of the Security, subject to the provisions of the immediately preceding paragraph.

On or prior to a Repurchase Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust in accordance with **Section 2.04**) an amount of money (to be available on the Repurchase Date) sufficient to pay the Repurchase Price, plus accrued and unpaid interest, if any, to, but excluding, the Repurchase Date, of all of the Securities which are to be repurchased on that date.

Both the Repurchase Event Notice and the Purchase Notice having been duly given as specified in this **Section 3.09**, the Securities to be so repurchased shall, on the Repurchase Date, become due and payable at the Repurchase Price (plus accrued and unpaid interest, if any, to, but excluding, the Repurchase Date) applicable thereto and from and after such date (unless there shall be a default in the payment of the Repurchase Price or such accrued and unpaid interest) such Securities shall cease to bear interest and shall cease to be convertible. Upon surrender of any such Security for repurchase in accordance with such Purchase Notice, such Security shall be paid by the Company at the Repurchase Price plus such accrued and unpaid interest.

If any Security shall not be paid upon surrender thereof for repurchase, the principal shall, until paid, bear interest from the Repurchase Date at the rate borne by such Security on the principal amount of such Security and shall continue to be convertible.

Any Security which is to be submitted for Repurchase Upon Repurchase Event only in part shall be delivered pursuant to this **Section 3.09** (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or its attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, of the same tenor and in aggregate principal amount equal to the portion of such Security not submitted for repurchase.

There shall be no purchase of any Securities pursuant to this **Section 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 Repurchase Event Notice) and is continuing an Event of Default (other than a default in the payment of the Repurchase Price or accrued and unpaid interest, if any, payable as herein provided upon Repurchase Upon Repurchase Event). The Paying Agent will promptly return to the respective Holders thereof any Securities held by it during the continuance of an Event of Default (other than a default in the payment of the Repurchase Price or such accrued and unpaid interest) in which case, upon such return, the Repurchase Event Notice with respect thereto shall be deemed to have been withdrawn.

Notwithstanding anything herein to the contrary, if the option granted to Securityholders to require the repurchase of the Securities upon the occurrence of a Repurchase Event is determined to constitute a tender offer, the Company will comply with all applicable tender offer rules under the Exchange Act, including Rules 13e-4 and 14e-1, and file a Schedule TO or any other schedules required under the Exchange Act .

As used in this **Section 3.09** and in the Securities:

A "**Repurchase Event**" of the Company shall be deemed to have occurred upon the occurrence of either a "Change in Control" or a "Termination of Trading."

A "**Change in Control**" of the Company shall be deemed to have occurred at such time as:

(i) any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the total voting power of all classes of the Company's Capital Stock entitled to vote generally in the election of directors; or

(ii) at any time the following persons cease for any reason to constitute a majority of the Company's Board of Directors:

(1) individuals who on the Issue Date constituted the Company's Board of Directors; and

(2) any new directors whose election to the Company's Board of Directors or whose nomination for election to the Company's stockholders was approved by at least a majority of the directors then still in office who were either directors on the Issue Date or whose election or nomination for election was previously so approved; or

(iii) The Company consolidates with, or merges with or into, another person or any person consolidates with, or merges with or into, the Company, in any such event other than pursuant to a transaction in which the persons that "beneficially owned," directly or indirectly, the shares of the Company's Voting Stock immediately prior to such transaction, "beneficially own," directly or indirectly, immediately after such transaction, shares of the Company's Voting Stock representing at least a majority of the total voting power of all outstanding classes of Voting Stock of the continuing or surviving corporation in substantially the same proportion as such ownership prior to the transaction; or

(iv) the sale, lease, transfer or other conveyance or disposition of all or substantially all of the assets or property of the Company to any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act; or

(v) the Company is liquidated or dissolved or the holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company;

provided, *however*, that a Change in Control shall not be deemed to occur if either:

(A) the Closing Sale Price for each of any five (5) Trading Days during the ten (10) Trading Days immediately preceding the Change in Control is equal to at least one hundred and five percent (105%) of the Conversion Price in effect on such Trading Day;

(B) in the case of a merger or consolidation, all of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' appraisal rights) in the merger or consolidation constituting the Change in Control consists of common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change in Control) and as a result of such transaction or transactions the Securities become convertible solely into such common stock; or

(C) in the case of a Qualifying Foreign Merger, all of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' or appraisal rights) in the Qualifying Foreign Merger constituting the Change in Control consists of common stock or American Depositary Shares representing such common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change in Control) and as a result of such transaction or transactions the Securities become convertible solely into such common stock or American Depositary Shares.

A "**Termination of Trading**" shall occur if the Common Stock of the Company (or other common stock into which the Securities are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States; *provided*, *however*, that a Termination of Trading shall not be deemed to have occurred solely by reason of the Company having engaged in a Qualifying Foreign Merger, so long as, immediately after such Qualifying Foreign Merger, the Holders shall have the right to convert their Securities solely into common stock or American Depositary Shares representing such common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market, until such time as the common stock or American Depositary Shares on such common stock into which the Securities are solely convertible are no longer so traded or quoted.

3.10 **CONVERSION ARRANGEMENT ON CALL FOR REDEMPTION.**

In connection with any redemption of Securities, the Company may arrange, in lieu of redemption, for the purchase and conversion of any Securities called for redemption by an agreement with one or more investment bankers or other purchasers to purchase all or a portion of such Securities by paying to the Paying Agent in trust for the Holders whose Securities are to be so purchased, on or before the close of business on the Redemption Date, an amount that, together with any amounts deposited with the Paying Agent by the Company for redemption of such Securities, is not less than the Redemption Price, together with interest, if any, accrued to the Redemption Date, of such Securities. Notwithstanding anything to the contrary contained in this **Article III**, the obligation of the Company to pay the Redemption Price of such Securities,

including all accrued interest, if any, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers, but no such agreement shall relieve the Company of its obligation to pay such Redemption Price or such accrued interest, if any. 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 X**) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the Redemption Date, subject to payment of the above amount as aforesaid. The Paying Agent 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 prior written consent of the Trustee and the Paying Agent, 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, rights, immunities, responsibilities or obligations of the Trustee or Paying Agent as set forth in this Indenture, and the Company agrees to indemnify the Trustee and Paying Agent from, and hold them harmless against, any and all 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 (including counsel fees and expenses) incurred by the Trustee or Paying Agent in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of their powers, duties, responsibilities or obligations under this Indenture except to the extent arising from its bad faith, willful misconduct or negligence.

IV. COVENANTS

4.01 PAYMENT OF SECURITIES.

The Company shall pay all amounts due with respect to the Securities on the dates and in the manner provided in the Securities. All such amounts shall be considered paid on the date due if the Paying Agent holds (or, if the Company is acting as Paying Agent, if the Company has segregated and holds in trust in accordance with **Section 2.04**) on that date money sufficient to pay the amount then due with respect to the Securities.

The Company shall pay interest on any overdue amount (including, to the extent permitted by applicable law, overdue interest) at the rate borne by the Securities.

4.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-Registrar) where Securities may be surrendered for registration of transfer or exchange or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

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. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as an agency of the Company in accordance with **Section 2.03**.

4.03 REPORTS.

(A) The Company will promptly provide to the Trustee and shall, upon request, provide to any Holder or beneficial owner of Securities or prospective purchaser of Securities that so requests, the information required to be delivered pursuant to Rule 144A(d)(4) until such time as the Securities and the underlying Common Stock have been registered by the Company for resale under the Securities Act pursuant to the Registration Rights Agreement. In addition, the Company will furnish such Rule 144A(d)(4) information if, at any time while the Securities or the Common Stock issuable upon conversion of the Securities are restricted securities within the meaning of the Securities Act, the Company is not subject to the informational requirements of the Exchange Act.

(B) The Company will comply with the provisions of TIA § 314(a).

4.04 COMPLIANCE CERTIFICATE.

The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Company, an Officers' Certificate stating whether or not the signers know of any Default or Event of Default by the Company in performing any of its obligations under this Indenture or the Securities. If they do know of any such Default or Event of Default, the certificate shall describe the Default or Event of Default and its status.

4.05 STAY, EXTENSION AND USURY LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (in each case, to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any

such law, and covenants that it will not, by resort to any such law, 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 has been enacted.

4.06 **CORPORATE EXISTENCE.**

Subject to **Article V**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existence of

each of the Subsidiaries in accordance with the respective organizational documents of each Subsidiary and the rights (charter and statutory), licenses and franchises of the Company and the Subsidiaries; *provided*, *however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate existence of any Subsidiary, if in the judgment of the Board of Directors (i) such preservation or existence is not material to the conduct of business of the Company and (ii) the loss of such right, license or franchise or the dissolution of such Subsidiary does not have a material adverse impact on the Holders.

4.07 **NOTICE OF DEFAULT.**

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

V. SUCCESSORS

5.01 **WHEN COMPANY MAY MERGE, ETC.**

The Company shall not consolidate with, or merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to, another person (whether in a single or series of related transactions) unless:

(A) the resulting, surviving or transferee person is either (i) a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any State thereof or the District of Columbia or (ii) a corporation, limited liability company, partnership or trust organized and existing under the laws of a jurisdiction outside the United States; *provided*, *however*, that in the case of a transaction where the resulting, surviving or transferee person is organized under the laws of a jurisdiction outside the United States, the Company shall not consummate the transaction unless (I) such person has common stock or American Depository Shares representing such common stock traded on a national securities exchange in the United States or quoted on The Nasdaq National Market; (II) such person has a worldwide total market capitalization of its equity securities (before giving effect to such consolidation, merger or disposition) of at least US$5 billion; (III) such person has consented to service of process in the United States; (IV) the Company shall have made provision for the satisfaction of the Company's obligations, if any, to repurchase Securities upon a Repurchase Upon Repurchase Event; and (V) the Company shall have obtained an opinion of tax counsel experienced in such matters to the effect that, under the then-existing U.S. federal tax laws, there would be no material adverse tax consequences to holders of the Securities resulting from such transaction (a transaction that satisfies the above conditions, a "**Qualifying Foreign Merger**");

(B) the resulting, surviving or transferee person assumes by supplemental indenture all the obligations of the Company under the Securities and this Indenture; and

(C) immediately after giving effect to such transaction, no Default or Event of Default shall exist.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate to the foregoing effect and an Opinion of Counsel, which may rely upon such Officers' Certificate as to the absence of Defaults and Events of Default, stating that the proposed transaction and such supplemental indenture will, upon consummation of the proposed transaction, comply with this Indenture.

5.02 **SUCCESSOR SUBSTITUTED.**

Upon any consolidation or merger or sale, conveyance, transfer, lease, or other disposition of all or substantially all of the assets of the Company in accordance with **Section 5.01**, the successor person formed by such consolidation or into which the Company is merged or to which such sale, conveyance, transfer, lease, or other disposition is made shall succeed to, and, except in the case of a lease, be substituted for, and may exercise every right and power of, and shall assume every duty and obligation of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein. When the successor assumes all obligations of the Company hereunder, except in the case of a lease, all obligations of the predecessor shall terminate.

VI. DEFAULTS AND REMEDIES

6.01 **EVENTS OF DEFAULT.**

An "**Event of Default**" occurs if:

(i) the Company fails to pay the principal of or premium, if any, of any Security when the same becomes due and payable, whether at maturity, upon Redemption, on an Option Purchase Date with respect to a Repurchase at Holder's Option, on a Repurchase Date with respect to a Repurchase Upon Repurchase Event or otherwise, whether or not such payment shall be prohibited by the provisions of **Article XI** hereof;

(ii) the Company fails to pay an installment of interest or liquidated damages, if any, on the Securities when due, if such failure continues for thirty (30) days after the date when due, whether or not such payment shall be prohibited by the provisions of **Article XI** hereof; *provided*, that a failure to make any of the first six (6) scheduled interest payments on any Security within three (3) Business Days after the applicable interest payment dates will constitute an Event of Default with no additional grace or cure period;

(iii) the Company fails to provide a timely Repurchase Event Notice, or a notice required under **Section 3.08(E)**, as required by the provisions of this Indenture;

(iv) the Company fails to comply with any other term, covenant, or agreement set forth in the Securities or this Indenture and such failure continues for the period, and after the notice, specified below;

(v) the Company fails to perform or observe any of its obligations under the Pledge Agreement (including any supplement thereto) or the Control Agreement or the Company's representations and warranties set forth in such agreements fail to be true and correct, in all material respects, when deemed made;

(vi) the Pledge Agreement shall cease to be in full force and effect or enforceable in accordance with its terms;

(vii) the Company or any of the Subsidiaries defaults in the payment when due, after the expiration of any applicable grace period, of principal of, or premium, if any, or interest on Indebtedness for money borrowed, in the aggregate principal amount then outstanding of $15,000,000 or more, or the acceleration of Indebtedness for money borrowed in such aggregate principal amount so that it becomes due and payable prior to the date on which it would otherwise become due and payable and such acceleration is not rescinded or such default is not cured within thirty (30) days after notice to the Company by the Trustee or to the Company and the Trustee by holders of not less than twenty five percent (25%) in the aggregate principal amount of the Securities then outstanding, each in accordance with this Indenture;

(viii) the Company or any of the Subsidiaries fails to pay final judgments, the uninsured portion of which aggregates in excess of $10,000,000, and such judgments are not paid, discharged or stayed for a period of thirty (30) days;

(ix) the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company pursuant to, or within the meaning of, any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

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

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

(A) is for relief against the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company in an involuntary case or proceeding, or adjudicates the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company insolvent or bankrupt,

(B) appoints a Custodian of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company for all or substantially all of the property of the Company or any such Significant Subsidiary or any group of Subsidiaries that in the aggregate constitute a Significant Subsidiary of the Company, as the case may be, or

(C) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate constitute a Significant Subsidiary of the Company, and the order or decree remains unstayed and in effect for ninety (90) consecutive days.

The term "**Bankruptcy Law**" means Title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term "**Custodian**" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A default under **clause (iv)** is not an Event of Default until (I) the Trustee notifies the Company or the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding notify the Company and the Trustee in writing of the default and (II) the default is not cured within sixty (60) days after receipt of the notice. The notice must specify the default, demand that it be remedied and state that the notice is a "**Notice of Default**". If the Holders of twenty five percent (25%) in aggregate principal amount of the outstanding Securities request the Trustee to give such notice on their behalf, the Trustee shall do so at the expense of the Company. When a default is cured, it ceases.

6.02 **ACCELERATION.**

If an Event of Default (other than an Event of Default specified in **Section 6.01(ix)** or **(x)** with respect to the Company) as to which the Trustee has received written notice pursuant to the provisions of this Indenture occurs and is continuing, the Trustee by notice to the Company or the Holders of at least

twenty five percent (25%) in principal amount of the Securities then outstanding by notice in writing to the Company and the Trustee may declare the Securities to be due and payable. Upon such declaration such principal and interest shall be due and payable immediately. If an Event of Default specified in **Section 6.01(ix)** or **(x)** with respect to the Company occurs, the principal of and accrued interest on all the Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may rescind or annul an acceleration and its consequences if the rescission would not conflict with any order or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration and if all amounts due to the Trustee under **Section 7.07** have been paid.

6.03 **OTHER REMEDIES.**

Notwithstanding any other provision of this Indenture, if an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of amounts due with respect to the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative.

6.04 **WAIVER OF PAST DEFAULTS.**

Subject to **Sections 6.07** and **9.02**, the Holders of a majority in aggregate principal amount of the Securities then outstanding by written notice to the Trustee may waive any past Default or Event of Default and its consequences, other than (A) a Default or Event of Default in the payment of the principal of, premium, if any, or interest on any Security, or in the payment of the Redemption Price, the Option Purchase Price or the Repurchase Price (or accrued and unpaid interest, if any, payable as herein provided upon Redemption, Repurchase at Holder's Option or Repurchase Upon Repurchase Event), (B) a Default or Event of Default arising from a failure by the Company to convert any Securities into Common Stock or (C) any Default or Event of Default in respect of any provision of this Indenture or the Securities which, under **Section 9.02**, cannot be modified or amended without the consent of the Holder of each Security affected. When a Default or an Event of Default is waived, it is cured and ceases for every purpose of this Indenture.

6.05 **CONTROL BY MAJORITY.**

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

6.06 **LIMITATION ON SUITS.**

Except as provided in **Section 6.07**, a Securityholder may not pursue a remedy with respect to this Indenture or the Securities unless:

(i) the Holder gives to the Trustee written notice of a continuing Event of Default;

(ii) the Holders of at least twenty five percent (25%) in aggregate principal amount of the Securities then outstanding make a written request to the Trustee to pursue the remedy;

(iii) such Holder or Holders offer and, if requested, provide to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(iv) the Trustee does not comply with the request within sixty (60) days after receipt of notice, the request and the offer of indemnity; and

(v) during such sixty (60) day period, the Holders of a majority in aggregate principal amount of the Securities then outstanding do not give the Trustee a direction inconsistent with the request.

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

6.07 **RIGHTS OF HOLDERS TO RECEIVE PAYMENT.**

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of all amounts due with respect to the Securities, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder.

Notwithstanding any other provision of this Indenture, the right of any Holder to bring suit for the enforcement of the right to convert the Security in accordance with this Indenture shall not be impaired or affected without the consent of the Holder.

6.08 **COLLECTION SUIT BY TRUSTEE.**

If an Event of Default specified in **Section 6.01(i)** or **(ii)** 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 due with respect to the Securities, including any unpaid and accrued interest.

6.09 **TRUSTEE MAY FILE PROOFS OF CLAIM.**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, any predecessor Trustee and the Securityholders allowed in any judicial proceedings relative to the Company or its creditors or properties.

The Trustee may 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 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.

6.10 **PRIORITIES.**

Subject to the provisions of the Pledge Agreement and **Article XII**, if the Trustee collects any money pursuant to this **Article VI**, it shall pay out the money in the following order:

First: to the Trustee for amounts due under **Section 7.07**;

Second: to holders of Senior Indebtedness to the extent required by **Article XI**;

Third: to Securityholders for all amounts due and unpaid on the Securities, without preference or priority of any kind, according to the amounts due and payable on the Securities;

Fourth: to such other Person or Persons, if any, to the extent entitled thereto; and

Fifth: to the Company.

The Trustee, upon prior written notice to the Company may fix a record date and payment date for any payment by it to Securityholders pursuant to this **Section 6.10**.

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 in the suit other than the Trustee of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, 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 ten percent (10%) in aggregate principal amount of the outstanding Securities.

VII. TRUSTEE

7.01 **DUTIES OF TRUSTEE.**

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

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

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith, willful misconduct or negligence 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 the 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).

(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:

(i) 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

(ii) 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**.

(D) Every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this **Section 7.01**.

(E) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

7.02 **RIGHTS OF TRUSTEE.**

(A) Subject to **Section 7.01**, the Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document; if, however, the Trustee shall determine to make such further inquiry or investigation, it shall be entitled during normal business hours to examine the relevant books, records and premises of the Company, personally or by agent or attorney upon reasonable prior notice.

(B) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(C) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution.

(D) The Trustee may consult with counsel (such counsel to be reasonably acceptable to the Company) and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(E) The Trustee may act through agents or attorneys and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(F) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its discretion, rights or powers conferred upon it by this Indenture.

(G) Except with respect to **Section 6.01**, the Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in **Article IV**. In addition, the Trustee shall not be deemed to have knowledge of an Event of Default except (i) any Default or Event of Default occurring pursuant to **Sections 6.01(i)** and **(ii)** or (ii) any Default or Event of Default of which a Responsible Officer of the Trustee shall have received written notification or obtained actual knowledge. Delivery of reports, information and documents to the Trustee under **Article IV** (other than **Sections 4.04** and **4.07**) is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(H) The Trustee shall be under no obligation to exercise any of the rights or powers vested by this Indenture at the request or direction of any of the Holders pursuant to this Indenture unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(I) 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 each agent, custodian and other Person employed to act hereunder.

(J) 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.

(K) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to **Section 6.05**

relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture.

(L) No permissive power, right or remedy conferred on the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(M) None of the provisions of this Indenture shall be deemed to require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

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 any of its Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, must comply with **Sections 7.10** and **7.11**.

7.04 **TRUSTEE'S DISCLAIMER.**

The Trustee makes no representation as to the validity, adequacy or priority of this Indenture or the Securities; it shall not be accountable for the Company's use of the proceeds from the Securities; and it shall not be responsible for any statement in the Securities or in offering materials related to the sale of the Securities, other than its certificate of authentication.

7.05 **NOTICE OF DEFAULTS.**

If a Default or Event of Default occurs and is continuing as to which the Trustee has received notice pursuant to the provisions of this Indenture, the Trustee shall mail to each Securityholder a notice of the Default or Event of Default within thirty (30) days after it occurs unless such Default or Event of Default has been cured or waived. Except in the case of a Default or Event of Default in payment of any amounts due with respect to any Security, the Trustee may withhold the notice if, and so long as it in good faith determines that, withholding the notice is in the interests of Securityholders.

7.06 **REPORTS BY TRUSTEE TO HOLDERS.**

Within sixty (60) days after each May 15 beginning with May 15, 2004, the Trustee shall mail to each Securityholder if required by TIA § 313(a) a brief report dated as of such May 15 that complies with TIA § 313(c). In such event, the Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its mailing to Securityholders shall be mailed to the Company and filed by the Trustee with the SEC and each stock exchange, if any, on which the Securities are listed. The Company shall promptly notify the Trustee when the Securities are listed on any stock exchange.

7.07 **COMPENSATION AND INDEMNITY.**

The Company shall pay to the Trustee from time to time such compensation for its services as shall be agreed upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and out-of-pocket expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee against any and all loss, liability, damage, claim or expense (including the reasonable fees and expenses of counsel and taxes other than those based upon the income of the Trustee) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers and duties hereunder. The Company need not pay for any settlement made without its consent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnification. The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's negligence, bad faith or willful misconduct.

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 amounts due on particular Securities.

The indemnity obligations of the Company with respect to the Trustee provided for in this **Section 7.07** shall survive any resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in **Section 6.01(ix)** or **(x)** occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

7.08 **REPLACEMENT OF TRUSTEE.**

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this **Section 7.08**.

The Trustee may resign by so notifying the Company in writing thirty (30) Business Days prior to such resignation. The Holders of a majority in aggregate principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing and may appoint a successor Trustee with the Company's consent. The Company may remove the Trustee if:

(i) the Trustee fails to comply with **Section 7.10**;

(ii) the Trustee is adjudged a bankrupt or an insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee 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 a successor Trustee.

If a successor Trustee does not take office within thirty (30) days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the outstanding Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to 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**.

7.09 **SUCCESSOR TRUSTEE BY MERGER, ETC.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee, if such successor corporation is otherwise eligible hereunder.

7.10 **ELIGIBILITY; DISQUALIFICATION.**

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has, or whose parent bank holding company has, a combined capital and surplus of at least $100 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b).

7.11 **PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.**

The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

VIII. DISCHARGE OF INDENTURE

8.01 **TERMINATION OF THE OBLIGATIONS OF THE COMPANY.**

This Indenture shall cease to be of further effect if (a) either (i) all outstanding Securities (other than Securities replaced pursuant to **Section 2.07** hereof) have been delivered to the Trustee for cancellation or (ii) all outstanding Securities have become due and payable at their scheduled maturity or upon Repurchase at Holder's Option, Redemption or Repurchase Upon Repurchase Event, and in either case the Company irrevocably deposits with the Trustee or the Paying Agent (if the Paying Agent is not the Company or any of its Affiliates) cash (and/or, to the extent permitted by **Section 3.08**, shares of Common Stock) sufficient to pay all amounts due and owing on all outstanding Securities (other than Securities replaced pursuant to **Section 2.07** hereof) on the Maturity Date, Option Purchase Date, Redemption Date or Repurchase Date, as the case may be; (b) the Company pays to the Trustee all other sums payable hereunder by the Company; (c) such deposit will not result in a breach or violation of, or constitute a Default under, **Article XI**; and (d) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for herein relating to the satisfaction and discharge of this Indenture have been complied with; *provided*, *however*, that **Sections 2.02**, **2.03**, **2.04**, **2.05**, **2.06**, **2.07**, **2.08**, **2.15**, **2.16**, **2.17**, **3.05**, **3.08**, **3.09**, **4.01**, **4.02**, **4.05**, **7.07** and **7.08** and **Articles VIII**, **X** and **XII** shall survive any discharge of this Indenture until such time as the Securities have been paid in full and there are no Securities outstanding.

8.02 **APPLICATION OF TRUST MONEY.**

The Trustee shall hold in trust money deposited with it pursuant to **Section 8.01**. It shall apply the deposited money through the Paying Agent and in accordance with this Indenture to the payment of the principal of and any unpaid and accrued interest on the Securities. Money and securities so held in trust are not subject to the subordination provisions of **Article XI**.

8.03 **REPAYMENT TO COMPANY.**

The Trustee and the Paying Agent shall promptly notify the Company of, and pay to the Company upon the request of the Company, any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay to the Company upon the written request of the Company any money held by them for the payment of the principal of and any unpaid and accrued interest that remains unclaimed for two (2) years; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may, at the expense and request of the Company, cause to be published once in a newspaper of general circulation in the City of New York or cause to be mailed to each Holder, notice stating that such money remains and that, after

a date specified therein, which shall not be less than thirty (30) days from the date of such publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Securityholders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and all liability of the Trustee and the Paying Agent shall cease. In the absence of a written request from the Company to return to the Company funds that are unclaimed pursuant to this **Section 8.03**, the Trustee shall, from time to time deliver all unclaimed funds to, or as directed by, applicable escheat authorities, as determined by the

Trustee in its sole discretion, in accordance with the customary practices and procedures of the Trustee and in accordance with any applicable law. Except as otherwise provided by law or by an agreement to which the Company is a party, the Company shall not be regarded as a trustee of any such moneys received by the Company pursuant to this **Section 8.03**.

8.04 **REINSTATEMENT.**

If the Trustee or Paying Agent is unable to apply any money in accordance with **Sections 8.01** and **8.02** by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to **Sections 8.01** and **8.02** until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with **Sections 8.01** and **8.02**; *provided*, *however*, that if the Company has made any payment of amounts due with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

IX. AMENDMENTS

9.01 **WITHOUT CONSENT OF HOLDERS.**

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

(i) to comply with **Sections 5.01** and **10.12**;

(ii) to add to the covenants of the Company described in this Indenture for the benefit of Securityholders or to surrender any right or power conferred upon the Company;

(iii) to secure the obligations of the Company in respect of the Securities;

(iv) to make provisions with respect to adjustments to the Conversion Rate as required by this Indenture or to increase the Conversion Rate in accordance with this Indenture;

(v) to make any changes or modifications to this Indenture necessary in connection with the registration of the Securities under the Securities Act pursuant to the Registration Rights Agreement and the qualification of the Indenture under the TIA;

(vi) to cure any ambiguity, defect, omission or inconsistency in this Indenture in a manner that does not adversely affect the rights of any Holder; and

(vii) to add or modify any other provisions of the Indenture which the Company and the Trustee jointly deem necessary or desirable and which shall not adversely affect any Holder's rights.

9.02 **WITH CONSENT OF HOLDERS.**

The Company, with the consent of the Trustee, may amend or supplement this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities. Subject to **Section 6.07**, the Holders of a majority in aggregate principal amount of the outstanding Securities may waive compliance by the Company with any provision of this Indenture or the Securities without notice to any other Securityholder. However, without the consent of each Securityholder affected, an amendment, supplement or waiver, including a waiver pursuant to **Section 6.04**, may not:

(a) change the stated maturity of the principal of, or the payment date of any installment of interest or liquidated damages payable on, any Security;

(b) reduce the principal amount of, or any premium or interest or liquidated damages on, any Security;

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

(d) change the place or currency of payment of principal of, or any premium or interest or liquidated damages on, any Security;

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

(f) modify the provisions with respect to the right of Holders pursuant to **Article III** to require the Company to purchase Securities on an Option Purchase Date or to repurchase Securities upon the occurrence of Repurchase Event in a manner adverse to Holders;

(g) modify the provisions of **Article XI** in a manner adverse to Holders;

(h) adversely affect the right of Holders to convert Securities other than as provided in or under **Article X**;

(i) reduce the percentage of the aggregate principal amount of the outstanding Securities whose Holders must consent to a modification or amendment of any provision of this Indenture;

(j) reduce the percentage of the aggregate principal amount of the outstanding Securities necessary for the waiver of compliance with certain provisions of this Indenture or the waiver of certain Defaults or Events of Default; and

(k) modify the provisions of this Indenture with respect to modification and waiver (including waiver of Events of Default), except to increase the percentage required for modification or waiver or to provide for consent of each affected Holder.

An amendment under this **Section 9.02** may not make any change that adversely affects the rights under **Article XI** of any holder of Senior Indebtedness unless the holders of such Senior Indebtedness pursuant to its terms consent to the change.

Promptly after an amendment, supplement or waiver under **Section 9.01** or this **Section 9.02** becomes effective, the Company shall mail to Securityholders a notice briefly describing such amendment, supplement or waiver. Any failure of the Company to mail such notice shall not in any way impair or affect the validity of such amendment, supplement or waiver.

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, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

9.03 **COMPLIANCE WITH TRUST INDENTURE ACT.**

Every amendment, waiver or supplement to this Indenture or the Securities shall comply with the TIA as then in effect.

9.04 **REVOCATION AND EFFECT OF CONSENTS.**

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

After an amendment, supplement or waiver becomes effective with respect to the Securities, it shall bind every Securityholder unless it makes a change described in **Section 9.02**. In that case, the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and, provided that notice of such amendment, supplement or waiver is reflected on a Security that evidences the same debt as the consenting Holder's Security, every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

9.05 **NOTATION ON OR EXCHANGE OF SECURITIES.**

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

9.06 **TRUSTEE PROTECTED.**

The Trustee need not sign any amendment, supplement or waiver authorized pursuant to this **Article IX** that adversely affects the Trustee's rights, duties, liabilities or immunities. The Trustee shall be entitled to receive and conclusively rely upon an Opinion of Counsel and an Officers' Certificate that any supplemental indenture, amendment or waiver is permitted or authorized pursuant to the Indenture.

X. CONVERSION

10.01 **CONVERSION PRIVILEGE; RESTRICTIVE LEGENDS.**

A Holder of a Security may convert such Security into Common Stock at any time during the period stated in **paragraph 10** of the Securities upon the satisfaction of the requirements set forth in **paragraph 10** of the Securities. The initial Conversion Rate is 49.6618 shares of Common Stock per $1,000 Principal Amount at Maturity. The Conversion Rate is subject to adjustment in accordance with **Sections 10.06** through **10.12**.

A Holder may convert a portion of the principal of such Security if the portion is $1,000 principal amount or an integral multiple of $1,000 principal amount. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of it.

Any shares issued upon conversion of a Security shall bear the Private Placement Legend until after the second anniversary of the later of the Issue Date and the last date on which the Company or any Affiliate was the owner of such shares or the Security (or any predecessor security) from which such shares were converted (or such shorter period of time as permitted by Rule 144(k) under the Securities Act or any successor provision thereunder) (or such longer period of time as may be required under the Securities Act or applicable state securities laws in the Opinion of Counsel, unless otherwise agreed by the Company and the Holder thereof).

10.02 **CONVERSION PROCEDURE.**

To convert a Security, a Holder must satisfy the requirements of **paragraph 10** of the Securities. The date on which the Holder satisfies all those requirements is the conversion date. As soon as practicable 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 a check in lieu of any fractional share. The person in whose name the certificate is registered shall be treated as a stockholder of record on and after the conversion date.

Except as described below, no payment or adjustment will be made for accrued interest on, or liquidated damages with respect to, a converted Security or for dividends on any Common Stock issued on or prior to conversion. If any Holder surrenders a Security for conversion after the close of business on the record date for the payment of an installment of interest and prior to the next succeeding interest payment date, then, notwithstanding such conversion, the interest payable on such interest payment date shall be paid to the Holder of such Security on such record date; *provided, however,* that such Security, when surrendered for conversion, must be

accompanied by payment to the Trustee on behalf of the Company of an amount equal to the interest payable on such interest payment date on the portion so converted; *provided, further, however,* that such payment to the Trustee described in the immediately preceding proviso shall not be required in connection with any conversion of a Security called for Redemption pursuant to **Section 3.04** hereof.

If a Holder converts more than one Security at the same time, the number of full shares issuable upon the conversion shall be based on the total principal amount of the Securities converted.

Upon surrender of a Security that is converted in part the Trustee shall authenticate for the Holder a new Security equal in principal amount to the unconverted portion of the Security surrendered.

If the last day on which a Security may be converted is a Legal Holiday in a place where a Conversion Agent is located, the Security may be surrendered to that Conversion Agent on the next succeeding day that is not a Legal Holiday.

10.03 **FRACTIONAL SHARES.**

The Company will not issue fractional shares of Common Stock upon conversion of Securities and instead will deliver a check in an amount equal to the value of such fraction computed on the basis of the Closing Sale Price.

10.04 **TAXES ON CONVERSION.**

If a Holder converts its 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 shares are issued in a name other than the Holder's name.

10.05 **COMPANY TO PROVIDE STOCK.**

The Company shall reserve out of its authorized but unissued Common Stock or Common Stock held in its treasury enough shares of Common Stock to permit the conversion of all of the Securities.

All shares of Common Stock which may be issued upon conversion of the Securities shall be validly issued, fully paid and non-assessable and shall be free of preemptive rights and free of any lien or adverse claim created by the Company.

The Company shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities and shall list such shares on each national securities exchange or automated quotation system on which the Common Stock is listed.

10.06 **ADJUSTMENT OF CONVERSION RATE.**

The Conversion Rate shall be subject to adjustment from time to time as follows:

(a) In case the Company shall (1) pay a dividend in shares of Common Stock to all holders of Common Stock, (2) make a distribution in shares of Common Stock to all holders of Common Stock, (3) subdivide the outstanding shares of Common Stock into a greater number of shares of Common Stock or (4) combine the outstanding shares of Common Stock into a smaller number of shares of Common Stock, the Conversion Rate in effect immediately prior to such action shall be adjusted so that the holder of any Security thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which he would have owned immediately following such action had such Securities been converted immediately prior thereto. Any adjustment made pursuant to this **Section 10.06(a)** shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

(b) In case the Company shall issue rights or warrants to all or substantially all holders of Common Stock, as the case may be, entitling them, for a period commencing on the record date for the determination of holders of Common Stock entitled to receive such rights or warrants and expiring not more than sixty (60) days after such record date, to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock), at a price per share less than the then current market price (as determined pursuant to **Section 10.06(g)**) of Common Stock on such record date, the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date, plus the number of shares of Common Stock so offered for subscription or purchase, and the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on such record date plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price. Such adjustments shall become effective immediately after such record date.

(c) In case the Company shall dividend or distribute to all or substantially all holders of Common Stock shares of Capital Stock of the Company (other than Common Stock), evidences of Indebtedness or other assets (other than cash dividends), or shall dividend or distribute to all or substantially all holders of Common Stock rights or warrants to subscribe for securities (other than those referred to in **Section 10.06(b)**), then in each such case the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the determination of stockholders entitled to such distribution by a fraction of which the numerator shall be the current market price of Common Stock (as determined pursuant to **Section 10.06(g)**), on such date and the denominator shall be such current market price less the fair market value (as determined in good faith by the Board of Directors whose determination shall be conclusive and described in a Board Resolution) on such date of the portion of the evidences of Indebtedness, shares of Capital Stock, cash and other assets to be

distributed or of such subscription rights or warrants applicable to one share of Common Stock, such increase to become effective immediately prior to the opening of business on the day following such record date. Notwithstanding the foregoing, in the event that the Company shall distribute rights or warrants (other than those referred to in **Section 10.06(b)**) ("**Rights**") *pro rata* to holders of Common Stock, the Company may, in lieu of making any adjustment pursuant to this **Section 10.06(c)**, make proper provision so that each Holder of a Security who converts such Security (or any portion thereof) after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such conversion, in addition to the shares of Common Stock issuable upon such conversion (the "**Conversion Shares**"), a number of Rights to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the "**Distribution Date**"), the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of shares of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the Rights; and (ii) if such conversion occurs after the Distribution Date, the same number of Rights to which a holder of the number of shares of Common Stock into which the principal amount of the Security so converted was convertible immediately prior to the Distribution Date would have been entitled on the Distribution Date in accordance with the terms and provisions of and applicable to the Rights. In the event that the Company implements a stockholders' rights plan after the date hereof, the Company shall provide that the Holders will receive, in addition to Common Stock, the rights described therein upon conversion of the Securities (whether or not the rights have separated from the Common Stock prior to the time of conversion), subject to the limitations set forth in the stockholders' rights plan. Any distribution of rights or warrants pursuant to a stockholders' rights plan complying with the requirements set forth in the two preceding sentences shall not constitute a distribution of rights or warrants pursuant to this **Section 10.06(c)**.

(d) In case the Company shall, by dividend or otherwise, at any time make a distribution of cash (excluding any cash that is distributed as part of a distribution requiring a Conversion Rate adjustment pursuant to **subsection (e)** below) to all or substantially all holders of Common Stock, the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the record date for the determination of holders of Common Stock entitled to such distribution by a fraction (A) whose numerator shall be the current market price per share of Common Stock (as determined pursuant to **Section 10.06(g)**) on such record date and (B) whose denominator shall be an amount equal to (a) such current market price per share of Common Stock less (b) the lesser of (i) the amount of the distribution per share of Common Stock and (ii) such current market price per share of Common Stock; *provided, however*, that the Conversion Rate shall not be adjusted pursuant to this **Section 10.06(d)** to the extent, and only to the extent, such adjustment would cause the Conversion Price to be less than one cent ($0.01); *provided further* that, if the denominator of such fraction shall be zero, the Conversion Rate shall be instead adjusted so that the Conversion Price is equal to one cent ($0.01). An adjustment to the Conversion Rate pursuant to this **Section 10.06(d)** shall become effective immediately prior to the opening of business on the day immediately following such record date.

(e) In case the Company or any Subsidiary shall distribute cash or other consideration in respect of a tender offer or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock where the sum of the aggregate amount of such cash distributed and the aggregate fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the Expiration Date (as defined below), of such other consideration distributed (such sum, the "**Aggregate Amount**") expressed as an amount per share of Common Stock validly tendered or exchanged, and not withdrawn, pursuant to such tender offer or exchange offer as of the Expiration Time (as defined below) (such tendered or exchanged shares of Common Stock, the "**Purchased Shares**") exceeds the current market price per share of Common Stock (as determined pursuant to **Section 10.06(g)**) on the trading day next succeeding the last date (such last date, the "**Expiration Date**") on which tenders or exchanges could have been made pursuant to such tender offer or exchange offer (as the same may be amended through the Expiration Date), then the Conversion Rate shall be increased by multiplying the Conversion Rate in effect immediately prior to the close of business on the Expiration Date by a fraction (A) whose numerator is equal to the sum of (I) the Aggregate Amount and (II) the product of (a) the current market price per share of Common Stock on the Expiration Date and (b) an amount equal to (i) the number of shares of Common Stock outstanding as of last time (the "**Expiration Time**") at which tenders or exchanges could have been made pursuant to such tender offer or exchange offer less (ii) the Purchased Shares and (B) whose denominator is equal to the product of (I) the number of shares of Common Stock outstanding as of the Expiration Time (including all Purchased Shares) and (II) the current market price per share of Common Stock on the Expiration Date.

An adjustment, if any, to the Conversion Rate pursuant to this **Section 10.06(e)** shall become effective immediately prior to the opening of business on the Business Day following the Expiration Date. In the event that the Company or a Subsidiary is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such tender offer or exchange offer had not been made. If the application of this **Section 10.06(e)** to any tender offer or exchange offer would result in a decrease in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this **Section 10.06(e)**.

(f) In addition to the foregoing adjustments in **subsections (a)**, **(b)**, **(c)**, **(d) and (e)** above, the Company, from time to time and to the extent permitted by law, may increase the Conversion Rate by any amount for at least twenty (20) days or such longer period as may be required by law, if the Board of Directors has made a determination, which determination shall be conclusive, that such increase would be in the best interests of the Company, provided that the then effective Conversion Price is not less than the par value of a share of Common Stock. The Company shall give notice to the Trustee and cause notice of such increase to be mailed to each Holder of Securities at such Holder's address as the same appears on the registry books of the Registrar, at least fifteen (15)

days prior to the date on which such increase commences. Such Conversion Rate increase shall be irrevocable during such period.

(g) For the purpose of any computation under **subsections (a)**, **(b)**, **(c)**, **(d) and (e)** above, the current market price per share of Common Stock on the date fixed for determination of the stockholders entitled to receive the issuance or distribution requiring such computation (the "**Determination Date**") shall be deemed to be the average of the Closing Sale Prices for the ten (10) consecutive Trading Days immediately preceding the Determination Date; *provided*, *however*, that (i) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Rate pursuant to **subsection (a)**, **(b)**, **(c)**, **(d) or (e)** above occurs on or after the tenth (10th) Trading Day prior to the Determination Date and prior to the "ex" date for the issuance or distribution requiring such computation, the Closing Sale Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Sale Price by the reciprocal of the fraction by which the Conversion Rate is so required to be adjusted as a result of such other event, (ii) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Rate pursuant to **subsection (a)**, **(b)**, **(c)**, **(d) or (e)** above occurs on or after the "ex" date for the issuance or distribution requiring such computation and on or prior to the Determination Date, the Closing Sale Price for each Business Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Sale Price by the same fraction by which the Conversion Rate is so required to be adjusted as a result of such other event, and (iii) if the "ex" date for the issuance or distribution requiring such computation is on or prior to the Determination Date, after taking into account any adjustment required pursuant to **clause (i) or (ii)** of this proviso, the Closing Sale Price for each Trading Day on and after the "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined in good faith by the Board of Directors in a manner consistent with any determination of such value for the purposes of this **Section 10.06**, whose determination shall be conclusive and described in a Resolution of the Board of Directors) of the evidences of Indebtedness, shares of Capital Stock or other securities or assets being distributed (in the distribution requiring such computation) applicable to one share of Common Stock as of the close of business on the day before such "ex" date. For the purpose of any computation under **subsection (e)** of this **Section 10.06**, the current market price per share of Common Stock at the expiration date for the tender offer or exchange offer requiring such computation shall be deemed to be the average of the Closing Sale Price for the ten (10) consecutive Trading Days immediately preceding the Expiration Date; *provided*, *however*, that if the "ex" date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Rate pursuant to **subsection (a)**, **(b)**, **(c)**, **(d) or (e)** above occurs on or after the expiration time for the tender offer or exchange offer requiring such computation and prior to the day in question, the Closing Sale Price for each Trading Day on or after to the "ex" date for such other event shall be adjusted by multiplying such Closing Sale Price by the same fraction by which the Conversion Rate is so required to be adjusted as a result of such other event. For purposes of this subsection, the term "ex" date, (i) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the

Closing Sale Price was obtained without the right to receive such issuance or distribution, (ii) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market

after the time at which such subdivision or combination becomes effective, and (iii) when used with respect to any tender offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the expiration time of such tender offer (as it may be amended or extended).

10.07 **NO ADJUSTMENT.**

No adjustment in the Conversion Rate shall be required until cumulative adjustments amount to one percent (1%) or more of the Conversion Price as last adjusted; *provided, however,* that any adjustments which by reason of this **Section 10.07** are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this **Article X** shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

If any rights, options or warrants issued by the Company as described in **Section 10.06** are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate will not be adjusted as provided in **Section 10.06** until the earliest of such triggering event occurs. Upon the expiration or termination of any rights, options or warrants without the exercise of such rights, options or warrants, the Conversion Rate then in effect shall be adjusted immediately to the Conversion Rate which would have been in effect at the time of such expiration or termination had such rights, options or warrants, to the extent outstanding immediately prior to such expiration or termination, never been issued.

No adjustment need be made for a transaction referred to in this **Article X** if Securityholders are to participate in the transaction without conversion 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.

10.08 **OTHER ADJUSTMENTS.**

In the event that, as a result of an adjustment made pursuant to **Section 10.06** hereof, the Holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock other than shares of Common Stock, thereafter the Conversion Rate of such other shares so receivable upon conversion of any Security shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this **Article X**.

10.09 **ADJUSTMENTS FOR TAX PURPOSES.**

The Company may make such increases in the Conversion Rate, in addition to those required by **Section 10.06** hereof, as it determines to be advisable in order that any stock dividend, subdivision of shares, distribution or rights to purchase stock or securities or distribution of securities convertible into or exchangeable for stock made by the Company to its stockholders will not be taxable to the recipients thereof.

10.10 **NOTICE OF ADJUSTMENT.**

Whenever the Conversion Rate is adjusted, the Company shall promptly mail to Holders at the addresses appearing on the Registrar's books a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment.

10.11 **NOTICE OF CERTAIN TRANSACTIONS.**

In the event that:

(1) the Company takes any action which would require an adjustment in the Conversion Rate;

(2) the Company takes any action that would require a supplemental indenture pursuant to **Section 10.12**; or

(3) there is a dissolution or liquidation of the Company,

a Holder of a Security may wish to convert such Security into shares of Common Stock prior to the record date for or the effective date of the transaction so that such Holder may receive the rights, warrants, securities or assets which a holder of shares of Common Stock on that date may receive. Therefore, the Company shall mail to Holders at the addresses appearing on the Registrar's books and the Trustee a notice stating the proposed record or effective date, as the case may be, of any transaction referred to in **clause (1)**, **(2)** or **(3)** of this **Section 10.11**. The Company shall mail such notice at least fifteen (15) days before such date; however, failure to mail such notice or any defect therein shall not affect the validity of any transaction referred to in **clause (1)**, **(2)** or **(3)** of this **Section 10.11**.

10.12 **EFFECT OF RECLASSIFICATIONS, CONSOLIDATIONS, MERGERS, BINDING SHARE EXCHANGES OR SALES ON CONVERSION PRIVILEGE.**

If any of the following shall occur, namely: (i) any reclassification or change in the Common Stock issuable upon conversion of Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation, merger or binding share exchange to which the Company is a party other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par value, or from no par value to par value or as a result of a subdivision or combination) in, the Common Stock, or (iii) any sale or conveyance of all or substantially all of the property or business of the Company, then the Company or such successor or purchasing corporation, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, merger, binding share exchange, sale or conveyance, execute and deliver to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee providing that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, change, consolidation, merger, binding share exchange, sale or

conveyance by a holder of the number of shares of Common Stock, deliverable upon conversion of such Security immediately prior to such reclassification, change, consolidation, merger, binding share exchange, sale or conveyance, assuming that such Holder would not have exercised any rights of election that the Holder would have had as a holder of Common Stock to select a particular type of consideration. Such supplemental indenture shall provide for adjustments of the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this **Article X**. The foregoing, however, shall not in any way affect the right a Holder of a Security may otherwise have, pursuant to **clause (ii)** of the last sentence of the first paragraph of **Section 10.06(c)** hereof, to receive Rights upon conversion of a Security. If, in the case of any such consolidation, merger, binding share exchange, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock includes shares of stock or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, binding share exchange, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing. The provision of this **Section 10.12** shall similarly apply to successive consolidations, mergers, binding share exchanges, sales or conveyances.

In the event the Company shall execute a supplemental indenture pursuant to this **Section 10.12**, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, consolidation, merger, binding share exchange, sale or conveyance and any adjustment to be made with respect thereto.

10.13 **TRUSTEE'S DISCLAIMER.**

The Trustee has no duty to determine when an adjustment under this **Article X** should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to **Section 10.10** hereof. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the failure by the Company to comply with any provisions of this **Article X**.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to **Section 10.12**, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to **Section 10.12** hereof.

XI. SUBORDINATION

11.01 **AGREEMENT TO SUBORDINATE.**

The Company agrees, and each Securityholder by accepting a Security agrees, that the payment of all amounts due with respect to the Securities (except as set forth in this **Article XI** with respect to Permitted Payments) is subordinated in right of payment, to the extent and in the manner provided in this **Article XI**, to the prior payment in full in cash or cash equivalents of all Senior Indebtedness (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed) and that the subordination is for the benefit of the holders of Senior Indebtedness.

11.02 **CERTAIN DEFINITIONS.**

"**Designated Senior Indebtedness**" means any Senior Indebtedness in which the instrument creating or evidencing the Indebtedness expressly provides that such Indebtedness is "designated senior indebtedness."

"**Indebtedness**" means, with respect to any person, the principal of, and premium, if any, and interest on and all other obligations in respect of (a) all indebtedness of such person for borrowed money (including all indebtedness evidenced by notes, bonds, debentures or other securities), (b) all obligations (other than trade payables) incurred by such person in the acquisition (whether by way of purchase, merger, consolidation or otherwise and whether by such person or another person) of any business, real property or other assets, (c) all reimbursement obligations of such person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such person, (d) all of such person's capital lease obligations and obligations under facility leases between such person as lessee and a subsidiary of such person as lessor, (e) all net obligations of such person under interest rate swap, currency exchange or similar agreements to which such person is a party, (f) all obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, conditional sale or other title retention agreement, in connection with the lease of real property or improvements thereon (or any personal property included as part of any such lease) which provides that such person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed-upon residual value of the leased property, including such person's obligations under such lease or related document to purchase or cause a third party to purchase such leased property or pay an agreed-upon residual value of the leased property to the lessor, (g) guarantees by such person of indebtedness described in **clauses (a) through (f)** of another person and pledges of any of such person's assets as security for another person's indebtedness, and (h) all renewals, extensions, refundings, deferrals, restructurings, amendments and modifications of any indebtedness, obligation, guarantee, pledge or liability of the kind described in **clauses (a) through (g)**.

"**Representative**" means the indenture trustee or other trustee, agent or representative for an issue of Senior Indebtedness.

"**Senior Indebtedness**" means all Indebtedness of the Company outstanding at any time, except the Securities, Indebtedness that by its terms provides that it shall not be "senior" in right

of payment to the Securities or Indebtedness that by its terms provides that it shall be "pari passu" or "junior" in right of payment to the Securities. Senior Indebtedness does not include Indebtedness for trade payables or any account payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services. In addition, Senior Indebtedness does not include Indebtedness of the Company to any of the Subsidiaries, except for amounts due by the Company to Fremont Holding L.L.C., a Delaware limited liability company, under that certain Lease between the Company and Fremont Holding L.L.C., dated September 9, 1999.

11.03 **LIQUIDATION; DISSOLUTION; BANKRUPTCY.**

In the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relating to the Company or to its assets, or any liquidation, dissolution or other winding-up of the Company, whether voluntary or involuntary, or any assignment for the benefit of creditors or other marshaling of assets or liabilities of the Company (except in connection with the consolidation or merger of the Company or its liquidation or dissolution following the conveyance, transfer or lease of its properties and assets substantially upon the terms and conditions described in **Article V),** the holders of Senior Indebtedness will be entitled to receive payment in full in cash or cash equivalents of all Senior Indebtedness, or provision shall be made for such payment in full, before the Securityholders will be entitled to receive any payment or distribution of any kind or character on account of principal of, or premium, if any, or interest or liquidated damages on the Securities (except for Permitted Payments); and any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, by set-off or otherwise, to which the Securityholders or the Trustee would be entitled but for the provisions of this **Article XI** (except for Permitted Payments) shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their Representative or Representatives ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

11.04 **DEFAULT ON DESIGNATED SENIOR INDEBTEDNESS**

No payment or distribution, other than Permitted Payments, of any assets of the Company of any kind or character, whether in cash, property or securities, may be made by or on behalf of the Company on account of the principal of, or premium, if any, or interest on the Securities or on account of the purchase, redemption or other acquisition of Securities, upon the occurrence of any Payment Default in respect of Designated Senior Indebtedness until such Payment Default shall have been cured or waived in writing or shall have ceased to exist or such Designated Senior Indebtedness shall have been discharged or paid in full in cash or cash equivalents. A "**Payment Default**" shall mean a default in payment, whether at scheduled maturity, upon a scheduled installment, by acceleration or otherwise, of principal of, or premium, if any, or interest on Designated Senior Indebtedness beyond any applicable grace period.

No payment or distribution, other than Permitted Payments, of any assets of the Company of any kind or character, whether in cash, property or securities, may be made by or on behalf of the Company on account of principal of, or premium, if any, or interest on the Securities or on account of the purchase, redemption or other acquisition of Securities for the period specified below (a "**Payment Blockage Period**"), upon the occurrence of any default or event of default with respect to any Designated Senior Indebtedness, other than a Payment Default, pursuant to which the maturity thereof may be accelerated (a "**Non-Payment Default**"**)** and receipt by the Trustee of written notice thereof from the Company or a Representative with respect to such Designated Senior Indebtedness (a "**Payment Blockage Notice**").

The Payment Blockage Period shall mean the period (each a "**Payment Blockage Period**") that shall commence upon receipt by the Trustee of the Payment Blockage Notice, and shall end on the earliest of:

(i) one hundred seventy nine (179) days thereafter, (provided that any Designated Senior Indebtedness to which the Non-Payment Default relates shall not theretofore have been accelerated);

(ii) the date on which such Non-Payment Default is cured, waived or ceases to exist;

(iii) the date on which such Designated Senior Indebtedness is discharged or paid in full; or

(iv) the date on which such Payment Blockage Period shall have been terminated by written notice to the Trustee from the Representative initiating such Payment Blockage Period, after which the Company will resume making any and all required payments in respect of the Securities, including any missed payments. In any event, not more than one Payment Blockage Period may be commenced during any period of three hundred and sixty five (365) consecutive days. No Non-Payment Default that existed or was continuing on the date of the commencement of any Payment Blockage Period will be, or can be made, the basis for the commencement of a subsequent Payment Blockage Period, unless such Non-Payment Default has been cured or waived for a period of not less than ninety (90) consecutive days subsequent to the commencement of such initial Payment Blockage Period.

Notwithstanding anything to the contrary contained herein, nothing shall prevent any payment to Securityholders permitted by the Pledge Agreement from the Pledge Account or or permitted by **Article XII**.

11.05 **ACCELERATION OF SECURITIES.**

If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Indebtedness of the acceleration.

11.06 **WHEN DISTRIBUTION MUST BE PAID OVER.**

In the event that, notwithstanding the provisions of **Sections 11.03 and 11.04**, any payment or distribution of any kind or character, whether in cash, property or securities, shall be received by the Trustee or any Holder which is prohibited by such provisions, then and in such

event such payment shall be held in trust for the benefit of, and shall be paid over and delivered by such Trustee or Holder to, the trustee or Representative with respect to holders of Senior Indebtedness, as their interest may appear, for application to Senior Indebtedness remaining unpaid until all such Senior Indebtedness has been paid in full in cash or cash equivalents after giving effect to any concurrent distribution to or for the holders of Senior Indebtedness.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform only such obligations on the part of the Trustee as are specifically set forth in this **Article XI**, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. 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 the Trustee shall pay over or distribute to or on behalf of Holders or the Company or any other person money or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this **Article XI**, except if such payment is made as a result of the willful misconduct or negligence of the Trustee.

11.07 **NOTICE BY THE COMPANY.**

The Company shall promptly notify the Trustee and the Paying Agent of any facts known to the Company that would cause a payment of any obligations with respect to the Securities to violate this **Article XI**, but failure to give such notice shall not affect the subordination of the Securities to the Senior Indebtedness as provided in this **Article XI**.

11.08 **SUBROGATION.**

After all Senior Indebtedness is paid in full and until the Securities are paid in full, Securityholders shall be subrogated (equally and ratably with all other Indebtedness that is equal in right of payment to the Securities) to the rights of holders of Senior Indebtedness to receive distributions applicable to Senior Indebtedness to the extent that distributions otherwise payable to the Securityholders have been applied to the payment of Senior Indebtedness. A distribution made under this **Article XI**, to holders of Senior Indebtedness that otherwise would have been made to Securityholders is not, as between the Company and Securityholders a payment by the Company of the Securities.

11.09 **RELATIVE RIGHTS.**

This **Article XI**, defines the relative rights of Holders and holders of Senior Indebtedness. Nothing in this Indenture shall: (i) impair, as between the Company and Holders, the obligation of the Company, which is absolute and unconditional, to pay principal of and interest on the Securities in accordance with their terms; (ii) affect the relative rights of Holders and creditors of Holders other than their rights in relation to holders of Senior Indebtedness; or (iii) prevent the Trustee or any Holder from exercising its available remedies upon a Default or Event of Default, subject to the rights of holders and owners of Senior Indebtedness to receive distributions and payments otherwise payable to Holders of Securities. If the Company fails because of this **Article XI**, to pay principal of or interest on a Security on the Maturity Date, the failure is still a Default or Event of Default.

11.10 **SUBORDINATION MAY NOT BE IMPAIRED BY THE COMPANY.**

No right of any holder of Senior Indebtedness to enforce the subordination of the Indebtedness evidenced by the Securities shall be impaired by any act or failure to act by the Company or any Holder or by the failure of the Company or any Holder to comply with this Indenture.

Without in any way limiting the generality of this **Section 11.10**, 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, without incurring responsibility to the Trustee or the Holders and without impairing or releasing the subordination provided in this **Article XI**, or the obligations hereunder of the Holders to the holders of Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding or secured; (b) sell, exchange, release, foreclose against or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (c) release any person liable in any manner for the collection of Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the Company, and Subsidiary thereof or any other person.

11.11 **DISTRIBUTION OR NOTICE TO REPRESENTATIVE.**

Whenever a distribution is to be made or a notice given to holders of any Senior Indebtedness, the distribution may be made and the notice given to their trustee or Representative.

Upon any payment or distribution of assets of the Company referred to in this **Article XI**, the Trustee and the Holders the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of such representative(s) or of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, all 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 XI**.

11.12 **RIGHTS OF TRUSTEE AND PAYING AGENT.**

Notwithstanding the provisions of this **Article XI**, or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution by the Trustee, and the Trustee and the Paying Agent may continue to make payments on the Securities, unless a Responsible Officer of the Trustee shall have received at its Corporate Trust Office of the Trustee at least three (3) Business Days prior to the date of such payment written notice of facts that would cause the payment of any obligations with respect to the Securities to violate this **Article XI**. Only the Company or a trustee or Representative with respect to Senior Indebtedness may give the notice. Nothing in this **Article XI**, shall impair the claims of, or payments to, the Trustee under or pursuant to **Section 7.07**.

The Trustee in its individual or any other capacity may hold Senior Indebtedness with the same rights it would have if it were not Trustee.

XII. SECURITY

12.01 **SECURITY.**

On the date hereof, the Company shall (i) duly execute and deliver the Pledge Agreement and comply with the terms and provisions thereof; and (ii) purchase the Pledged Security Entitlements to be pledged to the Trustee for the benefit of the Holders in such amount as will be sufficient upon receipt of scheduled interest and/or principal payments on such Pledged Security Entitlements to provide for payment in full of the first six (6) scheduled interest payments on the Securities when due. The Pledged Security Entitlements shall be pledged by the Company to the Trustee for the ratable benefit of the Holders and shall be held by the Trustee in the Pledge Account pending disposition pursuant to the Pledge Agreement.

12.02 **PLEDGE AGREEMENT.**

Each Holder, by its acceptance of a Security, consents and agrees to the terms of the Pledge Agreement (including, without limitation, the provisions providing for foreclosure and release of the Pledged Financial Assets) as the same may be in effect or may be amended from time to time in accordance with its terms, and each Holder authorizes and directs the Trustee to enter into the Pledge Agreement and to perform its respective obligations and exercise its respective rights thereunder in accordance therewith. The Company shall do or cause to be done all such acts and things as may be necessary or reasonably requested by the Trustee, or as may be required by the provisions of the Pledge Agreement, to assure and confirm to the Trustee the security interest in the Pledged Financial Assets contemplated hereby, or by the Pledge Agreement, as the same may be in effect from time to time, so as to render the Pledged Financial Assets available for the security and benefit of this Indenture and of the Securities secured thereby, according to the intent and purposes herein and therein expressed. The Company shall take, or shall cause to be taken, upon request of the Trustee, any and all actions reasonably required to cause the Pledge Agreement to create and maintain, as security for the obligations of the Company under this Indenture and the Securities, valid and enforceable first-priority liens in and on all the Pledged Financial Assets, in favor of the Trustee, superior and prior to the rights of third Persons and subject to no other Liens.

12.03 **RELEASE OF PLEDGED FINANCIAL ASSETS.**

The release of any Pledged Financial Assets pursuant to the Pledge Agreement shall not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent such Pledged Financial Assets are released in accordance with this Indenture and the Pledge Agreement. To the extent applicable, the Company shall cause TIA § 314(d) relating to the release of property or securities from the Lien and security interest of the Pledge Agreement and relating to the substitution therefor of any property or securities to be subjected to the Lien and security interest of the Pledge Agreement to be complied with. Any certificate or opinion required by TIA § 314(d) may be made by an Officer, except in cases where TIA

§ 314(d) requires that such certificate or opinion be made by an independent Person, which Person shall be an independent engineer, appraiser or other expert selected by the Company.

12.04 **DISBURSEMENTS FROM PLEDGE ACCOUNT UPON CONVERSION OR REPURCHASE.**

If, prior to the payment of the sixth (6th) scheduled interest payment due on the Securities, any Securities are converted in accordance with this Indenture or any Securities are repurchased by the Company, then, upon the written request of the Company to the Trustee and satisfaction of the conditions precedent specified in this **Section 12.04**, the Trustee shall promptly instruct the Account Intermediary (as defined in the Pledge Agreement) to liquidate Collateral (as defined in the Pledge Agreement) to the extent (but only to the extent) necessary to generate an amount of cash proceeds equal to the Release Amount (as defined below) and shall distribute to the Company (such distribution, a "**Release Distribution**") such amount in immediately available funds. Upon each Release Distribution, the Trustee shall release the security interest and continuing lien in that portion of the Collateral, and proceeds derived therefrom, distributed to the Company pursuant to such Release Distribution, and shall execute such documents as the Company may reasonably request to evidence such release. No Release Distribution or liquidation to facilitate a Release Distribution shall occur unless all of the following shall have been satisfied:

(A) the Company has delivered to the Trustee an Opinion of Counsel to the effect that (i) the Securities referred to in the above paragraph have been duly converted or repurchased by the Company and (ii) all conditions precedent to the Release Distribution have been satisfied;

(B) the Company has delivered to the Trustee an Officers' Certificate that (i) identifies the Securities that have been so converted or so repurchased, (ii) affirms that such Securities have been duly converted or repurchased, (iii) states that all conditions precedent relating to the Release Distribution have been satisfied and (iv) states the Release Amount;

(C) the Company has delivered to the Trustee a Written Independent Accountant Report (as defined in the Pledge Agreement) stating that the Collateral to be remaining after the proposed Release Distribution and related liquidation of Collateral will be sufficient, upon receipt of the scheduled interest and principal payments on the remaining Pledged Financial Assets, to provide for payment in full of the remaining first six (6) scheduled interest payments on the Remaining Securities (as defined below) when due;

(D) no Event of Default has occurred and is continuing;

(E) no Event (as defined in the Registration Rights Agreement) has occurred and is continuing; and

(F) no Securities that have been repurchased by the Company have subsequently been resold.

"**Release Amount**" shall mean an amount equal to the net proceeds (after deducting expenses related in any way to the related Release Distribution and liquidation of Collateral) from the liquidation of that portion of the Collateral not necessary to remain in the Pledge Account in order to provide, from the receipt of the scheduled interest and principal payments on

the remaining Pledged Financial Assets, for payment in full of the remaining first six (6) scheduled interest payments on the Remaining Securities when due.

"**Remaining Securities**" shall mean the Securities other than the Securities specified in the Officers' Certificate referred to in this **Section 12.04** as having been converted or repurchased.

12.05 **OPINIONS OF COUNSEL.**

The Company shall cause TIA § 314(b), relating to opinions of counsel regarding the Lien under the Pledge Agreement, to be complied with. The Trustee may accept, to the extent permitted by **Sections 4.04** and **7.06** as conclusive evidence of compliance with the foregoing provisions, the appropriate statements contained in such opinions.

12.06 **AUTHORIZATION OF ACTIONS TO BE TAKEN BY THE TRUSTEE UNDER THE PLEDGE AGREEMENT.**

On behalf of the Holders, the Trustee may, in its sole discretion and without the consent of the Holders, take all reasonable actions in accordance with the Pledge Agreement necessary or appropriate in order to (A) enforce any of the terms of the Pledge Agreement or (B) collect and receive any and all amounts payable in respect of the obligations of the Company thereunder. The Trustee shall have the power to institute and to maintain such suits and proceedings as the Trustee may reasonably deem expedient to preserve or protect its interests and the interests of the Holders in the Pledged Financial Assets (including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders or of the Trustee).

XIII. MISCELLANEOUS

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 of the TIA shall control.

13.02 **NOTICES.**

Any notice or communication by the Company or the Trustee to one or both of the others is duly given if in writing and delivered in person, mailed by first-class mail or by express delivery or by telecopy, with written confirmation of transmittal, to the other parties' addresses stated in this **Section 13.02**. The Company or the Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to a Securityholder shall be mailed to its address shown on the register kept by the Registrar. 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 the addressee receives it.

If the Company mails a notice or communication to Securityholders, it shall mail a copy to the other and to the Trustee and each Agent at the same time.

All notices or communications shall be in writing.

The Company's address is:

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555

For purposes of **Section 4.02** only, the Trustee's address is:

c/o JPMorgan Chase Bank
Institutional Trust Services
4 New York Plaza
1st Floor
New York, New York 10004

For all purposes other than **Section 4.02**, the Trustee's address is:

J.P. Morgan Trust Company, National Association
560 Mission Street, 13th Floor
San Francisco, CA 94105
Attention: Mitch Gardner

13.03 **COMMUNICATION BY HOLDERS WITH OTHER HOLDERS.**

Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

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:

(i) 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

(ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each signer of an Officers' Certificate or an Opinion of Counsel may (if so stated) rely, effectively, upon an Opinion of Counsel as to legal matters and an Officers' Certificate as to factual matters if such signer reasonably and in good faith believes in the accuracy of the document relied upon.

13.05 **STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.**

Each Officers' Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture shall include:

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

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

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

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

13.06 **RULES BY TRUSTEE AND AGENTS.**

The Trustee may make reasonable rules for action by or at a meeting of Securityholders. The Registrar, Paying Agent or Conversion Agent may make reasonable rules and set reasonable requirements for their respective functions.

13.07 **LEGAL HOLIDAYS.**

A "**Legal Holiday**" is a Saturday, a Sunday or a day on which banking institutions are not required to be open in the City of New York, in the State of New York or in the city in which the Trustee administers its corporate trust business. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on that payment for the intervening period.

A "**Business Day**" is a day other than a Legal Holiday.

13.08 **DUPLICATE 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. Delivery of an executed

counterpart by facsimile shall be effective as delivery of a manually executed counterpart thereof.

13.09 **GOVERNING LAW.**

The laws of the State of New York, without regard to principles of conflicts of law, shall govern this Indenture and the Securities.

13.10 **NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.**

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

13.11 **SUCCESSORS.**

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

13.12 **SEPARABILITY.**

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 and a Holder shall have no claim therefor against any party hereto.

13.13 **TABLE OF CONTENTS, HEADINGS, ETC.**

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

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

PROTEIN DESIGN LABS, INC.

By: /s/ MARK MCDADE
Name: Mark McDade
Title: Chief Executive Officer

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

By: /s/ MITCH GARDNER
Name: Mitch Gardner
Title: Vice President

EXHIBIT A

[Face of Security]

PROTEIN DESIGN LABS, INC.

Certificate No. _____

[INSERT PRIVATE PLACEMENT LEGEND AND GLOBAL SECURITY LEGEND AS REQUIRED]

2.75% Convertible Subordinated Note due 2023
CUSIP No. _____

Protein Design Labs, Inc., a Delaware corporation (herein called the "**Company**"), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of two hundred and fifty million dollars ($250,000,000) on August 16, 2023 and to pay interest thereon, as provided on the reverse hereof, until the principal and any unpaid and accrued interest is paid or duly provided for. The right to payment of the principal and all other amounts due with respect hereto is subordinated to the rights of Senior Indebtedness as set forth in the Indenture referred to on the reverse side hereof.

Interest Payment Dates: February 16 and August 16, with the first payment to be made on February 16, 2004.

Record Dates: February 1 and August 1.

The provisions on the back of this certificate are incorporated as if set forth on the face hereof.

IN WITNESS WHEREOF, PROTEIN DESIGN LABS, INC. has caused this instrument to be duly signed.

PROTEIN DESIGN LABS, INC.

By:_____
Name:
Title:

Dated: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Dated: _____

[REVERSE OF SECURITY]

PROTEIN DESIGN LABS, INC.

2.75% Convertible Subordinated Note due 2023

1. **Interest**. Protein Design Labs, Inc., a Delaware corporation (the "**Company**"), promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company will pay interest semi-annually on February 16 and August 16 of each year, with the first payment to be made on February16, 2004. Interest on the Securities will accrue on the principal amount from the most recent date to which interest has been paid or provided for or, if no interest has been paid, from July 14, 2003. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Holder of this Security is entitled to the benefits of the Pledge Agreement, dated July 14, 2003, between the Company and the Trustee, pursuant to which, among other things, the Company has placed in the Pledge Account Pledged Financial Assets sufficient to provide for the payment in full of the first six (6) interest payments on this Security. The terms capitalized but undefined in this paragraph have the meanings ascribed to them in the Pledge Agreement.

2. **Maturity**. The Securities will mature on August 16, 2023.

3. **Method of Payment**. The Company will pay interest on the Securities (except defaulted interest) to the persons who are registered Holders of Securities at the close of business on the record date set forth on the face of this Security next preceding the applicable interest payment date. Holders must surrender Securities to a Paying Agent to collect the principal, Redemption Price, Option Purchase Price or Repurchase Price of the Securities, plus, if applicable, accrued and unpaid interest, if any, payable as herein provided upon Redemption, Repurchase at Holder's Option or Repurchase Upon Repurchase Event, as the case may be. The Company will pay all amounts due with respect to the Securities in money of the United States that at the time of payment is legal tender for payment of public and private debts. If this Security is in global form, the Company will pay interest on the Securities by wire transfer of immediately available funds to the account specified by the Holder. With respect to securities held other than in global form, the Company will make payments by wire transfer of immediately available funds to the account specified by the Holders thereof or, if no such account is specified with respect to a Holder, by mailing a check to the Holder's registered address.

4. **Paying Agent, Registrar, Conversion Agent**. Initially, J.P. Morgan Trust Company, National Association (the "**Trustee**"), will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or Conversion Agent without notice.

5. **Indenture**. The Company issued the Securities under an Indenture, dated as of July 14, 2003 (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 (15 U.S. Code §§ 77aaa-77bbbb) (the "**Act**") as in effect on the date of the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of such terms. Except for Permitted Payments, the Securities are general unsecured subordinated obligations of the Company limited to $250,000,000 aggregate principal amount ($300,000,000 if the Initial Purchasers have elected to exercise the Option to purchase the $50,000,000 of Additional Securities), except as otherwise provided in the Indenture (except for Securities issued in substitution for destroyed, mutilated, lost or stolen Securities). Terms used herein which are defined in the Indenture have the meanings assigned to them in the Indenture.

6. **Optional Redemption**. The Securities will be redeemable prior to maturity at the option of the Company, in whole or in part, at any time on or after August 16, 2008 (the date of such time, the "**Redemption Date**"), at a redemption price equal to one hundred percent (100%) of the principal amount of the Securities to be redeemed, plus any accrued and unpaid interest to, but excluding, the Redemption Date; *provided* that if such Redemption Date is also an interest payment date, such accrued and unpaid interest will be payable in the ordinary course to the Holder of record on the relevant record date.

7. **Notice of Redemption**. Notice of redemption will be mailed at least thirty (30) days but not more than sixty (60) days before the Redemption Date to each Holder of Securities to be redeemed at its registered address. Securities in denominations larger than $1,000 principal amount may be redeemed in part but only in integral multiples of $1,000 principal amount. On and after the Redemption Date, interest will cease to accrue on Securities or portions of them called for redemption (except to the extent the Company defaults in the payment of the Redemption Price or accrued and unpaid interest, if any, to, but excluding, the Redemption Date).

8. **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 August 16, 2010, August 16, 2013 and August 16, 2018 (each, an "**Option Purchase Date**") at an Option Purchase Price of one hundred percent (100%) of the Principal Amount at Maturity of Securities to be purchased, plus accrued and unpaid interest, if any, to, but excluding, applicable Option Purchase Date, 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 twenty (20) Business Days prior to applicable Option Purchase Date until the close of business on the Business Day immediately preceding the applicable Option Purchase Date and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture. The Option Purchase Price, plus accrued and unpaid interest, if any, payable, as provided in the Indenture, in respect of Securities upon a Repurchase at Holder's Option, shall be paid in cash if the applicable Option Purchase Date is August 16, 2010. Subject to certain conditions and exceptions set forth in the Indenture, upon a Repurchase at Holder's Option where the applicable Option Purchase Date is August 16, 2013 or August 16, 2018, the Option Purchase Price may be paid for, in whole or in part, at the election of the Company, in cash or shares of Common Stock or in any combination of cash and shares of Common Stock.

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

If the Paying Agent (other than the Company) holds on the applicable Option Purchase Date money and/or Common stock, if applicable and as provided in the Indenture, sufficient to pay the aggregate Option Purchase Price, and accrued and unpaid interest, if any, to, but excluding, the applicable Option Purchase Date, payable in respect of Securities on the applicable Option Purchase Date, then immediately after the applicable Option Purchase Date such Securities shall be deemed to be no longer outstanding and interest on them shall cease to accrue, and such Securities shall be deemed paid whether or not such Securities are delivered to the Paying Agent. Thereafter, all other rights of the Holders of such Securities shall terminate with respect to such Securities, other than the right to receive the Option Purchase Price plus such accrued and unpaid interest.

9. **Repurchase at Option of Holder Upon a Repurchase Event**. In the event of a Repurchase Event, then each Holder of the Securities shall have the right, at the Holder's option, subject to the rights of the holders of Senior Indebtedness under **Article XI** of the Indenture, to require the Company to repurchase such Holder's Securities including any portion thereof which is $1,000 in principal amount or any integral multiple thereof on a date (the "**Repurchase Date**") no later than thirty (30) days after the date on which notice of such Repurchase Event is mailed in accordance with the immediately succeeding paragraph, at a price equal to one hundred percent (100%) of the outstanding principal amount of such Security, plus accrued and unpaid interest to, but excluding, the Repurchase Date.

Within fifteen (15) days after the occurrence of the Repurchase Event, the Company is obligated to give notice of the occurrence of such Repurchase Event to each Holder. Such notice shall include, among other things, the date by which Holder must notify the Company of such Holder's intention to exercise the Repurchase Right and of the procedure which such Holder must follow to exercise such right. To exercise the Repurchase Right, a Holder of Securities must, in accordance with the provisions of the Indenture, (i) deliver, no later than the close of business on the Business Day immediately preceding the Repurchase Date, written notice to the Paying Agent of the Holder's exercise of such right; and (ii) deliver, at any time after the delivery of such written notice, the Securities with respect to which the Holder is exercising its Repurchase Right, duly endorsed for transfer to the Company.

A "**Repurchase Event**" of the Company shall be deemed to have occurred upon the occurrence of either a "Change in Control" or a "Termination of Trading."

A "**Change in Control**" of the Company shall be deemed to have occurred at such time as:

(i) any "person" or "group" (as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as such term is used in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% or more of the total voting power of

all classes of the Company's Capital Stock entitled to vote generally in the election of directors; or

(ii) at any time the following persons cease for any reason to constitute a majority of the Company's Board of Directors:

(1) individuals who on the Issue Date constituted the Company's Board of Directors; and

(2) any new directors whose election by the Company's Board of Directors or whose nomination for election by the Company's stockholders was approved by at least a majority of the directors then still in office who were either directors on the Issue Date or whose election or nomination for election was previously so approved; or

(iii) The Company consolidates with, or merges with or into, another person or any person consolidates with, or merges with or into, the Company, in any such event other than pursuant to a transaction in which the persons that "beneficially owned," directly or indirectly, the shares of the Company's Voting Stock immediately prior to such transaction, "beneficially own," directly or indirectly, immediately after such transaction, shares of the Company's Voting Stock representing at least a majority of the total voting power of all outstanding classes of Voting Stock of the continuing or surviving corporation in substantially the same proportion as such ownership prior to the transaction; or

(iv) the sale, lease, transfer or other conveyance or disposition of all or substantially all of the assets or property of the Company to any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), including any group acting for the purpose of acquiring, holding, or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act; or

(v) the Company is liquidated or dissolved or the holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company;

provided, *however*, that a Change in Control shall not be deemed to occur if either:

(A) the Closing Sale Price for each of any five (5) Trading Days during the ten (10) Trading Days immediately preceding the Change in Control is equal to at least one hundred and five percent (105%) of the Conversion Price in effect on such Trading Day;

(B) in the case of a merger or consolidation, all of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' appraisal rights) in the merger or consolidation constituting the Change in Control consists of common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change in Control) and as a result of such transaction or transactions the Securities become convertible solely into such common stock; or

(C) in the case of a Qualifying Foreign Merger, all of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters' or appraisal rights) in the Qualifying Foreign Merger constituting the Change in Control consists of common stock or American Depositary Shares representing such common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market (or which will be so traded or quoted when issued or exchanged in connection with such Change in Control) and as a result of such transaction or transactions the Securities become convertible solely into such common stock or American Depositary Shares.

A "**Termination of Trading**" shall occur if the Common Stock of the Company (or other common stock into which the Securities are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on an established automated over-the-counter trading market in the United States; *provided*, *however*, that a Termination of Trading shall not be deemed to have occurred solely by reason of the Company having engaged in a Qualifying Foreign Merger, so long as, immediately after such Qualifying Foreign Merger, the Holders shall have the right to convert their Securities solely into common stock or American Depositary Shares representing such common stock traded on a U.S. national securities exchange or quoted on The Nasdaq National Market, until such time as the common stock or American Depositary Shares on such common stock into which the Securities are solely convertible are no longer so traded or quoted.

10. **Conversion**.

A Holder may convert his or her Security into Common Stock of the Company at any time prior to the close of business on the earlier of (i) August 16, 2023, (ii) if the Security is called for Redemption by the Company, the Business Day immediately preceding the Redemption Date, (iii) if the Security is to be repurchased by the Company pursuant to a Repurchase Event, the Repurchase Date (*provided* that the holder has timely withdrawn, in accordance with the indenture, any Purchase Notice delivered with respect to the Security) or (iv) if the Security is to be purchased by the Company pursuant to a Repurchase at Holder's Option, the applicable Option Purchase Date (*provided* that the holder has timely withdrawn, in accordance with the indenture, any Purchase Notice delivered with respect to the Security). The initial Conversion Rate is 49.6618 shares of Common Stock per $1,000 principal amount of Securities, or an effective initial Conversion Price of approximately $20.14 per share, subject to adjustment in the event of certain circumstances as specified in the Indenture. The Company will deliver a check in lieu of any fractional share. On conversion no payment or adjustment for any unpaid and accrued interest, or liquidated damages with respect to, the Securities will be made. If a Holder surrenders a Security for conversion between the record date for the payment of interest and prior to the next interest payment date, such Security, when surrendered for conversion, must be accompanied by payment of an amount equal to the interest thereon which the registered Holder on such record date is to receive, unless the Securities have been called for redemption as described in the Indenture.

To convert a Security, a Holder must (1) complete and sign the Conversion Notice, with appropriate signature guarantee, on the back of the Security, (2) surrender the Security to a Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by

the Registrar or Conversion Agent, (4) pay the amount of interest, if any, the Holder may be paid as provided in the last sentence of the above paragraph and (5) pay any transfer or similar tax if required. A Holder may convert a portion of a Security if the portion is $1,000 principal amount or an integral multiple of $1,000 principal amount.

Any shares issued upon conversion of a Security shall bear the Private Placement Legend until after the second anniversary of the later of the Issue Date and the last date on which the Company or any Affiliate was the owner of such shares or the Security (or any predecessor security) from which such shares were converted (or such shorter period of time as permitted by Rule 144(k) under the Securities Act or any successor provision thereunder) (or such longer period of time as may be required under the Securities Act or applicable state securities laws, as set forth in an the Opinion of Counsel, unless otherwise agreed by the Company and the Holder thereof).

11. **Subordination**. The Securities are subordinated in right of payment, in the manner and to the extent set forth in the Indenture, to the prior payment in full of all Senior Indebtedness. Each Holder by accepting a Security agrees to such subordination and authorizes the Trustee to give it effect.

12. **Denominations, Transfer, Exchange**. The Securities are in registered form without coupons in denominations of $1,000 principal amount and integral multiples of $1,000 principal amount. The transfer of Securities may be registered and Securities may be exchanged as provided in the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. The Registrar need not exchange or register the transfer of any Security selected for redemption in whole or in part, except the unredeemed portion of Securities to be redeemed in part. Also, it need not exchange or register the transfer of any Securities for a period of fifteen (15) days before the mailing of a notice of redemption of the Securities selected to be redeemed and in certain other circumstances provided in the Indenture.

13. **Persons Deemed Owners**. The registered Holder of a Security may be treated as the owner of such Security for all purposes.

14. **Merger or Consolidation**. The Company shall not consolidate with, or merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to, another person (whether in a single or series of related transactions) unless (i) the resulting, surviving or transferee person is either (A) a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any State thereof or the District of Columbia or (B) a corporation, limited liability company, partnership or trust organized and existing under the laws of a jurisdiction outside the United States, where the transaction is a Qualifying Foreign Merger, as described in, and subject to the provisions of, the Indenture; (ii) the resulting, surviving or transferee person assumes by supplemental indenture all the obligations of the Company under the Securities and the Indenture; and (iii) immediately after giving effect to such transaction, no Default or Event of Default shall exist.

15. **Amendments, Supplements and Waivers**. Subject to certain exceptions, the Indenture or the Securities may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding, and any existing Default or Event of Default may be waived with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. Subject to certain exceptions, without notice to or the consent of any Securityholder, the Indenture or the Securities may be amended or supplemented, among other things, to cure any ambiguity, defect or inconsistency, to comply with **Sections 5.01** and **10.12** of the Indenture, to make any changes or modifications to the Indenture necessary in connection with the registration of the Securities under the Securities Act pursuant to the Registration Rights Agreement and the qualification of the Indenture under the TIA, to secure the obligations of the Company in respect of the Securities, or to add to covenants of the Company described in the Indenture for the benefit of Securityholders, to surrender any right or power conferred upon the Company or to make provisions with respect to adjustments to the Conversion Rate as required by the Indenture or to increase the Conversion Rate in accordance with the Indenture or to add or modify any other provisions of the Indenture which the Company and the Trustee jointly deem necessary or desirable and which do not adversely affect any Holder's rights.

16. **Defaults and Remedies**. Subject to the provisions of the Indenture, an Event of Default includes the occurrence of any of the following: (i) default in payment of principal or premium, whether at maturity, upon Redemption, on an Option Purchase Date with respect to a Repurchase at Holder's Option, on a Repurchase Date with respect to a Repurchase Upon Repurchase Event or otherwise; (ii) default for thirty (30) days in payment of interest or liquidated damages (*provided*, that a failure to make any of the first six (6) scheduled interest payments on any Security within three (3) Business Days after the applicable interest payment dates will constitute an Event of Default with no additional grace or cure period); (iii) failure to timely provide, as required, an Option Purchase Notice or a Repurchase Event Notice; (iv) failure by the Company for sixty (60) days after notice is given, as specified in the Indenture, to it to comply with any of the Company's other agreements in the Indenture or the Securities; (v) the Company's failure to perform or observe any of its obligations under the Pledge Agreement (including any supplement thereto) or the Control Agreement or the failure of the Company's representations and warranties set forth in such agreements to be true and correct, in all material respects, when deemed made; (vi) the Pledge Agreement ceasing to be in full force and effect or enforceable in accordance with its terms; (vii) certain payment defaults or the acceleration of other Indebtedness of the Company and the Subsidiaries or certain payment defaults on final judgments; and (viii) certain events of bankruptcy or insolvency involving Company or any of its Significant Subsidiaries or any group of Subsidiaries that in the aggregate would constitute a Significant Subsidiary of the Company. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding may declare all the Securities to be due and payable immediately, except as provided in the Indenture. If an Event of Default specified in **Section 6.01(ix)** or **(x)** of the Indenture with respect to the Company occurs, the principal of and accrued interest on all the Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholder. Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may require indemnity reasonably satisfactory to it before it enforces the Indenture or the Securities. Subject to certain limitations, Holders of a majority in principal amount of the Securities then outstanding may

direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment) if it determines that withholding notice is in the interests of the Securityholders. The Company must furnish an annual compliance certificate to the Trustee.

17. **Registration Rights**. The Holders are entitled to registration rights as set forth in the Registration Rights Agreement. The Holders shall be entitled to receive liquidated damages in certain circumstances, all as set forth in the Registration Rights Agreement.

18. **Trustee Dealings with the Company**. The Trustee under the Indenture, or any banking institution serving as successor Trustee thereunder, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not Trustee.

19. **No Recourse Against Others**. No past, present or future director, officer, employee or stockholder, as such, of the Company shall 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. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

20. **Authentication**. This Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

21. **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 entirety), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (Uniform Gifts to Minors Act).

THE COMPANY WILL FURNISH TO ANY SECURITYHOLDER UPON WRITTEN REQUEST AND WITHOUT CHARGE A COPY OF THE INDENTURE. REQUESTS MAY BE MADE TO:

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555

[FORM OF ASSIGNMENT]

I or we assign to

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

_____

_____

(please print or type name and address)

_____

_____

the within Security and all rights thereunder, and hereby irrevocably constitutes and appoints

_____

Attorney to transfer the Security on the books of the Company with full power of substitution in the premises.

Dated: _____ _____

NOTICE: The signature on this assignment must correspond with the name as it appears upon the face of the within Security in every particular without alteration or enlargement or any change whatsoever and be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

Signature Guarantee: _____

In connection with any transfer of this Security occurring prior to the date which is the earlier of (i) the date of the declaration by the Commission of the effectiveness of a registration statement under the Securities Act of 1933, as amended (the "Securities Act") covering resales of this Security (which effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) the Resale Restriction Termination Date, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with transfer:

[Check One]

(1) _____ to the Company or any Subsidiary thereof; or

(2) _____ pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

(3) _____ pursuant to the exemption from registration provided by Rule 144 under the Securities Act of 1933, as amended; or

(4) _____ pursuant to the exemption from registration under the Securities Act of 1933, as amended, other than under Rule 144A or Rule 144;

(5) _____ pursuant to an effective registration statement under the Securities Act of 1933, as amended.

and unless the box below is checked, the undersigned confirms that such Security is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended (an "Affiliate"):

o The transferee is an Affiliate of the Company. (If the Security is transferred to an Affiliate, the restrictive legend must remain on the Security for two (2) years following the date of the transfer).

Unless one of the items is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided, however*, that if item (3) or (4) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Securities, in their sole discretion, such written legal opinions, certifications and other information as the Trustee or the Company have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, as amended.

If none of the foregoing items are checked, the Trustee or Registrar shall not be obligated to register this Security in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Indenture shall have been satisfied.

Dated: _____ Signed _____

(Sign exactly as name appears on the other side of this Security)

Signature Guarantee: _____

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A and acknowledges that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____ _____

NOTICE: To be executed by an executive officer

CONVERSION NOTICE

To convert this Security into Common Stock of the, check the box: o

To convert only part of this Security, state the principal amount to be converted (must be in multiples 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 I.D. no.)

_____

_____

(Print or type other person's name, address and zip code)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed by: _____

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

PURCHASE NOTICE

Certificate No. of Security: _____

Check the appropriate box:

o I elect to have the following principal amount of this Security purchased by the Company pursuant to **Section 3.08** of the Indenture:

$ _____
(in an integral multiple of $1,000)

If you checked the above box, then check the box below corresponding to the date on which you elect to have all or part of this Security purchased by the Company:

August 16, 2010: o

August 16, 2013: o

August 16, 2018: o

If you checked the box next to August 16, 2013 or August 16, 2018, then check the appropriate box:

In the event the Company elects to pay the Option Purchase Price, in whole or in part, in shares of Common Stock, but the Option Purchase Price is ultimately to be paid entirely in cash because any of the conditions to payment of the Option Purchase Price in shares of Common Stock is not satisfied before the close of business on the Business Day immediately preceding the Option Purchase Date, you elect:

o to withdraw this Purchase Notice as to the following principal amount of this Security:

$ _____
(in an integral multiple of $1,000)

or

o to receive cash in respect of the Option Purchase Price for that portion of the principal amount of this Security which I have elected above to be purchased by the Company pursuant to **Section 3.08** of the Indenture

o I elect to have the following principal amount of this Security purchased by the Company pursuant to **Section 3.09** of the Indenture:

$ _____
(in an integral multiple of $1,000)

Date: _____ Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Security)

Signature(s) guaranteed by: _____

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

SCHEDULE A

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL SECURITY[a].

The following exchanges of a part of this Global Security for an interest in another Global Security or for Securities in certificated form, have been made:

Date of Exchange	Amount of decrease in Principal amount of this Global Security	Amount of increase in Principal amount of this Global Security	Principal amount of this Global Security following such decrease (or increase)	Signature or authorized signatory of Trustee or Note Custodian

[a] This is included in Global Securities only.

EXHIBIT B-1

FORM OF PRIVATE PLACEMENT LEGEND

THIS SECURITY AND THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES THAT IT WILL NOT DIRECTLY OR INDIRECTLY ENGAGE IN ANY HEDGING TRANSACTIONS INVOLVING THIS SECURITY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY UNLESS IN COMPLIANCE WITH THE SECURITIES ACT, AND

(3) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, PRIOR TO THE DATE THAT IS THE LATER OF (X) TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(K) UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT ONLY

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF,

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT,

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (3)(C) ABOVE, A DULY COMPLETED AND SIGNED CERTIFICATE (THE FORM OF WHICH MAY BE OBTAINED FROM THE TRUSTEE) MUST BE DELIVERED TO THE TRUSTEE. PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (3)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT B-2

FORM OF LEGEND FOR GLOBAL SECURITY

Any Global Security authenticated and delivered hereunder shall bear a legend (which would be in addition to any other legends required in the case of a Restricted Security) in substantially the following form:

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS SECURITY IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. 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 **SECTION 2.16** OF THE INDENTURE.

EXHIBIT C

Form of Notice of Transfer Pursuant to Registration Statement

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555
Attention: General Counsel

J.P. Morgan Trust Company, National Association
560 Mission Street, 13th Floor
San Francisco, CA 94105
Attention: Corporate Trust Administration

Re: Protein Design Labs, Inc. (the "**Company**") 2.75% Convertible Subordinated Notes due 2023 (the "**Securities**")

Ladies and Gentlemen:

Please be advised that _____ has transferred $_____ aggregate principal amount of the Securities or _____ shares of the Common Stock, $.01 par value per share, of the Company issuable on conversion of the Securities ("**Stock**") pursuant to an effective Shelf Registration Statement on Form S-3 (File No. 333-_____).

We hereby certify that the prospectus delivery requirements, if any, of the Securities Act of 1933 as amended, have been satisfied with respect to the transfer described above and that the above-named beneficial owner of the Securities or Stock is named as a "**Selling Security Holder**" in the Prospectus dated _____, or in amendments or supplements thereto, and that the aggregate principal amount of the Securities, or number of shares of Stock transferred are [a portion of] the Securities or Stock listed in such Prospectus, as amended or supplemented, opposite such owner's name.

Very truly yours,

_____
(Name)

EXHIBIT D

Form of Opinion of Counsel in Connection with Registration of Securities

J.P. Morgan Trust Company, National Association
560 Mission Street, 13th Floor
San Francisco, CA 94105
Attention: Corporate Trust Administration

Re: Protein Design Labs, Inc. (the "**Company**") 2.75% Convertible Subordinated Notes due 2023 (the "**Securities**")

Ladies and Gentlemen:

Reference is made to the Securities issued pursuant to the Indenture dated as of July 14, 2003 by and between the Company and J.P. Morgan Trust Company, National Association, as trustee (the "**Trustee**"). The Company issued $250,000,000 principal amount of Securities on July 14, 2003 [and an additional $_____ on _____, 2003 [IF THE INITIAL PURCHASERS' OPTION IS EXERCISED]] in transactions exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**"). The Company has filed with the Securities and Exchange Commission (the "**SEC**") a registration statement on Form S-3 (File No. 333-_____) (the "**Registration Statement**") relating to the registration under the Securities Act of $_____ principal amount of the Securities and the shares of Common Stock of the Company (the "**Shares**") issuable upon conversion of the Securities being registered. The Registration Statement was declared effective by order of the SEC dated _____.

We have acted as counsel for the Company in connection with the issuance of the Securities and the preparation and filing of the Registration Statement and are familiar with the Securities, the Indenture, the Registration Statement, the above-mentioned SEC order and such other documents as are necessary to render this opinion.

Based on the foregoing, it is our opinion that (1) the Registration Statement has become effective under the Securities Act and, to our knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued, (2) assuming that the Securities covered by the Registration Statement and the Shares issuable upon conversion of such Securities are sold by a relevant Holder specified in the Registration Statement in a manner specified in the Registration Statement, such sale of the Securities and Shares issuable upon conversion of the Securities will have been duly registered under the Securities Act and (3) the Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended.

Yours truly,

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "Agreement") is made and entered into as of July 14, 2003, by and between Protein Design Labs, Inc., a Delaware corporation (the "Company"), and UBS Securities LLC and the other Initial Purchasers named in the Purchase Agreement referred to below (collectively, the "Initial Purchasers") pursuant to that certain Purchase Agreement, dated as of July 9, 2003 (the "Purchase Agreement") among the Company and the Initial Purchasers.

In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchasers (i) for their benefit as Initial Purchasers and (ii) for the benefit of the beneficial owners (including the Initial Purchasers) from time to time of the Notes (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the Notes (each of the foregoing a "Holder" and together the "Holders"), as follows:

Section 1. *Definitions*. Capitalized terms used herein without definition shall have the 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 set forth in Section 2(d) hereof.

"Applicable Conversion Price" means, as of any date of determination, $1,000 principal amount at maturity of Notes divided by the Conversion Rate then in effect as of the date of determination or, if no Notes are then outstanding, the Conversion Rate that would be in effect were Notes then outstanding.

"Business Day" means each day on which the New York Stock Exchange is open for trading.

"Common Stock" means the shares of common stock, par value $.01 per share, of the Company and any other shares of capital stock as may constitute "Common Stock" for purposes of the Indenture, including the Underlying Common Stock.

"Conversion Rate" has the meaning assigned to such term in the Indenture.

"Damages Accrual Period" has the meaning set forth in Section 2(e) hereof.

"Damages Payment Date" means each interest payment date under the Indenture in the case of Notes, and each February 16 and August 16 in the case of the Underlying Common Stock.

"Effectiveness Deadline Date" has the meaning set forth in Section 2(a) hereof.

"Effectiveness Period" means a period (subject to extension pursuant to Section 3(i) hereof) of two (2) years after the later of (1) the original issuance of the Notes and (2) the last date that the Company or any of its Affiliates was the owner of such Notes (or any predecessor thereto), or such other period of time (x) as permitted by Rule 144(k) under the Securities Act or any successor provisions thereunder or (y) that will terminate when each of the Registrable Securities covered by the Shelf Registration Statement ceases to be a Registrable Security.

"Event" has the meaning set forth in Section 2(e) hereof.

"Event Date" has the meaning set forth 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 set forth in Section 2(a) hereof.

"Holder" has the meaning set forth in the preamble hereto.

"Indenture" means the Indenture, dated as of July 14, 2003, between the Company and J.P. Morgan Trust Company, National Association, as trustee, pursuant to which the Notes are being issued.

"Initial Purchasers" has the meaning set forth in the preamble hereto.

"Initial Shelf Registration Statement" has the meaning set forth in Section 2(a) hereof.

"Issue Date" means the first date of original issuance of the Notes.

"liquidated damages" has the meaning set forth in Section 2(e).

"Liquidated Damages Amount" has the meaning set forth in Section 2(e) hereof.

"Managing Underwriters" has the meaning set forth in Section 8(a) hereof.

"Material Event" has the meaning set forth in Section 3(i) hereof.

"NASD Rules" has the meaning set forth in Section 3(s) hereof.

"Notes" means the 2.75% Convertible Subordinated Notes due 2023 of the Company to be purchased pursuant to the Purchase Agreement.

"Notice and Questionnaire" means a written notice and questionnaire delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum dated July 9, 2003 relating to the Notes.

"Notice Holder" means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date, so long as all of such Holder's Registrable Securities that have been registered for resale pursuant to a Notice and Questionnaire have not been sold in accordance with a Shelf Registration Statement.

"Prospectus" means the prospectus included in any Shelf 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 415 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 deemed to be incorporated by reference in such Prospectus.

"Purchase Agreement" has the meaning set forth in the preamble hereto.

"Record Holder" means (i) with respect to any Damages Payment Date relating to any Notes as to which any Liquidated Damages Amount has accrued, the holder of record of such Note on the record date with respect to the interest payment date under the Indenture on which such Damages Payment Date shall occur and (ii) with respect to any Damages Payment Date relating to the Underlying Common Stock as to which any Liquidated Damages Amount has accrued, the registered holder of such Underlying Common Stock fifteen (15) days prior to such Damages Payment Date.

"Registrable Securities" means the Notes until such Notes have been converted into the Underlying Common Stock and, at all times the Underlying Common Stock and any securities into or for which such Underlying Common Stock has been converted, 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 (x) the date on which such security has been effectively registered under the Securities Act and disposed of in accordance with the Registration Statement relating thereto and (y) the date that is two (2) years after the later of (1) the Issue Date and (2) the last date that the Company or any of its Affiliates was the owner of such Notes (or any predecessor thereto), or such other period of time as permitted by Rule 144(k) under the Securities Act or any successor provisions thereunder.

"Registration Expenses" has the meaning set forth 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 deemed to be incorporated by reference in such registration statement.

"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 Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

"Shelf Registration Statement" means the Initial Shelf Registration Statement and any Subsequent Shelf Registration Statement.

"Subsequent Shelf Registration Statement" has the meaning set forth in Section 2(b) hereof.

"Subsequent Shelf Registration Statement Effectiveness Deadline Date" has the meaning set forth in Section 2(d) hereof.

"Suspension Notice" has the meaning set forth in Section 3(i) hereof.

"Suspension Period" has the meaning set forth in Section 3(i) hereof.

"TIA" means the Trust Indenture Act of 1939, as amended.

"Trustee" means J.P. Morgan Trust Company, National Association, the trustee under the Indenture.

"Underlying Common Stock" means the Common Stock into which the Notes 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") that is ninety (90) days 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 registering the resale

from time to time by Holders thereof of all of the Registrable Securities (or, if registration of Registrable Securities not held by Notice Holders is not permitted by the rules and regulations of the SEC, then registering all Registrable Securities held by Notice Holders) (the "Initial Shelf Registration Statement"). The Initial Shelf Registration Statement shall be on Form S-1 or S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders in accordance with the reasonable methods of distribution elected by the Holders, approved by the Company, and set forth in the Initial Shelf Registration Statement. The Company shall use its reasonable best 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") that is one hundred eighty (180) days 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. At the time the Initial Shelf Registration Statement is declared effective, each Holder that became a Notice Holder prior to the date that is two (2) Business Days prior to date of effectiveness shall be named as a selling securityholder in the Initial Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law.

(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, the Company shall use its reasonable best 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 (or, if registration of Registrable Securities not held by Notice Holders is not permitted by the rules and regulations of the SEC, then registering all Registrable Securities held by Notice Holders as of such date) (a "Subsequent Shelf Registration Statement"). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing, but in no event later than the Subsequent Shelf Registration Statement Effectiveness Deadline, and to keep such Shelf Registration Statement (or subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend any 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 as reasonably requested by the Initial Purchasers

or by the Trustee on behalf of the Holders of the Registrable Securities covered by such Shelf Registration Statement.

(d) (i) 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 completed and executed Notice and Questionnaire to the Company prior to any attempted or actual distribution of Registrable Securities under a Shelf Registration Statement. With respect to any Holder who delivers a completed and executed Notice and Questionnaire on or after the date that is two (2) Business Days prior to the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as reasonably practicable after the date a Notice and Questionnaire is delivered, and in any event, subject to clause (B) below, within the later of (x) five (5) Business Days after such date or (y) five (5) Business Days after the expiration of any Suspension Period (1) in effect when the Notice and Questionnaire is delivered or (2) put into effect within five (5) Business Days of such delivery date,

(A) if required by applicable law, file with the SEC a supplement to the related Prospectus or a post-effective amendment to the Shelf Registration Statement or a Subsequent Shelf Registration Statement and any necessary supplement or amendment to any document incorporated therein by reference to the applicable Shelf Registration Statement and file any other required document with the SEC so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in a 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; provided, however, that if a post-effective amendment or a Subsequent Shelf Registration Statement is required by the rules and regulations of the SEC in order to permit resales by Holders submitting Notice and Questionnaires on or after the date of effectiveness of the Initial Shelf Registration Statement, the Company shall not be required to file more than one (1) post-effective amendment or Subsequent Shelf Registration Statement for such purpose in any forty five (45) day period;

(B) if the Company shall file a post-effective amendment to the Shelf Registration Statement or file a Subsequent Shelf Registration Statement, it shall use its reasonable best efforts to cause such post-effective amendment or Subsequent Shelf Registration Statement, as the case may be, 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" in the case of a post-effective amendment or the "Subsequent Shelf Registration Statement Effectiveness Deadline Date" in the case of a Subsequent Shelf Registration Statement) that is forty five (45) days after the date such post-effective

amendment or Subsequent Shelf Registration Statement, as the case may be, is required by this Section 2(d) to be filed;

(C) the Company shall provide such Holder a reasonable number of copies of any documents filed pursuant to Section 2(d)(i)(A). and 2(d)(i)(B);

(D) the Company shall notify such Holder as promptly as reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment or Subsequent Shelf Registration Statement filed pursuant to Section 2(d)(i)(A) and 2(d)(i)(B);

(E) if a Notice and Questionnaire is delivered during a Suspension Period, or a Suspension Period is put into effect within five (5) Business Days after such delivery date, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (A), (B), (C) and (D) above within five (5) Business Days after expiration of the Suspension Period in accordance with Section 3(i); and

(F) if under applicable law, the Company has more than one option as to the type or manner of making any such filing, the Company shall make the required filing or filings in the manner or of a type that is reasonably expected to result in the earliest availability of a Prospectus for effecting resales of Registrable Securities.

(ii) 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 securityholder in any Shelf Registration Statement or related Prospectus; provided, however, that any Holder that becomes a Notice Holder pursuant to the provisions of this Section 2(d) (whether or not such Holder was a Notice Holder at the time the Shelf Registration Statement was declared effective) shall be named as a selling securityholder in a Shelf 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) either a supplement to a prospectus, a post-effective amendment or a Subsequent Shelf Registration Statement is required to be filed and fails to be filed within the prescribed period set forth in Section 2(d) (the applicable date being an "Additional Filing Deadline Date") or in the case of a post-effective amendment or a Subsequent Shelf Registration Statement, such post-effective amendment or Subsequent Registration Statement is not declared effective by the SEC by the Amendment Effectiveness Deadline Date or the Subsequent Shelf Registration Statement Effectiveness Deadline Date, as the case

may be, or (iv) the Initial Shelf Registration Statement or any Subsequent Registration Statement is filed and declared effective but shall thereafter cease to be effective (without being succeeded immediately by a new registration statement filed and declared effective) or usable for the offer and sale of Registrable Securities for a period of time (including any Suspension Period) which shall exceed thirty (30) days in the aggregate in any three (3) month period or ninety (90) days in the aggregate in any twelve (12) month period (each of the events of a type described in any of the foregoing clauses (i) through (iv) 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 Additional Filing Deadline Date, the Amendment Effectiveness Deadline Date or the Subsequent Shelf Registration Statement Effectiveness Deadline Date, as the case may be, in the case of clause (iii) and the date on which the duration of the ineffectiveness or unusability of the Shelf Registration Statement in any period exceeds the number of days permitted by clause (iv) hereof in the case of clause (iv), being referred to herein as an "Event Date"). Events shall be deemed to continue until 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 a prospectus supplement or a post-effective amendment to the Initial Shelf Registration Statement or Subsequent Shelf Registration Statement, whichever is required, is filed or declared effective, as the case may be, in the case of an Event of the type described in clause (iii) and the date the Shelf Registration Statement becomes effective or usable again in the case of an Event of the type described in clause (iv).

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 ("liquidated damages") and not as a penalty, an amount (the "Liquidated Damages Amount") at the rate described below, payable periodically on each Damages Payment Date to Notice Holders, to the extent of, for each such Damages Payment Date, accrued and unpaid Liquidated Damages Amount to (but excluding) such Damages Payment Date (or, if the Damages Accrual Period shall have ended prior to such Damages Payment Date, the date of the end of the Damages Accrual Period); provided that any Liquidated Damages Amount accrued with respect to any Note 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 Note 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). The Liquidated Damages Amount shall accrue at a rate per annum equal to one-quarter of one percent (0.25%) for the first 90-day period from the Event Date, increasing with respect to each subsequent 90-day period thereafter

by an additional one-quarter of one percent (0.25%), up to a maximum rate per year of three quarters of one percent (0.75%), of (i) the principal amount of such Notes or, without duplication, (ii) in the case of Notes that have been converted into Underlying Common Stock, the Applicable Conversion Price of such shares of Underlying Common Stock, as the case may be. 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 shall 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 Notes, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Liquidated Damages Amount.

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 9(m)).

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 a Shelf Registration Statement to be filed, declared effective, amended or replaced to include the names of all Notice Holders 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) Prepare and file with the SEC a Shelf Registration Statement or Shelf Registration Statements on Form S-1 or S-3 or any other appropriate form under the Securities Act available for the sale of the Registrable Securities by the Holders thereof in accordance with the intended method or methods of distribution thereof, and use its reasonable best efforts to cause each such Shelf Registration Statement to become effective and remain effective as provided herein; provided that before filing any Shelf Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, the Company shall furnish to the Initial Purchasers and counsel for the Holders and for the Initial Purchasers (or, if applicable, a single separate counsel for the Holders) copies of all such documents proposed to be filed and use its reasonable best efforts to

reflect in each such document when so filed with the SEC such comments as the Initial Purchasers or such counsel reasonably shall propose within three (3) Business Days of the delivery of such copies to the Initial Purchasers and such counsel; provided, however, that the Company shall have the final decision as to the form and content of each such document (with the exception that the Company shall not include in such document information that is contrary to the information provided in any Notice and Questionnaire unless previously approved by the Notice Holder).

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Shelf Registration Statement as may be necessary to keep such Shelf Registration Statement or Subsequent Shelf Registration Statement continuously effective until the expiration of the Effectiveness Period; 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 its reasonable best efforts to comply with the provisions of the Securities Act applicable to it with respect to the disposition of all securities covered by such Shelf Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Shelf Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders, the Initial Purchasers and counsel for the Holders and for the Initial Purchasers (or, if applicable, a single separate counsel for the Holders) (i) when any Prospectus, Prospectus supplement, Shelf Registration Statement or post-effective amendment to a Shelf Registration Statement has been filed with the SEC and, with respect to a Shelf Registration Statement or any post-effective amendment or when the same has been declared effective, (ii) of any request, following the effectiveness of a Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to such Shelf Registration Statement or the 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 Shelf Registration Statement or the initiation or threatening of any proceedings for that purpose, (iv) of the receipt by the Company or its legal counsel 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) after the effective date of any Shelf Registration Statement filed pursuant to this Agreement of the occurrence of (but not the nature of or details concerning) a Material Event and (vi) of the determination by the Company that a post-effective amendment to a Shelf Registration Statement or a Subsequent Shelf 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 Suspension Notice, in which event the provisions of Section 3(i) shall apply.

(d) Use its reasonable best efforts to prevent the issuance of, and, if issued, to obtain the withdrawal of any order suspending the effectiveness of a Shelf Registration Statement or obtain 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, and provide prompt notice to each Notice Holder and the Initial Purchasers of the withdrawal of any such order.

(e) If requested by the Initial Purchasers or any Notice Holder, as promptly as reasonably practicable incorporate in a Prospectus supplement or a post-effective amendment to a Shelf Registration Statement such information as the Initial Purchasers, such Notice Holder or counsel for the Holders and for the Initial Purchasers (or, if applicable, a single separate counsel for the Holders) shall 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, in the written opinion of counsel for the Company, are not in compliance with applicable law.

(f) As promptly as practicable furnish to each Notice Holder, counsel for the Holders and for the Initial Purchasers (or, if applicable, a single separate counsel for the Holders) and the Initial Purchasers, without charge, at least one (1) conformed copy of any Shelf 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, such counsel or the Initial Purchasers).

(g) During the Effectiveness Period, deliver to each Notice Holder, counsel for the Holders and for the Initial Purchasers (or, if applicable, separate counsel for the Holders) and the Initial Purchasers, in connection with any sale of Registrable Securities pursuant to a Shelf 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 or the Initial Purchasers may reasonably request; and the Company hereby consents (except during such periods that a Suspension 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 a Shelf Registration Statement, use its reasonable best 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 a Shelf Registration Statement, use its reasonable best 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 reasonably necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the relevant Shelf Registration Statement and the related Prospectus; provided that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified or (ii) take any action 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 any Shelf Registration Statement or the initiation of proceedings with respect to any 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 as a result of which any Shelf 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 necessary in order 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 (a "Material Event") that, in the reasonable discretion of the Company, makes it appropriate to suspend the availability of any Shelf Registration Statement and the related Prospectus, (i) in the case of clause (B) or (C) above, subject to the next sentence, as promptly as practicable, prepare and file, if necessary pursuant to applicable law, a post-effective amendment to such Shelf 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 Shelf Registration Statement and Prospectus so that such Shelf 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 necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (it being understood that the Company may rely on information provided by each Notice Holder with respect to such Notice Holder), as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Shelf Registration Statement, subject to the next sentence, use its reasonable best efforts to cause it to be declared effective as promptly as is practicable, and

(ii) give notice to the Notice Holders and counsel for the Holders and for the Initial Purchasers (or, if applicable, a single separate counsel for the Holders) that the availability of the Shelf Registration Statement is suspended (a "Suspension Notice") and, upon receipt of any Suspension Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to such Shelf 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 its reasonable best 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 reasonable judgment of the Company, the Shelf 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 the Prospectus does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (z) in the case of clause (C) above, as soon as, in the reasonable discretion of the Company, such suspension is no longer appropriate. The period during which the availability of the Shelf Registration Statement and any Prospectus may be suspended (the "Suspension

Period") without the Company incurring any obligation to pay liquidated damages pursuant to Section 2(e) shall not exceed thirty (30) days in any three (3) month period and an aggregate of ninety (90) days in any twelve (12) month period. The Effectiveness Period shall be extended by the number of days from and including the date of the giving of the Suspension Notice to and including the date on which the Notice Holder received copies of the supplemented or amended Prospectus provided in clause (i) above, or the date on which 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.

(j) Make reasonably available for inspection during normal business hours by representatives for the Notice Holders of such Registrable Securities and any underwriters participating in any disposition pursuant to any Shelf Registration Statement and any broker-dealers, one law firm and one accountancy firm retained by such Notice Holders or any such underwriters, all relevant financial and other records and pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate officers, directors and employees of the Company and its subsidiaries to make available for inspection during normal business hours all relevant information reasonably requested by such representatives for the Notice Holders, or any such underwriters, broker-dealers, law firm or accountancy firm in connection with such disposition, in each case as is customary for similar "due diligence" examinations; provided, however, that such persons shall, at the Company's request, 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 governmental or 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 Shelf Registration Statement or the use of any Prospectus referred to in this Agreement) or necessary to defend or prosecute a claim brought against or by any such persons (*e.g.*, to establish a "due diligence" defense), (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 or is not otherwise under a duty of trust to the Company; 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 Shelf 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 Shelf Registration Statement, which certificates shall not bear any restrictive legends, 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 (2) Business Days prior to any sale of such Registrable Securities.

(m) Provide a CUSIP number for all Registrable Securities covered by a Shelf Registration Statement not later than the effective date of the Initial Shelf Registration Statement and provide the Trustee and the transfer agent for the Common Stock with certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(n) Cooperate and assist in any filings required to be made with the National Association of Securities Dealers, Inc.

(o) Upon (i) the filing of the Initial Registration Statement and (ii) the effectiveness of the Initial Registration Statement, announce the same, in each case by release to PR Business Newswire.

(p) Take all actions and enter into such customary agreements (including, if requested, an underwriting agreement in customary form) as are necessary, or 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; and in such connection, whether or not an underwriting agreement is entered into and whether or not the registration is an underwritten registration (it being understood that this Agreement shall not grant to the Holders "piggyback registration rights" to have their Notes registered pursuant to a registration statement other than a Registration Statement):

(i) the Company shall make such representations and warranties to the Holders of such Registrable Securities and the underwriters, if any, in form, substance and scope as has been customarily made by the Company to underwriters in similar offerings of securities of the Company;

(ii) the Company shall obtain opinions of counsel of the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters, if any, and to the counsel to the Holders of the Registrable Securities being sold) addressed to each selling Holder and the underwriters, if any, covering the matters customarily covered in opinions requested in sales of securities or underwritten offerings of the Company;

(iii) the Company shall obtain "cold comfort" letters and updates thereof from the Company's independent certified public accountants (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which

financial statements are, or are required to be, included in any Shelf Registration Statement) addressed to the underwriters, if any, and use reasonable best efforts to have such letter addressed to the selling Holders of Registrable Securities (to the extent consistent with Statement on Auditing Standards No. 72 of the American Institute of Certified Public Accounts), such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters to underwriters in connection with similar underwritten offerings of the Company;

(iv) the Company shall, if an underwriting agreement is entered into, cause the same to set forth indemnification provisions and procedures substantially equivalent to the indemnification provisions and procedures set forth in Section 6 hereof with respect to the underwriters and all other parties to be indemnified pursuant to said Section; and

(v) the Company shall deliver such documents and certificates as may be reasonably requested and as are customarily delivered in similar

offerings to the holders of a majority of the Registrable Securities being sold and the managing underwriters, if any;

the above to be done at (x) the effectiveness of any Shelf Registration Statement (and each post-effective amendment thereto) and (y) each closing under any underwriting or similar agreement as and to the extent required thereunder.

(q) Cause the Indenture to be qualified under the TIA not later than the effective date of the Initial Shelf 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 its reasonable best 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.

(r) Use its reasonable best efforts to cause the Underlying Common Stock to be listed on The Nasdaq National Market.

(s) In the event that any broker-dealer registered under the Exchange Act shall underwrite any Registrable Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the Conduct Rules (the "NASD Rules") of the National Association of Securities Dealers, Inc.) thereof, whether as a Holder of such Registrable Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company will assist such broker–dealer in complying with the requirements of such NASD Rules, including, without limitation, by: (i) if such NASD Rules, including NASD Rule 2720, shall so require, engaging a "qualified independent underwriter" (as defined in NASD Rule 2720) to participate in the preparation of the Shelf Registration Statement relating to such Registrable Securities, to exercise usual standards of due diligence in respect thereof and, if any portion of the offering contemplated by such Shelf Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield or price, as the case may be, of such Registrable Securities; (ii) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 6 hereof; and (iii) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the NASD Rules.

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 Shelf 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 the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary in order to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

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 Section 2 and 3 of this Agreement whether or not any of the Shelf Registration Statements are filed or declared effective. Such fees and expenses ("Registration Expenses") shall include, without limitation, (i) all registration and filing fees and expenses (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 securities laws and state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of counsel for the Holders 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 Shelf Registration Statement may designate), (ii) all printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company and printing Prospectuses), (iii) all duplication and mailing expenses relating to copies of any Shelf Registration Statement or Prospectus delivered to any Holders hereunder, (iv) all fees and disbursements of counsel for the Company and the fees and disbursements of one counsel for the Holders in connection with the Shelf Registration Statement, (v) all fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock and (vi) Securities Act liability insurance obtained by the Company in its sole discretion. 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 by the Company 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, defend and hold harmless each Initial Purchaser, each Holder, each person, if any, who controls any Initial Purchaser or Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (a "Controlling Person") and the respective officers, directors, partners, employees, representatives and agents of any Initial Purchaser, the Holders or any Controlling Person (each, an "Indemnified Party"), from and against any loss, damage, expense, liability, claim or any actions in respect thereof (including the reasonable cost of investigation) which such Indemnified Party may incur or become subject to under the Securities Act, the Exchange Act or otherwise, insofar as such loss, damage, expense, liability, claim or action arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in any Shelf Registration Statement or Prospectus, including any document incorporated by reference therein, or in any amendment or supplement thereto or in any preliminary prospectus, or arises out of or is based upon any omission or alleged omission to state a material fact required to be stated in any Shelf Registration Statement or in any amendment or supplement thereto or necessary to make the statements therein not misleading, or arises out of or is based upon any omission or alleged omission to state a material fact necessary in order to make the statements made in any Prospectus or in any amendment or supplement thereto or in any preliminary prospectus, in the light of the circumstances under which they were made, not misleading, and the Company shall reimburse, as incurred, the Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, damage, expense, liability, claim or action in respect thereof; provided, however, that (i) insofar as any such loss, damage, expense, liability, claim or action arises out of or is based upon any untrue statement or omission or alleged untrue statement or omission of a material fact contained in, or omitted from, and in conformity with information furnished in writing by or on behalf of an Initial Purchaser or a Holder to the Company expressly for use therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to a Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Holder from whom the person asserting any such losses, damages, expenses, liabilities, claims or actions purchased the Registrable Securities concerned, to the extent that a prospectus relating to such Registrable Securities was required to be delivered by such Holder under the Securities Act in connection with such purchase and any such loss, damage, expense, liability, claim or action of such Holder results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Registrable Securities to such person, a copy of the final prospectus if the Company had previously furnished copies thereof to such Holder; provided further, however, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Indemnified Party.

(b) Each Holder, severally and not jointly, agrees to indemnify, defend and hold harmless the Company, its directors, officers, employees, representatives, agents and any person who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a "Company Indemnified Party") from and against any loss, damage, expense, liability, claim or any actions in respect thereof (including the reasonable cost of investigation) which such Company Indemnified Party may incur or become subject to under the Securities Act, the Exchange Act or otherwise, insofar as such loss, damage, expense, liability, claim or action arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in information furnished in writing by or on behalf of such Holder to the Company expressly for use in any Shelf Registration Statement or Prospectus, including any document incorporated by reference therein, or in any amendment or supplement thereto or in any preliminary prospectus, or arises out of or is based upon any omission or alleged omission to state a material fact required to be stated in any Shelf Registration Statement or in any amendment or supplement thereto or necessary to make the statements therein not misleading, or arises out of or is based upon any omission or alleged omission to state a material fact necessary in order to make the statements in any Prospectus or in any amendment or supplement thereto or in any preliminary prospectus, in the light of the circumstances under which they were made, not misleading, in connection with such information; and, subject to the limitation set forth immediately preceding this clause, each Holder shall reimburse the Company for any legal or other expenses reasonably incurred by the Company or any such controlling person in connection with investigating or defending any loss, damage, expense, liability, claim or action in respect thereof. This indemnity agreement will be in addition to any liability which such Holder may otherwise have to the Company or any of its controlling persons. In no event shall the liability of any selling Holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of the Registrable Securities pursuant to the Shelf Registration Statement giving rise to such indemnification obligation, absent fraud on the part of such Holder.

(c) If any action, suit or proceeding (each, a "Proceeding") is brought against any person in respect of which indemnity may be sought pursuant to either subsection (a) or (b) of this Section 6, such person (the "Indemnified Party") shall promptly notify the person against whom such indemnity may be sought (the "Indemnifying Party") in writing of the institution of such Proceeding and the Indemnifying Party shall assume the defense of such Proceeding; provided, however, that the omission to notify such Indemnifying Party shall not relieve such Indemnifying Party from any liability which it may have to such Indemnified Party or otherwise. Such Indemnified Party shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless the employment of such counsel shall have been authorized in writing by such Indemnifying Party in connection with the defense of such Proceeding or such Indemnifying Party shall not have

employed counsel to have charge of the defense of such Proceeding within thirty (30) days of the receipt of notice thereof or such Indemnified Party shall have reasonably concluded upon the written advice of counsel that there may be one or more defenses available to it that are different from, additional to or in conflict with those available to such Indemnifying Party (in which case such Indemnifying Party shall not have the right to direct that portion of the defense of such Proceeding on behalf of the Indemnified Party, but such Indemnifying Party may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such Indemnifying Party), in any of which events such reasonable fees and expenses shall be borne by such Indemnifying Party and paid as incurred (it being understood, however, that such Indemnifying Party shall not be liable for the expenses of more than one separate counsel in any one Proceeding or series of related Proceedings together with reasonably necessary local counsel representing the Indemnified Parties who are parties to such action). An Indemnifying Party shall not be liable for any settlement of such Proceeding effected without the written consent of such Indemnifying Party, but if settled with the written consent of such Indemnifying Party, such Indemnifying Party agrees to indemnify and hold harmless an Indemnified Party from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an Indemnified Party shall have requested an Indemnifying Party to reimburse such Indemnified Party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then such Indemnifying Party agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more than sixty (60) Business Days after receipt by such Indemnifying Party of the aforesaid request, (ii) such Indemnifying Party shall not have reimbursed such Indemnified Party in accordance with such request prior to the date of such settlement and (iii) such Indemnified Party shall have given such Indemnifying Party at least thirty (30) days' prior notice of its intention to settle. No Indemnifying Party shall, without the prior written consent of any Indemnified Party, effect any settlement of any pending or threatened Proceeding in respect of which such Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of such Indemnified Party.

(d) If the indemnification provided for in this Section 6 is unavailable to an Indemnified Party under subsections (a) and (b) of this Section 6 in respect of any losses, damages, expenses, liabilities, claims or actions referred to therein, then each applicable Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, damages, expenses, liabilities, claims or actions (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Holders or the Initial

Purchasers on the other hand from the offering of the Registrable Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Holders or the Initial Purchasers on the other in connection with the statements or omissions which resulted in such losses, damages, expenses, liabilities, claims or actions, as well as any other relevant equitable considerations. The relative fault of the Company on the one hand and of the Holders or the Initial Purchasers on the other shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information supplied by the Company or by the Holders or the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, damages, expenses, liabilities, claims and actions referred to above shall be deemed to include any reasonable legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any Proceeding.

(e) The Company, the Holders and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in subsection (d) above. Notwithstanding the provisions of this Section 6, no Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by it were offered to the public exceeds the amount of any damages which it 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. The Holders' respective obligations to contribute pursuant to this Section 6 are several in proportion to the respective amount of Registrable Securities they have sold pursuant to a Shelf Registration Statement, and not joint. The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or the Initial Purchasers or any person controlling any Holder or Initial Purchaser, or the Company, or the Company's officers or directors or any person controlling the Company and (iii) the sale of any Registrable Security by any Holder.

Section 7. *Information Requirements*. (a) The Company covenants that, if at any time before the end of the Effectiveness Period it is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder of Registrable Securities and take such further action as any Holder of Registrable Securities may reasonably request in writing (including, without limitation, making such 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 limitations of the exemptions provided by Rule 144, Rule 144A, Regulation S and Regulation D 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 the reporting requirements of the Exchange Act, unless such a statement has been included in the Company's most

recent report filed with the SEC 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 the Common Stock) under any section of the Exchange Act.

(b) The Company shall file the reports required to be filed by it under the Exchange Act and shall comply with all other requirements set forth in the instructions to Form S-1 or Form S-3, as the case may be, in order to allow the Company to be eligible to file registration statements on Form S-1 or Form S-3.

Section 8. *Underwritten Registrations*.

(a) If any of the Registrable Securities covered by the Shelf Registration Statement are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering ("Managing Underwriters") will be selected by the holders of a majority in aggregate principal amount of such Registrable Securities to be included in such offering (provided that holders of Common Stock issued upon conversion of the Notes shall not be deemed holders of Common Stock, but shall be deemed to be holders of the aggregate principal amount of Notes from which such Common Stock was converted), and such Managing Underwriters shall be reasonably acceptable to the Company.

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

Section 9. *Miscellaneous.*

(a) *Remedies*. The Company acknowledges and agrees that any failure by the Company to comply with its obligations under this Agreement may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, any Initial Purchaser or Holder may obtain such relief as may be required to specifically enforce the Company's obligations under this Agreement. The Company further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate. This Section 9(a) shall not apply to Section 2(e).

(b) *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. The Company will not take any action with respect to the Registrable Securities which would, in contravention of this Agreement, adversely affect the ability of any of the Holders to include such Registrable Securities in a registration undertaken pursuant to this Agreement, and after the date hereof, the Company shall not grant to any of its security holders (other than the Holders in such capacity) the right to include any of its securities in the Shelf Registration Statement filed pursuant to this Agreement.

(c) *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 in aggregate principal amount of such Registrable Securities (provided that holders of Common Stock issued upon conversion of the Notes shall not be deemed holders of Common Stock, but shall be deemed to be holders of the aggregate principal amount of Notes from which such Common Stock was converted); provided that, no consent is necessary from any of the Holders in the event that this Agreement is amended, modified or supplemented for the purpose of curing any ambiguity, defect or inconsistency that does not adversely affect the rights of any Holders. 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 Shelf 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 Shelf 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 9(c), 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.

(d) *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:

(x) if to a Holder of Registrable Securities, 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:

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California, 94555
Attention: General Counsel
Telecopy No.: 510-574-1500

(z) if to the Initial Purchasers, to:

c/o UBS Securities LLC
299 Park Avenue
New York, New York 10171
Attention: Syndicate Department
Telecopy No.: (212) 713-1205

with a copy to (for informational purposes only):

c/o UBS Securities LLC
299 Park Avenue
New York, New York 10171
Attention: Legal Department
Telecopy No.: (212) 821-4042

and

c/o UBS Securities LLC
677 Washington Boulevard
Stamford, Connecticut 06901
Attention: Syndicate Department
Telecopy No.: (203) 719-0683

or to such other address as such person may have furnished to the other persons identified in this Section 9(d) in writing in accordance herewith.

(e) *Approval of Holders*. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, 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 Purchasers 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.

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

(g) *Successors and Assigns*. Any person who purchases any Registrable Securities from any Initial Purchaser or from any Holder shall be deemed, for purposes of this Agreement, to be an assignee of such Initial Purchaser or such Holder, as the case may be. 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.

(h) *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.

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

(j) *Governing Law*. THIS AGREEMENT 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.

(k) *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 its reasonable 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.

(l) *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. No party hereto shall have any rights, duties or obligations other than those specifically set forth in this Agreement.

(m) *Termination.* This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Effectiveness Period, except for any liabilities or obligations under Section 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.

(n) *Submission to Jurisdiction.* Except as set forth below, no Proceeding may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company hereby consents to the jurisdiction of such courts and personal service with respect thereto. The Company hereby consents to personal jurisdiction, service and venue in any court in which any Proceeding arising out of or in any way relating to this Agreement is brought by any third party against any Initial Purchaser. THE COMPANY HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT. The Company agrees that a final judgment in any such Proceeding brought in any such court shall be conclusive and binding upon the Company and may be enforced in any other courts in the jurisdiction of which the Company is or may be subject, by suit upon such judgment.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PROTEIN DESIGN LABS, INC.

By: /s/ MARK MCDADE
Name: Mark McDade
Title: Chief Executive Officer

Confirmed and accepted as of the date
first above written on behalf of itself
and the other several Initial Purchasers:

UBS SECURITIES LLC

By: /s/ REAL LECLERC
Name: Real Leclerc
Title: Executive Director

By: /s/ STEVEN MEEHAN
Name: Steven Meehan
Title: Managing Director

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EXHIBIT 5.1

OPINION OF GRAY CARY WARE & FREIDENRICH LLP

September 8, 2003

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555

PROTEIN DESIGN LABS, INC.
REGISTRATION STATEMENT ON FORM S-3

Ladies and Gentlemen:

We are acting as counsel for Protein Design Labs, Inc., a Delaware corporation (the "Company"), in connection with the registration under the Securities Act of 1933, as amended, of $250,000,000 aggregate principal amount of 2.75% Convertible Subordinated Notes due 2023 (the "Notes"), and the shares of Common Stock, $0.01 par value (the "Common Stock"), of the Company issuable upon conversion of the Notes (the "Conversion Shares"). The Notes and the Conversion Shares are to be offered and sold by certain securityholders of the Company (the "Selling Securityholders"). In this regard we have participated in the preparation of a Registration Statement on Form S-3 relating to the Notes and the Conversion Shares (such Registration Statement, as it may be amended from time to time, is herein referred to as the "Registration Statement").

We are of the opinion that the Notes have been duly authorized by the Company and are in the form contemplated by the Indenture dated as of July 14, 2003, between the Company and J.P. Morgan Trust Company, National Association, a national banking association, as Trustee. The Indenture has been duly authorized, executed and delivered by the Company. We are of the further opinion that the Conversion Shares have been duly authorized and, when issued by the Company upon conversion of the Notes in accordance with the Indenture, will be legally issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement and the Prospectus included therein.

Very truly yours,

Gray Cary Ware & Freidenrich LLP

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EXHIBIT 5.1

OPINION OF GRAY CARY WARE & FREIDENRICH LLP

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EXHIBIT 12.1

STATEMENTS RE: COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

	Year Ended December 31,					Six Months Ended June 30,
	1998	1999	2000	2001	2002	2003
	(in thousands)					
Earnings:						
Income (Loss) before income taxes	$ (9,502)	$ (10,333)	$ 652	$ 2,659	$ (14,512)	$ (38,029)
Add: Fixed charges	1,195	1,510	8,915	10,191	10,371	5,348
Less: Capitalized interest	—	—	—	—	(531)	(1,184)
Earnings:	$ (8,308)	$ (8,824)	$ 9,567	$ 12,850	$ (4,673)	$ (33,866)
Fixed Charges:						
Interest expensed and capitalized	$ —	$ 155	$ 7,965	$ 8,989	$ 8,957	$ 4,465
Amortization of convertible notes offering costs	—	—	628	721	721	360
Estimated interest portion of rent expense	1,195	1,355	322	481	693	523
Fixed charges	$ 1,195	$ 1,510	$ 8,915	$ 10,191	$ 10,371	$ 5,348
Ratio of earnings to fixed charges(1)	N/A	N/A	1.07	1.26	N/A	N/A

(1) Income (loss) before income taxes for the years ended December 31, 1998, 1999 and 2002 and the six-month period ended June 30, 2003 was not sufficient to cover fixed charges by a total of approximately $9.5 million in 1998, $10.3 million in 1999, $15.0 million in 2002 and $39.2 million for the six-month period ended June 30, 2003. As a result, the ratio of earnings to fixed charges has not been computed for any of these periods.

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EXHIBIT 12.1

STATEMENTS RE: COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

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EXHIBIT 23.2

Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of Protein Design Labs, Inc., for the registration of the Company's 2.75% Convertible Subordinated Notes due 2023 and 12,415,450 shares of its common stock and to the incorporation by reference therein of our report dated February 4, 2003, with respect to the consolidated financial statements of Protein Design Labs, Inc., included in Protein Design Labs, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2002, and of our report dated February 24, 2003, with respect to the financial statements of Eos Biotechnology, Inc., included in Protein Design Labs, Inc.'s Current Report (Form 8-K/A) dated June 17, 2003, respectively, both filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Palo Alto, California
September 5, 2003

QuickLinks

EXHIBIT 23.2

Consent of Independent Auditors

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

FORM T-1

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)

J. P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

(Exact name of trustee as specified in its charter)

(State of incorporation if not a national bank)	**95-4655078** (I.R.S. employer identification No.)
560 Mission Street, Floor 13 **San Francisco, California** (Address of principal executive offices)	**94105** (Zip Code)

William H. McDavid
General Counsel
270 Park Avenue
New York, New York 10017
Tel: (212) 270-2611
(Name, address and telephone number of agent for service)

Protein Design Labs, Inc.

(Exact name of obligor as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**94-3023969** (I.R.S. employer identification No.)
34801 Campus Dr. **Fremont, CA** (Address of principal executive offices)	**94555** (Zip Code)

2.75% Convertible Subordinated Notes due 2023
(Title of the indenture securities)

Item 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.

Comptroller of the Currency, Washington, D.C.
Board of Governors of the Federal Reserve System, Washington, D.C.

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor.

If the Obligor is an affiliate of the trustee, describe each such affiliation.

None.

Items 3-15 are not applicable because, to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.

Item 16. List of Exhibits.

List below all exhibits filed as part of this statement of eligibility.

Exhibit 1.	Articles of Association of the Trustee as Now in Effect (see Exhibit 1 to Form T-1 filed in connection with Form 8K of the Southern California Water Company filing, dated December 7, 2001, which is incorporated by reference).
Exhibit 2.	Certificate of Authority of the Trustee to Commence Business (see Exhibit 2 to Form T-1 filed in connection with Registration Statement No. 333-41329, which is incorporated by reference).
Exhibit 3.	Authorization of the Trustee to Exercise Corporate Trust Powers (contained in Exhibit 2).
Exhibit 4.	Existing By-Laws of the Trustee (see Exhibit 4 to Form T-1 filed in connection with Form 8K of the Southern California Water Company filing, dated December 7, 2001, which is incorporated by reference).
Exhibit 5.	Not Applicable
Exhibit 6.	The consent of the Trustee required by Section 321 (b) of the Act (see Exhibit 6 to Form T-1 filed in connection with Registration Statement No. 333-41329, which is incorporated by reference).
Exhibit 7.	A copy of the latest report of condition of the Trustee, published pursuant to law or the requirements of its supervising or examining authority.
Exhibit 8.	Not Applicable
Exhibit 9.	Not Applicable

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the Trustee, J. P. Morgan Trust Company, National Association, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of San Francisco, and State of California, on the _____ day of _____, 2003.

J. P. Morgan Trust Company, National Association

By /s/: Mitch Gardner
Mitch Gardner
Vice President

Exhibit 7. Report of Condition of the Trustee.

Consolidated Report of Condition of J.P. Morgan Trust Company, National Association
(Legal Title)

Located at 1800 Century Park East, Ste. 400 (Street) Los Angeles, (City) CA (State) 90067 (Zip)

as of close of business on June 30, 2003

ASSETS DOLLAR AMOUNTS IN THOUSANDS

1.	Cash and balances due from depository institutions (from Schedule RC-A):	
	a. Noninterest-bearing balances and currency and coin (1)	30,669
	b. Interest bearing balances (2)	0
2.	Securities:	
	a. Held-to-maturity securities (from Schedule RC-B, column A)	0
	b. Available-for-sale securities (from Schedule RC-B, column D)	106,073

3.	Federal Funds sold and securities purchased agreements to resell	0
4.	Loans and lease financing receivables (from Schedule RC-C):	
	a. Loans and leases held for sale	0
	b. Loans and leases, net of unearned income	41,488
	c. LESS: Allowance for loan and lease losses	0
	d. Loans and leases, net of unearned income and allowance (item 4.b minus 4.c)	41,488
5.	Trading assets (from Schedule RC-D)	0
6.	Premises and fixed assets (including capitalized leases)	9,168
7.	Other real estate owned (from Schedule RC-M)	0
8.	Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)	0
9.	Customers' liability to this bank on acceptances outstanding	0
10.	Intangible assets	
	a. Goodwill	0
	b. Other intangible assets (from Schedule RC-M)	162,542
11.	Other assets (from Schedule RC-F)	17,245
12.	TOTAL ASSETS (sum of items 1 through 11)	367,185

(1) Includes cash items in process of collection and unposted debits.
(2) Includes time certificates of deposit not held for trading.

LIABILITIES

13.	Deposits:	
	a. In domestic offices (sum of totals of columns A and C from Schedule RC-E)	97,653
	(1) Noninterest-bearing (1)	97,653
	(2) Interest-bearing	0
	b. In foreign offices, Edge and Agreement subsidiaries, and IBF'	
	(1) Noninterest-bearing	0
	(2) Interest-bearing	0
14.	Federal funds purchased and securities sold under agreements to repurchase	0
15.	Trading liabilities (from Schedule RC-D)	0
16.	Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M):	0
17.	Not applicable	
18.	Bank's liability on acceptances executed and outstanding	0
19.	Subordinated notes and debentures (2)	0
20.	Other liabilities (from Schedule RC-G)	47,491
21.	Total liabilities (sum of items 13 through 20)	145,144
22.	Minority interest in consolidated subsidiaries	0

EQUITY CAPITAL

23.	Perpetual preferred stock and related surplus	0
24.	Common stock	600
25.	Surplus (exclude all surplus related to preferred stock)	181,587
26.	a. Retained earnings	39,854

	b. Accumulated other comprehensive income (3)	0
27.	Other equity capital components (4)	0
28.	Total equity capital (sum of items 23 through 27)	222,041
29.	Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)	367,185

(1) Includes total demand deposits and noninterest-bearing time and savings deposits.
(2) Includes limited-life preferred stock and related surplus.
(3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, and minimum pension liability adjustments.
(4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.